

CONSULTING SERVICES AGREEMENT

(MUNICIPAL PUBLIC WORKS PROJECT)

This Consulting Services Agreement (the “Agreement”) is dated as of September ____, 2021 (the “Effective Date”) by and between **BUCKHURST FISH & JACQUEMART, INC.**, a New York corporation, d/b/a BFJ Planning (the “Consultant”), and the **TOWN OF WILTON**, a Connecticut municipal corporation (the “Town”). In consideration of the mutual covenants set forth below, the sufficiency of which is hereby acknowledged, Consultant and the Town agree as follows.

1. Services by Consultant.

(a) Scope of Work. Consultant will perform professional land use planning consulting services for the Town with respect to the Master Plan Study of the Greater Wilton Center Area, as described in the Request for Proposals, RFP Number 2021-05, attached as **Exhibit A** (the “RFP”) and Consultant’s proposal dated May 17, 2021, attached as **Exhibit B** (the “Proposal”). For purposes of this Agreement, the consulting services described in the Proposal are referred to as the “Services”. For purposes of this Agreement, “Component Documents” means and includes this Agreement, the RFP and the Proposal. The Component Documents are complimentary, and what is required by one shall be as binding as if required by all; performance by Consultant shall be required only to the extent consistent with the Component Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflicts or discrepancies among the Component Documents, interpretations will be based on the following priorities: this Agreement; the RFP; and the Proposal.

(a) Performance. Consultant represents and warrants that Consultant has the technical capability, experience, equipment, and other resources necessary to provide the Services on a timely basis and in full compliance with this Agreement. Consultant will use Consultant’s best skill, judgment and efforts to timely perform the Services in a manner satisfactory to the Town. Consultant will commence performing the Services when directed by the Town’s Director of Planning & Land Use Management (the “Director”).

(b) Compliance With Laws. Consultant agrees, represents and warrants that all of Consultant’s Services will be rendered in compliance with all applicable federal, state and local laws, regulations, ordinances, codes, orders and requirements. Consultant will promptly notify the Town if Consultant’s Services fail in any way to comply with the covenants, representations and warranties set forth in this Section, or if it is alleged that Consultant’s Services fail to comply with the covenants, representations and warranties set forth in this Section.

(c) No Delegation, Exceptions. Without the express prior written approval of the Director, Consultant shall not delegate to any other person or entity the performance of the

Services or of any of Consultant's obligations and responsibilities under this Agreement. Notwithstanding, Consultant is authorized to retain the services of the following sub-consultants, as described in the Proposal: (i) RGR Landscape will assist with sustainability, streetscape and placemaking; and (ii) Urbanomics will assist with market analysis.

2. Additional Services.

Consultant shall not perform any additional services beyond the Services described in the Proposal. Any additional services shall be subject to a separate written agreement.

3. Independent Contractor.

Consultant represents, warrants and agrees that: (a) Consultant is an independent contractor and not an employee or agent of the Town; (b) Consultant shall have the sole obligation and responsibility to pay any and all federal, state and local taxes, including wage withholding, payroll, unemployment insurance, Social Security, and sales and income taxes, associated with any payments or other compensation Consultant directly or indirectly receives from the Town; and (c) neither Consultant nor any employees or other personnel of Consultant are entitled to receive or are eligible for any benefits which accrue to employees of the Town, including without limitation such benefits as health insurance and retirement benefits. Without the express prior written approval of the Director, neither Consultant nor any employees or other personnel of Consultant will do or perform any act or make any representation, promise or commitment which purports in any way to bind the Town.

4. Payments to Consultant.

(a) Compensation. Consultant will be entitled to compensation for the Services in accordance with the lump sum fees indicated in the Proposal: **\$130,000.00 (for the GWC Master Plan and to develop a set of updated zoning regulations for the subject area being master planned) and \$20,000.00 (for the Form-Based Code option, if chosen by the Planning & Zoning Commission).** The total fee quoted for the Services is **not to exceed \$130,000.00 (\$150,000.00 if the Planning & Zoning Commission chooses the Form-Based Code option)** (the "Quoted Fee"). The Town will not be responsible for payment for Services performed in excess of the Quoted Fee unless, prior to performing the Services, the Consultant obtained the written authorization of the Director.

