

SUPREME COURT
STATE OF NEW YORK

COUNTY OF MONROE

PITTSFORD CANALSIDE PROPERTIES LLC,

Plaintiff/Petitioner,

SETTLEMENT
AGREEMENT
AND RELEASE

-vs-

VILLAGE OF PITTSFORD, NEW YORK,
BOARD OF TRUSTEES OF THE VILLAGE
OF PITTSFORD, NEW YORK, AND STEVEN
LAUTH in his capacity as BUILDING
INSPECTOR OF THE VILLAGE OF PITTSFORD

E2024006050

Defendants/Respondents.

This Settlement Agreement and Release is entered into by and between Plaintiff/Petitioner Pittsford Canalside Properties LLC (“PCP”), Defendant/Respondent Village of Pittsford New York, Defendant/Respondent Board of Trustees of the Village of Pittsford New York (“Board of Trustees”), and Defendant/Respondent Steven Lauth in his capacity as Building Inspector of the Village of Pittsford (“Building Inspector”) (together “Village” or “Defendants/Respondents”), as of the __ day of _____, 2024. PCP and the Village are sometimes collectively referred to as the “Settling Parties.”

WHEREAS, Plaintiff/Petitioner PCP commenced this hybrid proceeding against Defendants/Respondents by filing a Summons, Verified Petition/Complaint, and Notice of Petition on April 8, 2024 (the “Litigation”); and the Village answered and commenced counterclaims, which PCP has answered, and

WHEREAS, the Litigation (the “Dispute”); arises out of disagreement between PCP and the Village as to the fees and cost reimbursement for the building permit and related review for Phase I of the proposed construction of a 156 unit multi-family mixed-use community (the “Project”) located on the Erie Canal at 75 Monroe Avenue in the Village of Pittsford, County of Monroe, State of New York (the “Property”).

WHEREAS, the Historic Preservation Board (“HPB”) has issued a Certificate of Appropriateness for the Project and the HPB and the Settling Parties wish to confirm the

validity of such approval and the time within which PCP may commence work on the Project.

WHEREAS, the Planning Board has issued a Final Site Plan for the Project that has not expired and the Planning Board and the Settling Parties wish to extend the Final Site Plan approval for one year as of the date of termination of the Litigation.

WHEREAS, the Settling Parties mutually desire to fully resolve and settle the Dispute and the Litigation between them, it being the intention of the parties that this be the end of all litigation, or potential litigation, as between them arising out of the Project, the Dispute and/or any and all other, claims, counterclaims, disputes and/or controversies raised in the Litigation or which could have been raised in the Litigation; and

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. PERMIT ISSUANCE. All Village permits necessary to construct the improvements shall be issued by the Building Inspector upon the following terms and conditions:

A. Phase 1.

1. Required Submissions. The Phase 1 Required Submissions shall consist of the following: (i) Letter to Building Inspector Requesting Phase 1 Permits; (ii) Phase 1 Permit Fee.
2. Phase 1 Permits. Within thirty days of execution of the Settlement Agreement, PCP shall submit the Required Submissions to the Village. Upon receipt of the Phase 1 Required Submissions the Building Inspector shall issue all permits necessary to construct the Phase 1 improvements within 3 business days.

B. Phase 2.

1. Required Submissions. The Phase 2 Required Submissions shall consist of the following: (i) Application Form; (ii) Building Plans for Buildings 4, 5, and 6; (iii) Phase 2 Permit Fee; (iv) Phase 2 Escrow Agreement; and the (v) Phase 2 Escrow Deposit.
2. Phase 2 Plan Review.
 - a. Upon receipt of the Phase 2 Required Submissions the Building Inspector shall transmit the building plans to the Consultant within 3 business days.

- b. Consultant shall have 10 business days to review and respond to the initial submission, and 5 business days to review and respond to each backcheck.
3. Phase 2 Permits. Upon receipt of confirmation from the Consultant that the Building Plans conform to the requirements of NYS Uniform Code, the Certificate of Appropriateness and the Final Site Plan, the Building Inspector shall issue all permits necessary to construct the Phase 2 improvements within 3 business days.

