



VILLAGE OF DOBBS FERRY BOARD OF TRUSTEES
REGULAR MEETING AGENDA

MEETING DATE: March 12, 2024

AGENDA ITEM SECTION: Resolutions

AGENDA ITEM NO. : 2

AGENDA ITEM:

Resolution: Consider a resolution authorizing the Village Administrator to execute a contract with Nelson, Pope & Voorhis, LLC for professional services in connection with Groundwater Monitoring, Well Sampling and Annual Reporting at Waterfront Park in furtherance of the existing 2003 Voluntary Cleanup Agreement with the New York State Department of Environmental Conservation

ITEM BACKUP DOCUMENTATION:

1. Draft resolution
2. Letter and attachments dated February 28, 2024 from Steven J. McGinn/Partner-Division Manager Nelson Pope Voorhis to Robert Yamuder/Village Administrator

BE IT RESOLVED, that, the Village of Dobbs Ferry Board of Trustees hereby authorizes the Village Administrator to execute a contract with Nelson, Pope & Voorhis, LLC as set forth in the proposal dated February 28, 2024 and signed by Steven J. McGinn, Partner/Division Manager for professional services in connection with the Groundwater Monitoring, Well Sampling and Annual Reporting at Waterfront Park in furtherance of the existing 2003 Voluntary Cleanup Agreement with the New York State Department of Environmental Conservation.



NELSON POPE VOORHIS

environmental • land use • planning

February 28, 2024

Robert Yamuder
Village Administrator
Village of Dobbs Ferry
112 Main Street
Dobbs Ferry, NY 10522

**Re: Groundwater Monitoring Well Sampling and Annual Report
Waterfront Park, Dobbs Ferry**

Dear Mr. Yamuder:

We are pleased to be afforded the opportunity to present the following proposal for the semi-annual sampling of three (3) groundwater monitoring wells, the preparation of a yearly groundwater monitoring report and the completion of an Annual Report that includes a Periodic Review Report for the former landfill cap system. The following proposal represents our understanding of the scope of work required to obtain information on the groundwater underlying the subject property.

FEE SUMMARY

1. Groundwater Monitoring Sampling and Annual Report

Fee: \$12,070.00

This proposal, consisting of Exhibits A "Scope of Services", Exhibit B "Rate Schedule", Exhibit C "General Terms and Conditions" and Exhibit D "Specific Terms and Conditions", represents the entire understanding between you and us with respect to the project. If this proposal, along with Exhibits A, B, C & D are acceptable, please sign and return the proposal to my attention. The Rate Schedule (Exhibit B) identifies the hourly fee schedule for any additional work that may be required but would not apply to the flat fee for services noted above.

The undersigned hereby acknowledges that they are authorized by the contracting organization and applicant to enter into this contract on their behalf and has consent of the property owner to undertake the scope of work covered by this contract, including the filing of applications.

If you have any questions or would like to discuss the proposal, please do not hesitate to contact me.

Respectfully submitted,
NELSON, POPE & VOORHIS, LLC

Steven J. McGinn
Partner/Division Manager

PROPOSAL ACCEPTANCE AND APPROVAL

Please provide the following information to facilitate project coordination and file set up.

INDIVIDUAL OR ENTITY RESPONSIBLE FOR THIS CONTRACT AND PAYMENT:

CLIENT NAME: _____

ADDRESS: _____

CITY/STATE/ZIP: _____

PHONE (OFFICE): _____

EMAIL: _____

CLIENT'S CONTACT INFORMATION*:

NAME and TITLE: _____

RELATIONSHIP TO CLIENT: _____

PHONE: (OFFICE) _____ (CELL) _____

EMAIL: _____

**The individual or individuals identified above are authorized to act on the client's behalf. Should there be a change to the client's authorized representative(s) and/or additional authorized representatives be added, the client shall immediately notify N+P of the change.*

ACCEPTANCE AND APPROVAL:

By signing below, I acknowledge that I am an authorized representative of the entity listed above and that my signature below indicates acceptance and approval of the proposal including the Cover Letter and Exhibits A, B, & C. In addition, I am confirming the address and contact information provided is correct.

Signature

DATE: _____

Printed Name and Title

**UPON SIGNING, KINDLY RETURN ONE COPY
INCLUDING COVER LETTER AND ALL EXHIBITS (A, B, & C)**

**EXHIBIT A
SCOPE OF SERVICES****1) Groundwater Monitoring Well Sampling and Annual Report**

- a) Utilize a low-flow groundwater pump with dedicated polypropylene tubing to sample the three (3) existing groundwater monitoring wells. Provide personnel to collect the samples and transport samples to the ELAP certified laboratory for analysis.
- b) Analysis groundwater samples for the presence of TCL volatile organic compounds, TAL metals and pesticides. In addition, one (1) duplicate sample and one (1) field blank will be analyzed for the same constituents as the three (3) groundwater monitoring wells samples. One (1) trip blank will be analyzed for volatile organic compounds only. All samples will be completed by a NYS ASP/DOH certified laboratory. All samples will be analyzed using standard USEPA SW-846 methodologies. A Data Usability Summary Report (DUSR) will be prepared for each round of sampling in order to comply with the NYSDEC request to complete the sample analysis in accordance with Category B requirements.
- c) Prepare a Summary Report for submission to the New York State Department of Environmental Conservation (NYSDEC) Division of Environmental Remediation. This report will be submitted by the end of the year and summarize the two (2) sampling events which were completed in March and September.
- d) Provide supervision of sampling events and report preparation to ensure quality control.