(b) Invoices, Payment Schedule. Consultant shall submit to the Town invoices for payment on a monthly basis. Each invoice shall include an itemized statement showing dates of work, a description of each task performed, and the total sum for each task. The Town shall review each invoice and, within ten (10) days of receipt, either certify the same for payment or advise Consultant of any necessary revisions or additional documentation necessary to render such invoice for payment. The Town will pay each invoice within twenty (20) days after receipt by the Finance Department of an approved invoice.

(c) Expenses. There will be no reimbursable disbursements or out-of-pocket expenditures associated with the Services. Consultant will be solely responsible for the payment of all expenses appropriate or necessary for Consultant to properly perform the Services.

5. Duration of Agreement.

(a) Term. The engagement of Consultant by the Town to provide the Services shall commence on the Effective Date and, unless earlier terminated as provided in this Agreement, shall end on June 30, 2022 (i. e., the end of the Town's current fiscal year). The engagement of Consultant by the Town will be automatically extended for a period of one (1) fiscal year (i. e., through June 30, 2023) unless either the Town or the Consultant notifies the other party that it does not wish to extend the engagement beyond the current fiscal year.

(b) Termination by the Town. The Town may, at any time and for any reason, terminate the engagement of Consultant to provide the Services under this Agreement. The Town shall give thirty (30) days' prior notice to Consultant of any such termination specifying the effective date of the termination. If the Town terminates the engagement under this Section 5(b): (i) Consultant shall continue to render the Services until the effective date of the termination; (ii) Consultant shall be paid by the Town, in accordance with the payment provisions of this Agreement, for all Services properly completed by Consultant as of the effective date of the termination; and (iii) upon payment of the amount specified in Section 5(b)(ii), the Town shall have no further liability to Consultant under this Agreement.

(c) Termination by Consultant. Consultant may, for any reason, terminate this Agreement, provided that Consultant gives at least thirty (30) days' prior notice to the Town of any such termination specifying the effective date of the termination. If Consultant terminates the engagement under this Section 5(c): (i) Consultant shall continue to render Services, as provided in this Agreement, until the effective date of the termination; (ii) Consultant shall be paid by the Town, in accordance with the payment provisions of this Agreement, for all Services properly completed by Consultant as of the effective date of the termination; and (iii) upon payment of the amount specified in Section 5(c)(ii), the Town shall have no further liability to Consultant under this Agreement.

(d) Cooperation. If the engagement of Consultant to provide Services as set forth in this Agreement is terminated under Section 5(b) or Section 5(c), Consultant shall cooperate with the Town to arrange the termination in such manner as may reasonably be requested by the Town so as to minimize any disruption or adverse impact to the Town, including, without limitation, providing documentation and data files to a successor consultant designated by the Town.

(e) Survival. Notwithstanding anything to the contrary contained herein, the provisions of Sections 7, 8, 9, 10, 12, 13 and 14 of this Agreement shall survive any termination or expiration of this Agreement regardless of how such termination or expiration may occur.

6. Insurance.

(a) Consultant shall, at its own expense and cost, obtain and keep in force during the entire duration of the Agreement the insurance coverages specified in Section 9 of the RFP.

(b) The insurance policies described in Section 6(a), above, are referred to herein as the “Policies”. Each of the Policies shall be underwritten by an insurance company licensed in the State of Connecticut to underwrite that particular form of insurance. Upon execution of this Agreement and, upon request of the Town, at every date for renewal of the Policies, Consultant shall cause a Certificate of Insurance to be issued by an insurance agent licensed in the State of Connecticut. Each of the Policies shall incorporate a provision requiring written notice to the Town at least thirty (30) days prior to any cancellation, nonrenewal or reduction in limits of the Policy.