C. Phase 3.

1. Required Submissions. The Phase 3 Required Submissions shall consist of the following: (i) Application Form; (ii) Building Plans for Building 7 and clubhouse/restaurant; (iii) Phase 3 Permit Fee; (iv) Phase 3 Escrow Agreement; and the (v) Phase 3 Escrow Deposit.
2. Phase 3 Plan Review.
 - a. Upon receipt of the Phase 3 Required Submissions the Building Inspector shall transmit the building plans to the Consultant within 3 business days.
 - b. Consultant shall have 10 business days to review and respond to the initial submission, and 5 business days to review and respond to each backcheck.
3. Phase 3 Permits. Upon confirmation from the Consultant that the Phase 3 Building Plans conform to the requirements of NYS Uniform Code, the Certificate of Appropriateness and the Final Site Plan, the Building Inspector shall issue all permits necessary to construct the Phase 3 improvements within 3 business days.

II. PERMIT FEES

- A. Phase 1. The Phase 1 Permit Fees shall consist of a one-time payment of \$50,809.60 from PCP to the Village of Pittsford, which consists of the following items:

FEE	PHASE 1
Residential New Construction	\$0.00
Residential Plumbing (\$40/unit)	\$2,240.00
Consultant Review Reimbursement	\$45,900.00
Inspections (to be paid directly by PCP)	N/A
Sewer Connection Fee	\$1,900.00
Residential – Garage	\$769.60
TOTAL	\$50,809.60

- B. Phase 2. The Phase 2 Permit Fees shall consist of a one-time payment of \$15,669.60 from PCP to the Village of Pittsford, which consists of the following items:

FEE	PHASE 2
Residential New Construction	\$0.00
Residential Plumbing (\$40/unit)	\$2,240.00
Consultant Review Cap (Escrow Deposit)	\$12,660.00
Inspections (to be paid directly by PCP)	N/A
Sewer Connection Fee	\$0.00
Residential – Garage	\$769.60
TOTAL	\$15,669.60

- C. Phase 3. The Phase 3 Permit Fees shall consist of a one-time payment of \$15,304.80 from PCP to the Village of Pittsford, which consists of the following items:

FEE	PHASE 3
Residential New Construction	\$0.00
Residential Plumbing (\$40/unit)	\$1,760.00
Consultant Review Cap (Escrow Deposit)	\$13,160.00
Consultant Inspections (to be paid directly)	N/A
Sewer Connection Fee	\$0.00
Residential – Garage	\$384.80
TOTAL	\$15,304.80

- D. The sewer connection fee for the entire development assumes that PCP will make one connection to the Village sewer system and that PCP will own the new piping. The Village will be responsible for the maintenance and operation of the force main from the pump station to the connection at the entry way along Monroe Avenue and will be granted an easement as approved by the Planning Board and drafted on the approved site plan drawing #54F. All other sanitary sewer piping on the site will be the maintenance responsibility of PCP.
- E. Right of Way Permit. Prior to commencing any work in the Village right-of-way PCP shall obtain a right-of-way permit for either \$100 per occurrence or \$500 per year, at PCP's discretion. Nothing in this Agreement shall authorize work in the right-of-way nor amend any approved plans for such work. PCP shall comply with all Village requirements prior to commencing work in the right-of-way we're coming. The Village and PCP agree to coordinate work in the right-of-way to minimize disruption.

- III. Plan Review Consultant. Within 60 days of the date of this Settlement Agreement the Village shall retain such Plan Review Consultant as it deems appropriate subject to the terms contained in this Settlement Agreement, including the following maximum fees:
- A. Phase 2. Maximum consultant review fee shall be \$12,660, which is the amount quoted by Bero/Bergman for Phase 2 Plan Review, subject to inflation at CPI after 6 months from the date of this Settlement Agreement. PCP shall make an Escrow Deposit of this amount prior to the issuance of Phase 2 Permits.
 - B. Phase 3. Maximum consultant review fee shall be \$13,160, which is the amount quoted by Bero/Bergman for Phase 3 Plan Review, subject to inflation at CPI after 6 months from the date of this Settlement Agreement. PCP shall make an Escrow Deposit of this amount prior to the issuance of Phase 3 Permits.
- IV. Certified Code Enforcement Official / Inspector
- A. Selection and Appointment. PCP shall select an independent New York State Certified Code Enforcement Official to conduct all inspections required by NYS Uniform Code and/or Pittsford Village Code (“Inspector”), and shall transmit the name and qualifications of such Inspector to the Village to obtain approval from Village Board of Trustees, which approval shall not be unreasonably withheld.
 - 1. The Board of Trustees shall appoint the Inspector as an inspector pursuant to Pittsford Village Code § 105-3(D) within 15 days following PCP’s transmittal or enter into an agreement with the selected Inspector for the services under this Agreement.
 - 2. The Village shall authorize the Inspector to inspect and accept work pursuant to Pittsford Village Code § 105-5(A) within 15 days following PCP’s transmittal.
 - B. Payment. PCP shall pay the Inspector directly for all work performed related to 75 Monroe Avenue. PCP shall provide proof of payment to the Village. Nothing in this Settlement Agreement shall be read as creating an employment relationship between the Village and the Inspector.
 - C. Reports. The Inspector shall transmit such records and reports to the Building Inspector as are required by NYS Uniform Code and Pittsford Village Code.