Fee: The fees for these options are itemized in the tables below.

Task	Description	Unit Cost	No. of Units	Cost
a)	Sampling Personnel & Equipment	\$1,800/round	2	\$3,600.00
b)	Sample Analysis			
	VOCs, Metals & Pesticides	\$335/sample	10	\$3,350.00
	VOCs	\$110/sample	2	\$220.00
c)	Report Preparation	\$4,000/report	1	\$4,000.00
d)	Task Management	\$300/hour	3	\$900.00
Total				\$12,070.00

EXHIBIT B
HOURLY RATE SCHEDULE
NELSON, POPE & VOORHIS, LLC

Time Rates* Fee Schedule for items previously listed as time rates and other services that may be required but are not included in this proposal:

Principal	\$320.00
Principal Landscape Ecologist	\$320.00
NPV Senior Partner	\$300.00
Partner/Division Manager	\$295.00
Partner/Principal Planner	\$280.00
Senior Associate NPV	\$260.00
Principal Planner	\$225.00
Construction Engineer	\$220.00
Project Manager/Sr. Environmental Planner	\$220.00
Project Manager/Sr. Environmental Scientist	\$220.00
Principal Environmental Planner	\$215.00
Transportation Planner	\$210.00
Project Manager/Hydrogeologist	\$200.00
Senior Environmental Scientist	\$175.00
Senior Landscape Ecologist	\$175.00
Senior Planner	\$170.00
Senior Environmental Planner	\$180.00
Senior Environmental Planner II	\$160.00
Senior Environmental Planner III	\$150.00
Director of Grants Management Services	\$160.00
Environmental Planner	\$150.00
Environmental Planner II	\$145.00
Environmental Planner III	\$135.00
Economic Analyst/Planner	\$150.00
Environmental Engineer	\$135.00
Planner	\$125.00
Landscape Ecologist/Asst Project Manager	\$130.00
Assistant Landscape Ecologist	\$110.00
Assistant Landscape Ecologist II	\$100.00
Environmental Analyst	\$125.00
Environmental Analyst II	\$ 95.00
Planning Analyst	\$105.00
Environmental Scientist III	\$120.00
Environmental Scientist II	\$105.00
Environmental Scientist	\$100.00
Environmental Scientist/Geologist	\$100.00
Environmental Technician	\$ 95.00
Field Technician	\$ 90.00
Project Coordinator	\$120.00
Assistant Project Coordinator	\$ 95.00
Junior Landscape Ecologist	\$ 80.00
Planning Technician	\$ 70.00
Court Testimony	\$480.00

* **Time Rates** is defined as the time expended by employee to perform a given task as multiplied by the hourly billing rate assigned to such employee as stated in the Hourly Rate Schedule.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

Nelson, Pope & Voorhis, LLC

Page 1 of 5
01/01/2024

The following **General Terms and Conditions** are applicable to the Proposal and/or Agreement, all Exhibits and Amendments thereto for professional services between **Nelson, Pope & Voorhis, LLC** (collectively hereinafter "**NPV**" or "**Nelson Pope Voorhis**") and the **Client**, when attached to and made part of such Proposal and/or Agreement (collectively hereinafter the "**Agreement**") for the Project identified in the Scope of Services. The "**Client**" or "**Applicant**" is defined as the person or business entity signing the Agreement authorizing **NPV** to commence services.

NPV's Scope of Services applicable to this Agreement are set forth in Scope of Services and Fees Exhibit A-1 and included herein and made a part of this Agreement.

This Agreement supersedes all prior written proposals, other writings and/or negotiations not referenced herein between the parties and is expressly conditioned upon the **Client's** agreement of the Terms and Conditions hereof. This Agreement may only be modified in writing executed by both parties.

1.0 FEES, INVOICES, REIMBURSABLE EXPENSES, ESCALATION OF FEES

1.1 Fees

1.1.1 **NPV's** fees for services performed under this Agreement are set forth in Exhibit A-1 and the Hourly Rate Schedule in Exhibit B both of which are included herein and made a part of this Agreement.

1.1.2 Unless otherwise provided, **NPV's** fees include only those revisions to **NPV** prepared plans and related documents resulting from the reviewing municipal entity's comments as they relate to the entity's applicable published standards and requirements.

1.1.3 The minimum time segment for charging of survey field work is four (4) hours and the minimum time segment for charging of all other work is one-half hour, unless otherwise modified or defined in Exhibit A-1. Where applicable, rental charges will be applied to the Project to cover the cost of instrumentation and/or technical equipment.

1.2 Invoices

1.2.1 **NPV** will submit invoices to the **Client** on **NPV's** standard invoice form, terms net thirty (30) days. Partially completed items of service for which a fee has been specified will be billed based upon percentage of completion as estimated by **NPV**. Otherwise, invoices will be based upon **NPV's** Hourly Rate Schedule in effect at the time services performed. Past due balances are subject to interest of one (1) percent per month, or the maximum permitted under state law, whichever is less.