(c) Consultant shall ensure that any and all sub-consultants engaged or employed by Consultant shall carry and maintain insurance in form and coverage amount consistent with the Policies and the consultant’s relative scope of work. With respect to the insurance maintained by each of Consultant’s sub-consultants, upon execution of this Agreement and, upon request of the Town, at every date for renewal of the Policies, Consultant shall cause a Certificate of Insurance to be issued by an insurance agent licensed in the State of Connecticut. The certificates will show the Town as an additional insured. Each of the Policies shall incorporate a provision requiring written notice to the Town at least thirty (30) days prior to any cancellation, nonrenewal or reduction in limits of the Policy.

7. **Ownership of Documents and Property.**

(a) Consultant understands and agrees that all information and other property of the Town, notwithstanding its disclosure to and use by Consultant in the course of the engagement of Consultant to provide Services under this Agreement, shall remain the property of the Town or of any third party who may furnished it to the Town. At the termination of Consultant’s engagement under this Agreement, or at the request of the Town at any time, Consultant will immediately deliver to the Town all information, and all other property of the Town or of a third party, which are in the possession, custody or control of Consultant.

(b) All documents prepared by Consultant pursuant to this Agreement, including maps, sketches, reports, drawings, CAD and/or computer design files and specifications (the “Work Product”) are instruments of service in respect to the Services to be performed and, upon payment as herein provided, shall become the property of the Town. Consultant hereby irrevocably and perpetually assigns to the Town all right, title and interest in and to the Work Product, including but not limited to all intellectual property rights, including but not limited to patents, trademark, trade secret and copyright.

8. **Remedies; Indemnification.**

(a) In addition to and not in lieu of any other obligation contained in this Agreement, Consultant agrees to and shall indemnify the Town and hold the Town harmless with respect to any and all claims, losses, costs and expenses (including but not limited to attorneys’ fees and costs of litigation), damages, fines, penalties and/or liabilities arising out of (i) any breach or

violation by Consultant of any provision of this Agreement, including any representation or warranty contained herein; and (ii) any negligent or intentional acts, errors or omissions by Consultant in the performance of its Services under this Agreement.

(b) The provisions of this Section 8 shall survive any termination or expiration of this Agreement regardless of how such termination or expiration may occur.

9. **Entire Agreement; Modification; Binding Effect.**

(a) This Agreement contains the entire agreement of the parties concerning its subject matter and shall supersede the terms of any other prior or contemporaneous agreement, representation or understanding (whether oral or written) between the parties concerning the subject matter of this Agreement. Consultant acknowledges that in connection with Consultant's decision to sign this Agreement, Consultant has not relied on any representations, promises or agreements of any kind except for those set forth in this Agreement.

(b) This Agreement may only be changed or modified in a writing signed by both Consultant and the Town.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns; provided, however, that Consultant may not assign Consultant's obligations under this Agreement.

10. **Governing Law; Jurisdiction.**

This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by and construed and enforced in accordance with the laws of the State of Connecticut. Consultant and the Town consent to the jurisdiction and exclusive venue of the State and/or Federal courts in Connecticut in any litigation concerning this Agreement or its enforcement.

11. **Consultant's Authority to Conduct Business.**

Consultant represents and warrants that Consultant shall maintain its existence in good standing in its state of incorporation or formation (as applicable), and that Consultant shall maintain in full force and effect any and all licenses or authorizations required for Consultant to do business in each jurisdiction where Services are to be rendered under this Agreement.

12. **Dispute Resolution.**

(a) The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between the parties. Any party may give the other party written notice of any dispute not resolved in the normal course of business. The notice and response shall include with reasonable particularity: (i) a statement of each party's position and a summary of arguments supporting that position; and (ii) the name and title of the

person who will represent that party and of any other person who will accompany him or her. Within thirty (30) days after delivery of the notice, the parties shall meet at a mutually acceptable time and place.