- V. Certificates of Occupancy. The Building Inspector shall issue a Certificate of Occupancy within 5 business days following transmittal of payment in the amount of \$75.00, and (a) a statement from the Inspector attesting that the work was completed in accordance with all applicable provisions of the Uniform Code, the Energy Code and NY Stretch Energy Code; (b) a statement from the Inspector indicating that the final inspection required by Pittsford Village Code § 105-7(B) has been completed; (c) a written statement of structural observations and/or a final report of special inspections; and (d) flood hazard certifications if applicable. Nothing in this provision shall prevent the issuance of a Temporary Certificate of Occupancy, as deemed appropriate by the Building Inspector, if requested by PCP.
- VI. Validity of Approvals. Any approvals that were valid as of September 4, 2023 shall be valid as of the date of this Settlement Agreement, and shall remain valid according to their terms as if obtained as of the date of this Settlement Agreement, including the Special Permit, Final Site Plan, LWRP Determination of Consistency, and Certificate of Appropriateness. The Village and HPB acknowledge and agree that the time between October 18, 2023 and the date of issuance of the building permit for Phase I of the Project (which shall be not later than the date by which the building permit must be issued under paragraph I.A.2) shall not be included in calculating the one (1) year time frame for commencing work in furtherance of the Certificate of Appropriateness under Section 112-7(E) of the Village Code.
- VII. Construction. No work shall commence pursuant to the Permits until current certificates of insurance as required by Village Code § 105-3(c)(5)(b) are on file in the office of the Village Clerk. Nothing in this Agreement authorizes any work to commence on Village-owned property or any deviation from the approved Final Site Plan, the Certificate of Appropriateness, and previously submitted building plans. Nothing in this Agreement waives the requirement for any notices, easements, public improvement, or other permits.
- VIII. Escrow Agreement. The Escrow Agreement referencing this Agreement is attached as Exhibit A, and is approved by the parties.
- IX. Certificate of Appropriateness. This Agreement has been presented to the HPB solely for the purpose of approving Paragraph VI of this Settlement Agreement.
- X. Final Site Plan. This Agreement has been presented to the Planning Board for the purpose of extending the Final Site Approval for one year effective with the termination of the Litigation, and the Planning Board has approved the execution of this Agreement solely as to this clause.

XI Release of Claims and Dismissal.

- A. The Village, and its officers, employees, successors, assigns and representatives, hereby release and forever discharge PCP, and his heirs, successors, assigns and representatives, from any and all demands, claims, counterclaims, causes of action, violations, charges, obligations, expenses, fees, lawsuits and liabilities, including, without limitation, claims for recovery of actual damages, general or special, punitive damages, statutory damages or penalties, fines, attorneys' fees, costs and equitable relief, arising from the beginning of time through the date of execution of this Settlement Agreement, whether known or unknown, matured or not matured, that the Village may have or may claim to have against PCP relating to or arising out of the Project, including but not limited to the Dispute, or that were or could have been asserted in the Litigation. Nothing herein shall be construed as prohibiting, precluding, or otherwise barring the Village from pursuing any and all legal remedies under this Settlement Agreement.
- B. PCP, and its officers, employees, successors, assigns and representatives, hereby releases and forever discharges the Village, and their officers, employees, successors, assigns and representatives, from any and all demands, claims, counterclaims, causes of action, obligations, expenses, fees, lawsuits and liabilities, including, without limitation, claims for recovery of actual damages, general or special, punitive damages, statutory damages or penalties, attorneys' fees, costs and equitable relief, arising from the beginning of time through the date of execution of this Agreement, whether known or unknown, matured or not matured, that PCP may have or may claim to have against the Village relating to or arising out of the Project, including but not limited to the Dispute, or that were or could have been asserted in the Litigation. Nothing herein shall be construed as prohibiting, precluding, or otherwise barring PCP from pursuing any and all legal remedies under this Settlement Agreement.
- C. Nothing in these mutual releases shall be read as limiting the right of any party to: (i) commence an action or special proceeding concerning any cause of action that accrues after the effective date of this settlement; (ii) commence an action or special proceeding concerning any cause of action arising out of, under, or involving the New York State Constitution or United States Constitution, including without limitation any cause of action alleging a claim pursuant to 42 U.S.C. §§ 1983, 1985, or 1988; or (iii) commence an action or special proceeding concerning any cause of action arising out of the Village's rezoning of the Property or any amendments to the Village Code that apply to the Property. Nothing in these mutual releases will limit the right of any party to rely on any fact, conduct, or action occurring prior to the effective date of this settlement as evidence in any post-settlement action.