1.2.2 If an invoice is not disputed by the **Client** within thirty (30) days of the date of invoice, the invoice shall be deemed as accepted by the **Client** and not subject to dispute.

1.2.3 The use of a credit card by the **Client** for any payment shall be subject to a 3.5% surcharge to cover the credit card processing fee.

1.2.4 **NPV**. After giving seven (7) days written notice, may suspend services under the Agreement until all past due accounts, including applicable interest, have been paid. In the event the **Client** fails to make full payment of any invoice in accordance with the Agreement, and, as such, the Project is lien and/or referred to an attorney or agency for collection, the **Client** agrees to pay **NPV** reasonable

collection and/or attorneys' fees equal to 25% of the total amount due at that time.

1.2.5 The **Client** acknowledges that the payment of invoices for **NPV's** rendered services is not contingent upon receipt of approvals from regulatory agencies having jurisdiction.

1.3 Reimbursable Expenses

Reimbursable expenses may be charged to the **Client** at cost plus 25%. Below, or as otherwise provided in this Agreement, are those items that shall constitute reimbursable expenses under this Agreement:

1.3.1 Reproduction of plans, specifications, and other documents, including documents necessary for submission to regulatory agencies and for coordination with the **Client** and any other **Client** consultant. Reproduction charges for documents reproduced by **NPV** in-house are: blackline (\$0.45/sf); translucent bond (\$0.70/sf); mylar (\$6.75/sf); presentation paper (\$3.35/sf); B&W- 8 1/2x11 (\$0.10/ea), 8 1/2x14 (\$0.15/ea), 11x17(\$0.30/ea); Color 8 1/2x11 (\$0.65/ea), 8 1/2x14 (\$1.25/ea), 11x17(\$2.00/ea), other size (\$2.00/sf); report binding (\$10.00/ea creation of portable document format (PDF) and emailing of documents. In-house document reproduction not subject to reimbursable markup. The cost of outside services for document reproduction will be billed as a reimbursable expense. In addition to the reproduction charges listed, all **NPV** labor associated with the document reproduction will be billed pursuant to the Hourly Rate Schedule in Exhibit B.

1.3.2 All processing fees, including but not limited to permit, application and filing fees advanced by **NPV** shall be the sole responsibility of the **Client**.

1.3.3 The cost of equipment rental including where applicable equipment operators, and subcontracted services, such as authorized photogrammetry, testing services, geotechnical services, laboratory services, archeological services, and other specialized services by consultants, excluding those services which are explicitly included in the Agreement.

1.3.4 Expenses for the specific benefit of the **Client** consisting of travel, incidental expenses, and expendable materials and supplies purchased specifically for the Project.

1.3.5 If the services covered by this Agreement are subject to local or state taxes or fees (except state income taxes), such additional costs will be charged to the Project and are subject to reimbursement as provided herein.

1.3.6 Cost of delivery of documents to the **Client**, regulatory agencies, or to others designated by the **Client** will be billed at either in accordance with the Hourly Rate Schedule in Exhibit B, if performed by **NPV** staff, or as a reimbursable expense, if an outside service is used.

1.4 Escalation of Fees

1.4.1 Fees and schedule commitments are subject to renegotiations for unreasonable delay caused by the **Client's** failure to provide specified facilities or information, or for delays caused by unpredictable occurrences, or force majeure (See 16.0) Temporary work stoppage caused by any of the above may result in additional cost (reflecting a change in scope) beyond that outlined in the Agreement.

1.4.2 **NPV** shall have the right to increase its compensation payable by the **Client** to **NPV**, if **NPV** is required to modify services, facilities

EXHIBIT C

GENERAL TERMS AND CONDITIONS

Page 2 of 5
01/01/24

or equipment to comply with laws or regulations applicable to its services that become effective after execution of this Agreement, provided that NPV gives the Client thirty (30) days prior notice as to the cause for escalation and the additional amounts involved.

1.4.3 NPV may make an annual adjustment to its Hourly Rate Schedule and document reproduction fees. Services performed on an hourly cost basis will be invoiced in accordance with the Hourly Rate Schedule in effect at the time such services are performed.

2.0 INSURANCE

NPV will furnish the Client with certificates of insurance upon request. Premiums for insurance coverage in excess of the below coverages, when requested by the Client, will be charged to the Project and are subject to reimbursement.

NPV represents and warrants that it now has in full effect and will maintain the following insurances for the duration of the Project:

2.1 **Commercial General Liability Insurance** covering as insured NPV and as an additional insured the Client with the following limits of liability:

Personal Injury	\$1,000,000 for each occurrence
General Aggregate	\$2,000,000 in the aggregate
Excess Liability-Umbrella and	\$5,000,000 for each occurrence \$5,000,000 in the aggregate

2.2 **Workers' Compensation Insurance** securing compensation for the benefit of NPV's employees as required by the Workers' Compensation Law. Premiums for additional insurance coverage required for work on or near the waterfront will be charged to the Project and are subject to reimbursement.

2.3 **Comprehensive Automobile Liability Insurance** covering owned, non-owned, and hired vehicles will be provided upon request.

2.4 **Professional Liability Insurance** insuring against negligent acts, errors, and omissions, by NPV, in an amount of \$2,000,000 per claim with a \$4,000,000 aggregate.