(b) Unless otherwise agreed in writing, the above-described negotiation shall end at the close of the first meeting described above (“First Meeting”). Such closure shall not preclude continuing or later negotiations, if desired.

(c) All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

(d) At no time prior to the First Meeting shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by agreement of the parties. This limitation is inapplicable, however, to a party if the other party refuses to comply with the requirements of Section 12(a).

(e) All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Section 12(a) and Section 12(b) are pending and for two (2) weeks thereafter. The parties will take such action, if any, required to effectuate such tolling.

(f) If the matter is not resolved by negotiations pursuant to Section 12(a) through Section 12(e), then either party may demand that the dispute be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “Commercial Arbitration Rules”) and upon such demand, the dispute shall be submitted to arbitration in Fairfield County, Connecticut. The parties may agree upon one (1) arbitrator. If they cannot so agree within two (2) weeks following demand for arbitration, then each party shall select an arbitrator, and the arbitrators so selected shall select a third arbitrator (the “Deciding Arbitrator”), and the decision of the Deciding Arbitrator shall be binding and conclusive. If either party refuses or fails to join in the appointment of an arbitrator, an arbitrator shall be appointed in accordance with the Commercial Arbitration Rules. All arbitration hearings conducted hereunder, and all judicial proceedings to enforce any of the provisions of this Agreement, shall take place in Fairfield County, Connecticut. Notice shall be given and the hearing conducted in accordance with the provisions of the Commercial Arbitration Rules. The arbitrator shall hear and determine the matter and shall execute and acknowledge its award in writing and deliver a copy thereof to each party by registered or certified mail. A judgment confirming the award of the arbitrator may be rendered in any court having jurisdiction. Costs and expenses of arbitration, including, but not limited to, the fees of the arbitrator, shall be borne by the non-prevailing party or in such proportion as the arbitrator shall determine.

13. Notices.

All notices required or permitted to be given under this Agreement shall be sufficient only if in writing and given by hand delivery, by overnight mail service, or by certified or registered mail, addressed to the party for whom such notice is intended at said party's address set forth below or such other address as either party may designate in writing to the other party.

If to the Town, addressed to:
Town of Wilton
238 Danbury Road
Wilton, CT 06897
Attention: First Selectwoman

If to Consultant, addressed to:
Buckhurst Fish & Jacquemart, Inc.
d/b/a BFJ Planning
115 Fifth Avenue
New York, NY 10003
Attention; Frank Fish, FAICP

14. **Miscellaneous Provisions.**

(a) Controlling Effect. In the event of an inconsistency between a provision of this Agreement and any terms and conditions that may be included in, or attached to, the Proposal, the provision in this Agreement shall control.

(b) Captions. Any title or caption contained in this Agreement is for convenience only and shall not be deemed a substantive part of this Agreement.

(c) Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which when taken together shall constitute one and the same Agreement. The parties hereto agree that this Agreement may be transmitted between them by electronic mail and, upon evidence of receipt of same, shall constitute delivery of this Agreement. The parties intend that PDF or electronic signatures constitute original signatures and that an Agreement containing the signatures (original, PDF or electronic) of all the parties is binding on the parties once sent via electronic mail or delivered to the other party.

(d) Non-Waiver. Any delay or failure by either party to exercise any right under this Agreement, or any party's partial exercise of any right under this Agreement, shall not constitute a waiver of such right or any other right. The waiver by either party of any particular breach of this Agreement or right hereunder shall not operate or be construed as a waiver of any other breach of this Agreement or right hereunder, and no such waiver shall be effective unless set forth in writing by Consultant or the Town.

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WHEREFORE, the Town and Consultant have entered into this Agreement as of the Effective Date (defined on Page 1).

TOWN OF WILTON

By: Lynne Vanderslice
Its: First Selectwoman

**CONSULTANT:
BUCKHURST FISH & JACQUEMART, INC.**

By: Frank Fish
Its:

{Signature page to Consulting Services Agreement}

EXHIBIT A
RFP

EXHIBIT B
CONSULTANT'S PROPOSAL