- D. The Settling Parties agree that within five (5) days of full execution of this Settlement Agreement the Settling Parties through their attorney will execute and file a stipulation of discontinuance in the form of Exhibit B in the Monroe County Clerk's Office so that the Litigation will be terminated and discontinued with prejudice as provided herein. .
- XII. Binding Effect. This Settlement Agreement shall be final and binding on, and shall inure to the benefit of all parties and upon their respective heirs, executors, administrators, successors, and/or assigns.
- XIII. No Admissions. It is understood and agreed among the Settling Parties that this Agreement is in compromise of the Dispute Nothing contained herein shall be construed as an admission of liability or wrongdoing on the part of any party.
- XIV. Whereas Clauses. Each of the Whereas Clauses in this Settlement Agreement are incorporated by reference and are part of this Settlement Agreement.
- XV. Governing Law and Venue. It is understood and agreed that this Settlement Agreement shall be governed by, construed, and enforced in accordance with, and subject to the laws of the State of New York, without regard to conflict of law provisions. Any litigation concerning this Agreement shall be brought exclusively in Monroe County, New York, and in no other jurisdiction.
- XVI. Execution. It is understood and agreed that this Settlement Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- XVII. No Waiver. No waiver of any of the terms of this Settlement Agreement shall be valid unless in writing and signed by all parties to this Settlement Agreement. No waiver of default of any term of this Settlement Agreement shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
- XVIII. Partial Invalidity. If any provision of the Settlement Agreement is or may be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless survive and continue in full force and effect without being impaired or invalidated in any way.
- XIX. Entire Agreement. The Settling Parties warrant that they have read this Agreement and fully understand it to be a compromise and settlement and release of all claims, known or unknown, present or future, that they have or may have against the party or parties released, arising out of the Litigation and the claims described, and that they have had an opportunity to have this Settlement Agreement reviewed by an attorney acting on their behalf. Each signatory warrants that he or she is of legal age and is legally competent to execute this Settlement Agreement, and that he or she executes this Settlement Agreement of his or her own free will and accord without reliance on any representation of any

kind or character not expressly set forth herein. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Settlement Agreement exist. This Settlement Agreement cannot be changed or terminated orally.

- XX. Representations and Warranties. Each signatory hereto warrants and represents that they have authority to bind the parties for whom the signatory acts and that the claims, suits, rights, and/or interests which are the subject matter hereto are owned by the party asserting same, have not been conveyed, assigned, transferred or sold, in whole or in part, and are free of encumbrance; and that they have carefully read and fully understand the terms of this Settlement Agreement, including the releases and obligations contained herein; and that they enter into this Settlement Agreement voluntarily.
- XXI. Construction. This Settlement Agreement is the product of negotiations and discussions among the parties and their respective attorneys. The parties hereto therefore expressly acknowledge and agree that this Settlement Agreement shall be deemed jointly prepared by and drafted by both parties and their attorneys, and that it shall be construed accordingly. This Settlement Agreement shall not be construed or interpreted for or against any party hereto because that party drafted or caused the party's legal representative to draft any of its provisions but shall be construed equally as to each party hereto.
- XXII. Amendment. Nothing in this Settlement Agreement shall limit the right of PCP to seek modification of the Plans for any Phase of the Project, which modification shall be reviewed by the Village in accordance with the Village Code in effect (and as it may be amended) at the time of the modification. None of the provisions related to cost of review or required permit fees shall apply to any portions of the Project which are modified by PCP.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Stipulation of Settlement as of the date first written above.