3.0 CLIENT'S RESPONSIBILITIES

3.1 The Client shall promptly provide all criteria and full information as to the Client's requirements for the Project; designate in writing an individual or individuals authorized to act with authority on the Client's behalf for all aspects of the Project; examine and respond promptly to NPV's submissions, inquiries and questions; and give prompt written notice to NPV whenever the Client observes or otherwise becomes aware of any defect in the services of NPV or work provided by others that relates to or impacts NPV's services.

3.2 The Client acknowledges that if any person or entity other than its designated authorized individual or individuals directly requests the assistance of NPV on the Client's behalf it shall be assumed by NPV that authority was provided by the Client for the requested assistance.

3.3 By providing NPV with AutoCAD drawings or any other drawings, the Client is confirming that it has secured the permission and authorization of the preparing design professional and/or owner for NPV to utilize the electronic formatted files in the performance of its services pursuant to this Agreement.

3.4 The Client shall provide the right of entry for NPV personnel and equipment necessary to complete the services.

3.5 While NPV will take all reasonable precautions to minimize any damage to the Client's property, it is acknowledged by the Client that in the normal course of services some damage may occur, the correction of which is not part of this Agreement.

3.6 The Client shall be responsible for making payment of all fees and expenses in accordance with this Agreement. The failure to make any such payment shall constitute a material breach of this Agreement.

4.0 COMMENCEMENT AND COMPLETION OF SERVICES

4.1 NPV shall commence its services for the Project after receipt of a signed Agreement or Proposal which establishes the Agreement for NPV's Professional Services together with payment of any required retainers. Retainers will be applied to the final billing.

4.2 Agreements or Proposals that have been submitted but not signed shall be considered as being accepted if the Client verbally instructs NPV to proceed.

4.3 Should the performance or completion of the services by NPV hereunder be delayed due to changes, delays, acts or omissions, by the Client, its contractors, subcontractors, agents, or representatives, then the time for performance or completion by NPV hereunder shall be extended for the period of such delays.

5.0 CHANGED CONDITIONS

Certain conditions may arise during the performance of our services which may differ significantly from those assumed to exist when the Scope of Services was prepared. If, in the reasonable professional opinion of NPV, and consistent with the Standard of Care (as defined herein), the Agreement is no longer adequate considering occurrences or discoveries that were not originally contemplated by or known to NPV, NPV reserves the right to renegotiate the Agreement by first identifying the Changed Condition and informing the Client.

The Client and NPV shall promptly and in good faith enter into renegotiation of the Agreement to assist NPV to meet the Client's requirements. If renegotiated terms cannot be agreed to, the Client agrees that NPV has an absolute right to terminate this Agreement.

6.0 STANDARDS OF PRACTICE

6.1 The Client acknowledges that NPV's services shall be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the respective profession currently practicing under similar conditions at the same time and in the same locality ("Standard of Care").

6.2 NPV shall endeavor to perform its services as expeditious as is consistent with care, skill, and orderly progress of the Project. Notwithstanding, such performance is contingent upon the Client's and its representatives' prompt responses to inquiries, the dissemination of material information related to NPV's services, and the issuance of timely decisions.

6.3 NPV's services shall incorporate those publicly announced federal, state, and local laws, rules, regulations, codes, and standards that are applicable at the time NPV rendered their services. In the event of a change in a law, rule, regulation, code, standard, or similar document NPV shall assess its impact. If, in NPV's reasonable professional opinion consistent with the Standard of Care, the impact is such to significantly affect NPV's fees, costs, or anticipated completion date, a Changed Condition shall be deemed to exist and

EXHIBIT C

GENERAL TERMS AND CONDITIONS

Page 3 of 5
01/01/24

shall be dealt with pursuant to Section 5. In any event, the **Client** waives any claim against **NPV**, and agrees to indemnify and hold **NPV** harmless from any claim or liability for injury or loss allegedly arising from **NPV's** failure to abide by federal, state and local laws, rules, regulations, codes, and standards that were not in effect or publicly announced at the time when **NPV** otherwise would have incorporated their intent into the services. The **Client** further agrees to compensate **NPV** for time expended in defending any such claim, and for expenses, costs, and reasonable attorneys' fees incurred by **NPV**. **NPV's** compensation for time expended shall be in accordance with its then prevailing hourly rate schedule and payment of expenses and costs shall be in accordance with its then prevailing expense reimbursement policy.

6.4 NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS MADE. Notwithstanding any clause in this Agreement to the contrary, **NPV** expressly disclaims all express or implied warranties and guarantees, including any warranty of fitness for purpose or merchantability with respect to the performance of professional services.

6.5 If a situation emerges that causes **NPV** to believe compliance with the **Client's** request could result in **NPV** violating an applicable provision or aspect of professional standards or ethics, laws, or regulations, **NPV** shall so advise the **Client**. The **Client** and **NPV** shall immediately enter discussions to arrive at a mutually satisfactory solution. Failing achievement of a solution, either party may terminate this Agreement in accordance with termination provisions stated herein.

6.6 The **Client** recognizes that changing weather and climatic conditions, including but not limited to changing rainfall events or patterns and coastal sea rise, may occur at any time which **NPV** has no control over. The **Client** agrees that **NPV** shall not be liable in any manner for any impact or effect that changing weather and climatic conditions may have on **NPV's** designs and/or plans.

6.7 The Consultant makes no representation or warranties that the Project will achieve any LEED certification level or accreditation or impact the future performance or operating costs associated with the Project.

6.8 **NPV** shall act as an independent contractor at all times during the performance of its services, and no term of this Agreement, either expressed or implied, shall create an agency or fiduciary relationship.

7.0 OWNERSHIP OF DOCUMENTS

7.1 All reports, studies, plans and specifications, surveys, logs, field data, field notes, laboratory test data, calculations, estimates, and other documents, including but not limited to electronic documents, prepared by or furnished by **NPV** pursuant to this Agreement are instruments of **NPV's** professional services ("Instruments of Service"). **NPV** shall retain all common law, statutory, and other reserved rights, including copyrights, and generally asserts **NPV's** moral rights to be identified as the author of such Instruments of Service. Submission or distribution of the Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project shall not be construed as publication in derogation of reserved rights of **NPV**. **NPV** grants the **Client** a non-exclusive license to utilize its Instruments of Service for the purpose of constructing, using, maintaining, and altering the Project, provided that the **Client** substantially performs its obligations, including prompt payment of all sums when due under this Agreement. The non-exclusive license granted under this section permits the **Client** to authorize its consultants and contractors to reproduce applicable portions of

the Instruments of Service solely and exclusively for use in performing services or construction for the Project. The non-exclusive license granted in this section shall expire upon termination of this Agreement for any reason whatsoever.

7.2 No other license or right shall be deemed granted or implied under this Agreement. The **Client** shall not assign, delegate, sublicense, pledge, or otherwise transfer any license granted herein to another party without the prior written agreement of **NPV**. Any unauthorized use or modification of the Instruments of Service shall be at the **Client's** sole risk and the **Client** agrees to fully indemnify and hold **NPV** harmless from all claims, damages, costs or expenses, including but not limited to all reasonable attorneys' fees arising out of such unauthorized use or modification by the **Client** or by others acting through or on behalf of the **Client** and without liability to **NPV**.

7.3 The **Client** agrees that all reports and other Instruments of Service furnished to the **Client** or his agents, which are not paid for, shall be returned upon demand, and shall not be used for any purpose whatsoever.

8.0 DEFECTS IN SERVICES

The **Client** and its personnel, representatives, contractors, and subcontractors shall promptly report in writing to **NPV** any defects or suspected defects in **NPV's** work or services, in order that **NPV** may take prompt, effective measures which in **NPV's** professional opinion consistent with the Standard of Care, will minimize the consequences of a defect in services.

9.0 INDEMNIFICATION AND LIMITATION OF LIABILITY

9.1 **NPV**, subject to the limitation in 9.3 herein, agrees to the fullest extent permitted by law, to hold the **Client**, its officers, directors, partners, members, employees, and representatives harmless from and against all claims, suits, damages, losses, judgments, liabilities, actions, costs, or expenses (including reasonable attorneys' fees) to the extent caused by the negligent professional acts, errors, or omissions of **NPV** in the performance of the services under this Agreement.

9.2 To the fullest extent permitted by law, the **Client** shall indemnify and hold **NPV**, its officers, directors, partners, members, subconsultants, employees, and representatives harmless from any claims, suits, damages, losses, judgments, liabilities, actions, legal or administrative proceedings, costs, or expenses, and reasonable attorneys' fees for injuries or damages (including economic losses) to the extent caused by the negligent acts, errors or omissions of the **Client** (or for its officers, employees, representatives and/or agents, independent contractors or consultants, other than **NPV**). This clause shall not have the effect of extending the time within which a claim by the **Client** must otherwise commence under the applicable statutes of limitations or repose.

9.3 **NPV** shall not be responsible for the acts, errors, or omissions of the **Client**, the Contractor or any third parties in connection with or arising out of the Project. The **Client** hereby agrees to indemnify and hold **NPV**, its officers, directors, partners, members, subconsultants, employees, and representatives harmless from and against all claims, suits, damages, losses, judgments, liabilities, actions, legal or administrative proceedings, costs or expenses (including reasonable attorneys' fees) incurred by **NPV** which arise out of the foregoing, including but not limited to the **Client's** failure to carry out recommended corrective actions. Expenses shall also include, but not be limited to time charges by **NPV's** partners and employees at **NPV's** then Hourly Rate Schedule.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

Page 4 of 5
01/01/24

9.4 The **Client** agrees, to the fullest extent permitted by law, to **limit the liability of NPV to the Client**, and to all construction contractors and subcontractors, for any and all claims, suits, losses, judgments, liabilities, actions, legal or administrative proceedings, costs or expenses (including reasonable attorneys' fees), damages of any nature whatsoever, and claims and expenses from any and all cause or causes arising out of, resulting from or in any way related to the negligent acts, errors, or omissions of **NPV** and its subconsultants, so that the total aggregate of liability of **NPV** shall not exceed the fee earned by, or paid to **NPV** (whichever is less). It is intended that this limitation applies to any and all liability or cause of action described herein, regardless of the legal theory alleged unless otherwise prohibited by law. The **Client** agrees that **NPV's** liability to the **Client** and to all construction contractors and subcontractors on the Project, to the extent caused by **NPV's** professional negligent acts, errors, omissions, or alleged breach of contract shall not exceed **NPV's** total fee for services rendered on the Project.