VILLAGE OF PITTSFORD, NEW YORK

By: _____
Alysa Plummer, Mayor

BOARD OF TRUSTEES OF THE
VILLAGE OF PITTSFORD, NEW YORK

By: _____
Alysa Plummer, Mayor

STEVEN LAUTH IN HIS CAPACITY AS
BUILDING INSPECTOR OF THE
VILLAGE OF PITTSFORD

By: _____
Steven Lauth, Building Inspector

PITTSFORD CANALSIDE PROPERTIES LLC

By: _____
Christopher A. DiMarzo, Member

VILLAGE OF PITTSFORD HISTORIC PRSERVATION BOARD

By _____
_____, Chair

VILLAGE OF PITTSFORD PLANNING BOARD

By _____
_____, Chair

CONSULTANT REVIEW FEE AGREEMENT

This Consultant Review Agreement (“Agreement”) is entered into by and between Pittsford Canalside Properties LLC (“PCP”) and the Village of Pittsford (“Village”) as of the ___ day of September, 2024.

WHEREAS, PCP and the Village have entered into a Settlement Agreement and Release, dated as of the ___ day of September, 2024 (“Settlement Agreement”); and

WHEREAS, PCP and the Village wish to clarify that if plans submitted by PCP are not sufficiently detailed for the consultant to adequately conduct the required review that the maximum consultant review fee set forth in the Settlement Agreement may be increased by the amount reasonably necessary to cover the additional consultant time spent; and

NOW THEREFORE, in exchange for the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PCP and the Village agree as follows:

With respect to the maximum consultant review fees for Phase 2 and Phase 3 set forth in Section III(A) and Section III(B) of the Settlement Agreement, it is understood and agreed that if, in the opinion of the consultant, the plans submitted are not sufficiently detailed for the consultant to adequately conduct the required review, the consultant review fee may be increased by the amount reasonably necessary to cover the additional consultant time spent.

All other terms and conditions of the Settlement Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement and Stipulation of Settlement as of the date first written above.

VILLAGE OF PITTSFORD,
NEW YORK

PITTSFORD CANALSIDE
PROPERTIES LLC

By: _____
Alysa Plummer, Mayor

By: _____
Christopher DiMarzo, Member

ESCROW DEPOSIT AGREEMENT

THIS ESCROW DEPOSIT AGREEMENT, made as of this _____ of _____,
20___ by and between:

PITTSFORD CANALSIDE PROPERTIES LLC, a New York limited liability company with offices at 301 Exchange Boulevard, Rochester, NY 14608

(hereafter "Applicant"); and

THE VILLAGE OF PITTSFORD, NEW YORK, a municipal corporation with offices at 21 North Main Street, Pittsford, NY 14534

(hereafter "Village");

WHEREAS, Applicant is applying for building permit(s) to construct the improvements for Phase ___ of the multi-family and restaurant project located at 75 Monroe Avenue for multi-family and restaurant purposes (the "Permits"); and

WHEREAS, under the terms of a Settlement Agreement between the Applicant and the Village the Applicant is required to make an escrow deposit with the Village to be utilized to pay the fees of Consultants retained for the purpose of assisting in issuing the Permits and related approvals; and

WHEREAS, the Village and the Applicant have agreed to the following procedures and payments in order to assure that the fees of the Consultants retained will be paid for their services;

NOW THEREFORE, in consideration of the covenants and conditions contained herein, the parties hereto do agree as follows:

1. Each Consultants scope of services shall be limited to the services described in the Settlement Agreement.
2. The scope of services to be rendered by each Consultant should be reviewed by the Village Attorney in order to provide assurance that the services are reasonably related to enabling the required review.
3. The Village shall direct that each invoice submitted by a Consultant for services rendered should contain an itemization of each and every billed work item that is performed with the date, specific description, duration, and the billing rate for each work item.
4. Upon receipt of an invoice from a consultant for services rendered the Village shall forward a copy of the invoice to the Applicant for review and approval.
5. In the event the Applicant has no objection to the invoice, the Applicant shall pay the invoice directly to the Consultant within thirty (30) days of receipt of a copy of the invoice from the Village.
6. In the event the Applicant objects to the invoice, or any portion thereof, said objection shall be provided in writing (or via e-mail) to the Village Clerk, with a copy to the Village Attorney, within ten (10) business days following receipt of a copy of the invoice from the Village. Any portion of an invoice to which the Applicant has no objection shall be paid directly to the

Consultant within thirty (30) days of receipt of a copy of the invoice from the Village.

7. Any objection raised by the Applicant shall be reviewed by the Village Board with the Village Attorney and a decision shall be communicated to the Applicant.

8. Upon execution of this Agreement by the parties hereto, the Applicant agrees to deposit the sum of _____ and 00/100 Dollars (\$_____) (hereafter the "Escrow Fund") with the Village Treasurer to be held in escrow and used to pay any invoices: (a) to which the Applicant has not objected; and (b) which has not been paid by the Applicant within thirty (30) days of receipt of a copy of the invoice from the Village or for which such objection has not been overruled. In the event the Village uses any portion of the Escrow Fund to pay such invoices as provided above, the Applicant agrees to make an additional deposit with the Village Clerk such that the Escrow Fund contains _____ (\$_____). Applicant's responsibility for payments shall not exceed the amounts in the Settlement Agreement.

9. Any money remaining in the Escrow Fund shall be returned to the Applicant upon issuance of a Certificate of Occupancy for the Property.

10. This Agreement may only be changed by an instrument in writing executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and date first above written.

PITTSFORD CANALSIDE PROPERTIES LLC

By: _____

Name: _____

Title: _____

THE VILLAGE OF PITTSFORD, NEW YORK

BY: _____

NAME: _____

TITLE: _____

LMC Codes, LLC

391 Basket Road
Webster, New York 14580
Mobile: 585.355.0307



September 18, 2024

Steven Lauth, Code Enforcement Officer
Village of Pittsford
21 North Main Street
Pittsford, NY 14534

**RE: Letter of Proposal – Continuation of Third-Party Code Review (Phases II & III)
Westport Crossing – fixed fee**

Dear Steve:

As requested **LMC Codes, LLC** (LMC Codes) by the Village of Pittsford (Village) I am pleased to have the opportunity to provide a fixed fee third-party code compliance review letter of proposal for the remainder of the **Westport Crossing** project, located at 75 Monroe Avenue in the Village of Pittsford. I have prepared this proposal for the project based on the initial permit documents for Phase I, dated March 09, 2023, and final site plans, dated April 3, 2023. Phase I was previously reviewed and accepted under a prior letter of agreement addressed to Bero Architecture, with Bergmann when I was an employee at that company. This proposal is intended for me to continue the third-party code reviews and findings/comments under my business, LMC Codes, for the Village for the Phase II and III permit application submissions.

A. SCOPE OF WORK:

LMC Codes will provide the following tasks, limited to Phase II and III submissions:

- A third-party code compliance review and written findings for architectural, structural, mechanical, electrical, and plumbing systems (MEP) components, based on permit drawings and associated supporting documents provided by the design team of record.
- The findings will indicate items not in compliance with the NYCRR Uniform and Energy Codes, plus the NY Stretch Energy Code adopted by the Village, and the written document will provide space for design team responses.
- The three reviews (one initial and two backchecks) for each Phase (Phases II and III) will be based on complete permit application documents provided by the design team of record and the following code documents and standards, as applicable:
 - 2020 Building Code of New York State (NYS).
 - 2020 Fire Code of NYS
 - 2020 Mechanical, Fuel Gas, and Plumbing Codes
 - 2017 National Electric Code – NFPA 70-17
 - ICC/ANSI A117.1-09 Accessible and Usable Buildings and Facilities
 - 2020 International Energy Conservation Code, plus NY Stretch Energy Code as adopted by the Village