9.5 The **Client** shall make no claim for professional negligent acts, errors, omissions, or alleged breach of contract either directly or in a third-party claim, against **NPV** unless the **Client** has first provided **NPV** with a written certification executed by an independent design professional currently practicing in the same discipline as **NPV** and licensed in the state in which the Project for which **NPV's** services were rendered is located. This certification shall: a) identify the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a design professional performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to **NPV** not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding.

9.6 The **Client** shall make no claim for breach of contract, misrepresentation, negligent misrepresentation or fraud arising out of any statement, representation, or omission by **NPV** in any certification or report required under the Martin Act (General Business Law §§ 352,353), or the regulations enacted thereunder, in connection with any project for which the plans and specifications were approved by the **Client** and/or the municipality with jurisdiction over said plans or specifications prior to the issuance of said report or certification, arising out of any design element, error, or omission known to or disclosed to the **Client** and/or said municipality prior to the time of said approval, and the **Client** shall indemnify, defend and hold **NPV** harmless from and against any such claim made by any homeowners association or unit owner claiming to have relied upon any such certification or report.

9.7 The **Client** recognizes that topographical mapping prepared from aerial photography is subject to an inherent margin of error. The **Client** agrees that **NPV** shall not be liable for any site work changes due to differences between actual site conditions and conditions depicted on topographic mapping from aerial photography used to prepare plans for the Project.

9.8 **NPV** has no control over, charge of, or responsibility for construction. The **Client** (owner) shall retain a qualified contractor(s), licensed in the jurisdiction of the Project ("Contractor"), to implement the construction of the Project ("Work"). The Contractor shall coordinate, supervise, and direct all portions of the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, safety, site safety, and security. To the fullest extent permitted by law, the Contractor shall indemnify and hold the **Client**, **NPV**, **NPV's**

subconsultants, employees, and representatives harmless from and against all claims, damages, losses, costs, or expenses (including but not limited to reasonable attorneys' fees), arising out of, or resulting from performance of the Work. Contractor shall provide insurance and name the **Client**, **NPV**, and **NPV's** subconsultants as additional insureds on Contractor's Commercial General Liability insurance policies.

9.9 **Waiver of Consequential Damages.** **NPV** and the **Client** waive any and all special, punitive, and indirect or direct consequential damages for claims, disputes, and other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the provisions defining termination.

10.0 DISPUTES

10.1 **Mediation.** Any dispute or claim arising between the **Client** and **NPV** in connection with this Agreement shall be submitted by either party, as a condition precedent, to Mediation for resolution in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless otherwise mutually agreed upon by the parties. The parties shall share the mediator's fee and any filing fee equally. The Mediation shall take place in Suffolk County, New York.

All offers, promises, conduct and statements, whether oral or written, made during the course of Mediation by any of the parties, their agents, employees, experts, and attorney, or by the mediator shall be confidential and privileged.

10.2 In the event Mediation does not result in a resolution of the dispute or claim between the **Client** and **NPV**, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction located in Suffolk County, New York.

10.3 The **Client** recognizes **NPV's** right not to release documents until the **Client** has made the account receivables current, excluding only any billed fees in good faith dispute, providing the **Client** has notified **NPV** in writing within thirty (30) days of the invoice date identifying the portion of the fees in dispute and the reason for the dispute. All undisputed fees on the disputed invoice shall be paid in accordance with these terms.

11.0 TERMINATION

11.1 This Agreement may be terminated by either party upon ten (10) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, **NPV** shall be paid for services performed prior to and including the termination notice date plus reasonable termination expenses.

11.2 This Agreement may be terminated by **NPV**, pursuant to Section 5 and 6.5 hereof, upon ten (10) calendar days written notice.

11.3 In the event of termination, or suspension for more than three (3) months, prior to completion of all services contemplated by this Agreement, **NPV** may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of **NPV** in completing such analyses and reports. A final invoice will be calculated on the first or fifteenth of the month

EXHIBIT C

GENERAL TERMS AND CONDITIONS

Page 5 of 5
01/01/24

(whichever comes first) following the end of the cancellation period (the effective date of cancellation).

11.3.1 Where the method of contract payment is lump sum, the final invoices will be based on the percentage of work completed to the effective date of cancellation, plus three (3%) percent of the billings to such date as a closeout cost.

11.3.2 Where the method of contract payment is based on time and materials, the final invoice will include all services and direct expenses associated with the Project up to the effective date of cancellation, plus three (3%) percent of the billings to such date as a closeout cost.

11.3.3 Where the method of contract payment is cost plus a fixed fee, the final invoice will include all costs to date of termination and a pro-rata share of the fixed fee plus three (3%) percent of the billings to such date as a closeout cost.

11.3.4 The closeout cost referred to in 12.3.1, 12.3.2 and 12.3.3 herein is not to be considered as a penalty but represents an allowance for demobilization of personnel, equipment, and costs not available on short notice.

12.0 GOVERNING LAW

The laws of the state in which the office of NPV, performing the services under this Agreement, is domiciled will govern the validity of this Agreement, its interpretation and performance, and remedies for contract breach or any other claims related to this Agreement, without reference to its choice of law principles.

13.0 PUBLICITY/CONFIDENTIALITY

13.1 NPV and its subconsultants shall have the right to photograph the Project and to use the photographs in the promotion of its professional practices through advertising, public relations, brochures, or other marketing material.

13.2 If the Client or NPV receives information specifically designated by the other party as "confidential" or "business proprietary", the receiving party shall keep such information strictly confidential, and shall not disclose it to any other person except to its employees, attorneys, accountants, or those who need to know the content of such information so that either party may fulfill its obligations under this Agreement.

14.0 ASSIGNS

The Client may not delegate, assign, sublet, or transfer the Client's duties, obligations, or interest in this Agreement without the written consent of NPV.

15.0 INUREMENT/THIRD PARTIES

This Agreement inures to the benefit and binds NPV and the Client and their respective successors and permitted assigns. This Agreement shall not create any rights in any person or entity other than NPV and the Client, and no other person or entity is intended to be a third-party beneficiary to this Agreement.

16.0 FORCE MAJEURE

Notwithstanding any provision herein to the contrary, neither NPV nor the Client shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement and/or any proposal between the parties where such delay or failure is caused by an unforeseen force majeure event, including, but not limited to: fire, flood, water, the elements, explosions, acts of God, war, accidents, pandemic, COVID-19, orders of a government agency, failure of a regulatory entity to act in a timely or expected manner, failure by either party to furnish information or act in a timely or

expected manner, or other unexpected or unforeseen cause beyond the reasonable control of the party delayed or prevented from performing (a "Force Majeure Event"). Notwithstanding this provision, each party shall take all commercially reasonable steps to avoid, alleviate or mitigate the impact of any force majeure event. If and to the extent that a party's performance is prevented or delayed by a Force Majeure Event, then the affected performance will be excused for so long as the Force Majeure Event continues to prevent or delay performance and the party continues efforts to recommence performance to the extent possible without delay. The affected party will promptly notify the other party in writing, describing the Force Majeure Event in reasonable detail. If any Force Majeure Event delays performance of NPV's services for more than ninety (90) days, either party may terminate this Agreement as of a date specified by the party in a termination notice to the other party, unless otherwise agreed upon in writing by the parties.

17.0 ENFORCEMENT AND SEVERABILITY

If any provision of this Agreement is invalid or unenforceable as against any person, party, or under certain circumstances, the remainder of this Agreement and the applicability of such provision to other persons, parties or circumstances shall not be affected thereby.

18.0 STRICT ADHERENCE

The failure of any party to this Agreement to insist upon strict adherence to any term or condition of this Agreement will not be considered a waiver of any right arising thereunder or deprive that party of the right thereof to insist upon strict adherence to that term or any other term under this Agreement.

EXHIBIT D
SPECIFIC TERMS AND CONDITIONS
PHASE II SITE ASSESSMENTS, SUBSURFACE INVESTIGATIONS AND CLEANUPS
Nelson, Pope & Voorhis, LLC

The following **Specific Terms and Conditions** are applicable to Agreements between Nelson, Pope & Voorhis, LLC (hereinafter "**NPV**" or "the consultant") and the **Client**, when attached to and made part of such Agreement or Proposals.

Phase II Agreement

CLIENT understands that a Phase II Environmental Site Assessment is conducted solely to permit NPV to render a professional opinion about the likelihood of regulated contaminants being present on, in, or beneath the site in question at the time services were conducted. No matter how thorough a Phase II Environmental Site Assessment study may be, findings derived from its conduct are limited and NPV cannot know or state for an absolute fact that a site is unaffected by reportable quantities of regulated contaminants. Furthermore, even if NPV believes that reportable quantities of regulated contaminants are not present, CLIENT still bears the risk that such contaminants may be present or may migrate to the site after the study is complete. Given the foregoing, CLIENT's acceptance of this Agreement shall signify the CLIENT understands the risks associated with Phase II Environmental Site Assessments and, as a material element of the consideration NPV requires to perform these services, CLIENT, shall to the fullest extent permitted by law, indemnify, defend, and hold NPV harmless from any claim or liability for injury or loss arising from NPV's discovery of unanticipated hazardous materials, or suspected hazardous materials, or their presence. CLIENT also shall compensate NPV for any time spent or expenses incurred by NPV in defense of any such claim (the term "any claim" means "any claim in contract, tort or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation or other acts giving rise to liability"). Such compensation shall be based upon NPV's prevailing fee schedule and expense reimbursement policy.

ASTM Standards

The American Society for Testing and Materials (ASTM) has developed a variety of prescriptive professional practice standards (standard practices and standard guides), that identify specific methods professionals could or should use to attain results. Such prescriptive professional practice standards fail to consider the unique needs of a client, the client's project-specific expectations, or the requirements and particular needs, expectations, circumstances, and requirements of the project and the professional engagement. At such, adherence to ASTM's prescriptive professional practice standards may not be appropriate or in the best interests of the client or the project NPV's instruments of service. NPV has not followed prescriptive professional practice standards issued by ASTM and has instead worked to develop a scope of service specifically for this project, in accordance with CLIENT's needs and preferences and NPV professional and contractual obligations.