B. ASSUMPTIONS:

- It is my understanding that since the site plans have been approved by the Village that no site plan review, relative to building code compliance, is required for the remainder of the third-party review. Therefore, as with the previous letter of proposal via Bero, reviews of site drawings are not included in this scope of work and are considered additional services, if so required.
- The initial and two follow up (backchecks) code reviews are based on changes only made to the documents to address previous compliance comments. If design changes are made by the design team of record that are not code compliance related or if they are changes made under the direction of the owner, additional services will be required to review any design changes.
- If more than three reviews (two backchecks) are required, additional services will be required.
- It is understood that the remainder of this project to be reviewed consists of Phase II (four (4) three-story multi-family buildings with either below grade parking or on-grade accessory parking garages) and Phase III (a community building consisting of a one-story: restaurant, clubhouse, with outdoor pool, and accessory structures, as applicable).
- LMC Codes will provide only a preliminary review of fire protection systems design and any engineered structural components, as we understand these systems will be design/build or delegated design, as applicable, and complete design documents are not anticipated to be submitted prior to permit approval. A comprehensive review of certified design drawings and shop drawings for each of the systems or components is anticipated to be needed during the construction phase, which is outside the scope of this proposal and will be considered an additional service, if requested by the Village.
- You, as the code enforcement official for the Village of Pittsford, will administer any permit approvals based on my findings and recommendations, upon final review and acceptance of permit documents. LMC Codes is not responsible for any administration of the permit process other than providing the requested third-party reviews for this project.
- Full permit application and revised documents will be provided in scaled PDF format by the Village of Pittsford for review. All revisions shall be clouded and revised documents shall be referenced in the design team’s responses to previous comments/findings by LMC Codes.
- Compliance assistance with local zoning regulations or laws and zoning or other local regulatory approvals are not included in the scope of this agreement and it is assumed that the Village has previously addressed these requirements.
- Any meetings or inspections requested will be considered additional services, including travel time to/from my business to any meeting location, plus mileage charges.
- No construction inspections, third-party inspections, or special inspections are included in this scope of work.
- The fees and hourly rate provided in this proposal are for the Westport Crossing project only and will be valid through April 1, 2025. Any scope of work still outstanding beyond this date will need to be renegotiated.

C. FEE PROPOSAL – Phases II and III only:

Services under this agreement, for the project scope of work and shall be compensated on fixed fee basis as defined below:

Phase II (Buildings 4-7 & accessory garages)

Initial Code Review & Findings – Phase II:	Estimated 50 hours
First Backcheck & Findings – Phase II:	Estimated 20 hours
<u>Second/Final Backcheck & Findings – Phase II:</u>	<u>Estimated 10 hours</u>
Total hours – Phase II:	Estimated 80 hours
Total fee at \$155 hourly rate – Phase II:	\$12,400.00



Phase III (Restaurant/Clubhouse/Pool & accessory structures)

Initial Code Review & Findings – Phase III:	Estimated 58 hours
First Backcheck & Findings – Phase III:	Estimated 18.5 hours
<u>Second/Final Backcheck & Findings – Phase III:</u>	<u>Estimated 10 hours</u>
Total hours – Phase III:	Estimated 86.5 hours
<hr/>	
Total fee at \$155 hourly rate – Phase III:	\$13,407.50
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Combined fees – Phases II and III:	\$25,807.50

We will invoice you on a monthly basis and request payment within 30 days of invoicing.

If you are interested in my services and you are in agreement with this proposal, kindly sign below indicating your notice to proceed and acceptance of the terms and conditions stated herein and in the attached LMC CODES, LLC STANDARD TERMS AND CONDITIONS enclosure.

We will be able to commence work as soon as possible after receipt of the signed proposal and the submitted permit drawings, and we anticipate the initial code review and written findings for each phase to be completed within 15 business days of commencement.

I appreciate this opportunity to provide you with this proposal and look forward to continuing working with you, including on this project.

Respectfully,
LMC Codes, LLC

Laura M. Cooney, AIA/NYS Certified Code Enforcement Official
 Owner

Accepted by:

 Client authorized Signature

 Company/Jurisdiction and Title

 Date

Enc. LMC CODES, LLC STANDARD TERMS AND CONDITIONS (TandC)

Cc: Daniel Spitzer, Hodgson Russ LLP - Village Attorney

LMC CODES, LLC STANDARD TERMS AND CONDITIONS

CLIENT/PROJECT: Village of Pittsford – Third-Party Code Reviews

1. **CONTRACT** – These Standard Provisions and the accompanying Proposal constitute the full and complete Agreement of the parties and may be amended, added to, superseded, or waived only if both parties agree in writing. The contract/agreement is between LMC Codes, LLC, known as LMC CODES throughout this document and the Client, who is the individual or firm, as applicable, with which the attached letter of proposal is provided for and signed by authorized personnel of said individual or firm, as applicable, thereby forming this agreement.

2. **DOCUMENTS AND SCOPE** – All reports, notes, drawings, data, calculations, and other documents prepared by LMC CODES (“Documents”) are instruments of LMC CODES’s services and shall be used by the Client only for the specific project under this contract/agreement. The Client agrees not to use the Documents phases of this Project or for other projects without LMC CODES’s express written consent. Any unauthorized use of the Documents will be at the Client’s sole risk and without liability to LMC CODES or its subconsultants. Accordingly, the Client shall defend, indemnify, and hold harmless LMC CODES from and against any and all losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized use.

Because LMC CODES’s scope of services does not include design phase services, LMC CODES shall not be responsible for the accuracy, completeness or adequacy of the design. Under such circumstances, the Client agrees to defend, indemnify, and hold harmless LMC CODES from and against any and all losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from the design of the Project.

3. **CONSTRUCTION PHASE SERVICES** – When construction-phase services are included in the Agreement, LMC CODES will provide personnel to determine in general whether construction is proceeding in a manner consistent with the Documents and the applicable Codes and Standards under which the permit was approved by the Authority Having Jurisdiction (AHJ) LMC CODES is not responsible for construction means, methods, techniques, sequencing or procedures, or for safety precautions or programs in connection with the Project.

4. **STANDARD OF CARE** – LMC CODES and its subconsultants will exercise that degree of care and skill ordinarily exercised by similarly situated certified code enforcements officials, building safety inspectors, and registered design professionals practicing under other firms, under similar circumstances. Client agrees that services provided will be rendered without any warranty, express or implied. LMC CODES shall exercise usual and customary professional care in its efforts to comply with codes, regulations, laws rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

5. **OPINION OF PROBABLE COSTS** – LMC CODES will not furnish opinions of probable cost and shall not be held to guarantee, warrant, or represent the accuracy of any estimates discussed or documented by the Client or LMC CODES’s subconsultants.

6. **SUSPENSION/TERMINATION OF WORK** – The Client may, upon seven (7) days written notice, suspend or terminate further work by LMC CODES. The Client shall remain liable for and shall promptly pay LMC CODES for all services rendered to the date of suspension or termination.

LMC CODES may suspend or terminate this Agreement upon seven (7) days written notice if the Client fails to substantially perform in accordance with this Agreement. Failure to make payments in accordance herewith shall constitute substantial nonperformance. This

Agreement shall automatically terminate if payment are not brought current within fourteen (14) days of notice of suspension.

7. **LIABILITY** – LMC CODES will furnish appropriate insurance certificates for general and professional liability upon request. The Client agrees that LMC CODES’s total aggregate liability to the Client for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorney’s fees, arising out of or in any way related to the Project or this Agreement from any cause or causes, including, but not limited to, LMC CODES’s negligence, errors, omissions, strict liability, breach of contract, or breach of warranty, shall not exceed the total amount of the LMC CODES fee received or \$10,000 whichever is greater.

8. **BILLING AND PAYMENT** – Client shall pay LMC CODES in accordance with the rate and charges set forth in the Proposal. LMC CODES will submit to Client, on a monthly basis, an invoice of services rendered and expenses incurred during the previous period. Payment will be due upon receipt of LMC CODES’s invoice. In the event Client fails to pay LMC CODES within thirty (30) days after invoices are rendered, Client agrees that LMC CODES shall have the right to consider that event a breach of this Agreement and upon fourteen (14) days written notice, the duties, obligations and responsibilities of LMC CODES under this Agreement may be either suspended or terminated.

9. **CONSEQUENTIAL DAMAGES** – LMC CODES and the Client waive consequential damages, including but not limited to damages for loss of profits, loss of revenues and loss of business of business opportunities, for claims, disputes or other matters in question arising out of or relating to this Agreement.

10. MISCELLANEOUS

Governing Law: The substantive laws of the state that the planned project resides shall govern any disputes between LMC CODES and the Client arising out of the interpretation and performance of this Agreement.

Mediation: LMC CODES and the Client agree that any disputes arising under this Agreement and the performance thereof shall be subject to nonbinding mediation as a prerequisite to further legal proceedings.

LMC CODES Reliance: Unless otherwise specifically indicated in writing, LMC CODES shall be entitled to rely, without liability, on the accuracy and completeness of information provided by Client, Client’s consultants and contractors, and information from public records, without the need for independent verification.

Certifications: LMC CODES shall not be required to sign any documents, no matter by whom requested, that would result in LMC CODES’s having to certify, guaranty, or warrant the existence of conditions that would require knowledge, services or responsibilities beyond the scope of this Agreement.

Third Parties: Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or LMC CODES. LMC CODES’s services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against LMC CODES because of this Agreement or LMC CODES’s performance of services hereunder.

Hazardous Materials: Unless otherwise specifically stated in the Scope of Services LMC CODES shall have no responsibility for the discovery, presence, handling, removal or disposal of any hazardous materials.