Buried Utilities

CLIENT will furnish to Consultant information identifying the type and location of utility lines and other man-made objects beneath the site's surface. Consultant will take reasonable precautions to avoid damaging these man-made objects by preparing, prior to penetrating the site's surface, a subsurface sketch indicating the locations intended for penetrations and, as per information provided to Consultant, the locations of buried utility lines and other buried man-made objects. CLIENT will review the sketch and approve the intended penetration locations before penetrations are made. In addition, CLIENT shall, to the fullest extent permitted by law, waive any claim against Consultant, and indemnify, defend, and hold Consultant harmless from any claim of liability for injury or loss arising from damage to or contact with buried utility lines or other buried man-made objects that were not called to Consultant's attention or

which were not properly located on drawings furnished to Consultant. CLIENT shall also compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such claim. Such compensation shall be based upon Consultant's prevailing fee schedule and expense reimbursement policy. The term "any claim" used in this provision means "any claim in contract, tort, or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability").

Discovery of Unanticipated Hazardous Materials and Substances

Hazardous materials or certain substances may exist where there is no reason to believe they are present. Should Consultant discover such unanticipated hazardous materials or suspected hazardous materials, Consultant shall notify CLIENT as soon as practically possible. CLIENT and Consultant agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation or termination of this Agreement. CLIENT and Consultant agree that, upon discovery of unanticipated hazardous materials or suspected hazardous materials, Consultant should take those measures that in Consultant's opinion are necessary to preserve and protect public health, safety, and welfare and the environment. CLIENT agrees to compensate for such services given that the hazardous materials or suspected hazardous materials in question are CLIENT's responsibility at fees that are five percent over cost and overhead. In addition, CLIENT shall, to the fullest extent permitted by law, indemnify, defend, and hold Consultant harmless from any claim or liability for injury or loss arising from Consultant's discovery of unanticipated hazardous materials, or suspected hazardous materials, or their presence. CLIENT also shall compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such claim (the term "any claim" means "any claim in contract, tort or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation or other acts giving rise to liability"). Such compensation shall be based upon Consultant's prevailing fee schedule and expense reimbursement policy.

Disposal of Contaminated Substances (including samples)

All substances on, in, or under CLIENT's site as samples or as byproducts of the sampling process, are CLIENT's property. Unless CLIENT directs otherwise, Consultant shall dispose of all nonhazardous samples and sampling process byproducts in accordance with applicable law. Unless other arrangements are mutually agreed upon in writing, or unless otherwise required, Consultant shall preserve samples for no longer than fifteen (15) calendar days after Consultant's issuance to the CLIENT of the initial instrument of service that relates data obtained from them. If in Consultant's opinion any of these samples are or may be affected by a regulated contaminant, Consultant shall package such samples in accordance with applicable law, and CLIENT shall arrange for lawful disposal procedures, that is, procedures to remove the samples from Consultant's custody and transport them to a disposal site. However, any samples or sampling process byproducts that are or are assumed to be affected by regulated contaminants shall be packaged by Consultant in accordance with applicable law, and they shall be turned over to CLIENT. Consultant shall not under this Agreement arrange for or otherwise dispose of substances affected by regulated contaminants. Consultant will, at CLIENT's request, help CLIENT identify appropriate alternatives for off-site treatment, storage, or disposal of such substances, but Consultant shall not make any independent determination about the selection of a treatment, storage or disposal facility nor will Consultant subcontract such activities through transporters or others. CLIENT shall sign all manifests for the disposal of substances affected by regulated contaminants. However,

EXHIBIT D
SPECIFIC TERMS AND CONDITIONS
PHASE II SITE ASSESSMENTS, SUBSURFACE INVESTIGATIONS AND CLEANUPS
Nelson, Pope & Voorhis, LLC

if CLIENT directs Consultant, Consultant's employees, or Consultant's agent to sign such manifests and/or to hire for CLIENT a contractor to transport, treat, or dispose of the contaminated substances, agent (notwithstanding any other provision of this Agreement to the contrary) so that Consultant shall not be considered a generator, transporter, or disposer of materials affected by regulated contaminants. Because involvement with CLIENT's contaminated samples can expose Consultant to severe risks. CLIENT shall, to the fullest extent permitted by law, waive any claim against Consultant and indemnify, defend, and hold Consultant harmless from any claim or liability for injury or loss allegedly arising from Consultant containing, labeling, transporting, testing, storing, or other handling of CLIENT's contaminated samples. CLIENT also shall compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such claim (the term "any claim" means "any claim in contract, tort or statute alleging negligence, errors, omissions, strict liability, status liability, breach of contract, breach of warranty, negligent misrepresentation or other acts giving rise to liability"). Such compensation shall be based upon Consultant's prevailing fee schedule and expense reimbursement policy.

Aquifer Cross-Contamination

Sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or boring device moves through a contaminated zone and links it to an aquifer underground stream, or other hydrous body not previously contaminated. Because Consultant is powerless to totally eliminate the risk despite use of due care, and because sampling is an essential element of Consultant's services indicated herein, CLIENT shall, to the fullest extent permitted by law, waive any claim against Consultant, and indemnify, defend, and hold Consultant harmless from any claim or liability for injury or loss arising from cross-contamination allegedly caused by Consultants sampling. CLIENT shall also compensate Consultant for any time spent or expenses incurred by Consultant in defense of any such claim. Such compensation shall be based upon Consultant's prevailing fee schedule and expense reimbursement policy. The term "any claim" used in this provision means "any claim in contract, tort, or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability").