

## CONSTRUCTION CONTRACT AGREEMENT

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This Construction Contract Agreement (this "Agreement") is made as of the 24<sup>th</sup> November 2024 by and between Town of Westminster and T Lillis Builder LLC a ☐ Individual ☒ Business Entity located at 283 Oak Hill Terrace with contractor's license number 992118997("Contractor"). Owner and Contractor may each be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

The Parties agree as follows:

1. Contractor shall perform the following described work at Hearse Shed, Westminster West Church, in accordance with Owner's contract plans and specifications, this Agreement and any Change Order, as defined herein, (collectively, the "Contract Documents"):
2. Scope as stated in RFP
3. Phases
  - 1. Temporary structural shoring and deconstruction
  - 2. Upper frame repair, sheathing, roof
  - 3. Foundation, lower frame, floor

4. Framing through finishes performed, or overseen by T Lillis Builder LLC  
[Description of work] (the "Work"). Industry terminology used in any Contract Documents which are not defined shall be interpreted as having the same meaning as that recognized in the construction industry in the area where the Property is located.

**2. Contract Price and Payments.** Owner agrees to pay Contractor the total amount of \$34,400 - \$37,400 (the "Contract Price"). Payment of this amount is subject to additions or deductions in accordance with any mutually agreed to changes and/or modifications in the Work. Payment will be made by (Check one) ☐ cash ☐ personal check ☐ cashier's check ☐ money order ☐ credit card or debit card ☐ wire transfer ☒ other: Town of Westminster check, according to the following schedule:

Deposit (Check one)

- ☐ A deposit is NOT required.
- ☒ \$3,000 deposit, due upon the execution of this Agreement.

Installments (Check one)

- ☐ There will be NO installment payments.
- ☐ Installment will be paid at set intervals.
- ☒ Installments will be paid upon the completion of the following milestones:
- \$5,000 at completion of phase 1
  - \$5,000 at beginning of phase 2
  - \$7,000 at completion of phase 2
  - \$5,000 at beginning of phase 3
  - \$5,000 phase 3 intermittent
  - Remainder at full completion



Payments could be spread out or split up differently depending on circumstances and agreement of both parties.

Unseen issues unearthed through construction which might change scope or cost or both to be agreed upon by both parties and addressed with a change order.

**3. Certificate of Completion.** Work under this Agreement shall begin on 12/10/ 2024, (☒ and shall be completed by 7/13/2025. Upon completion of the Work, Contractor shall notify Owner that the Work is ready for final inspection and acceptance and Owner shall make the final payment within 15days after final inspection.

**4. Materials and Labor.** Contractor shall provide and pay for all labor and equipment, including tools, construction equipment, machinery, transportation and all other facilities and services, and all materials necessary for the completion of the Work. All materials shall be good quality and new, unless the Contract Documents require or permit otherwise. Contractor may substitute materials only with the prior written approval of Owner. (Check all that apply)

☐ The following materials will not be included in the Contract Price and are the sole responsibility of Owner and will not be covered under warranty by Contractor: \_\_\_\_\_.

☐ In addition, the Contract Price shall include the following fixtures: \_\_\_\_\_.

**5. Licenses and Permits.** (Check one) ☐ Contractor ☒ Owner shall obtain all licenses and permits necessary for proper completion of the Work. (Check one) ☐ Contractor ☒ Owner is responsible for the cost of any necessary permits or licenses.

**6. Laws and Regulations.** Contractor shall perform the Work in a workmanlike manner and in compliance with all applicable federal, state, and local laws, regulations and ordinances, trade standards, ethical guidelines and any safety requirements of Owner (the "Applicable Laws"). Contractor shall promptly notify Owner upon discovery of any variance between the Applicable Laws and the Construction Documents.

**7. Supervision of Construction.** Contractor shall be solely responsible for and shall supervise and direct all construction under this Agreement. Contractor shall provide competent and suitable personnel to perform the Work and shall at all times maintain good discipline and order at the Property. Contractor will at all times take all reasonable precautions for the safety of its employees and the public at the Property. Contractor agrees to assume full responsibility for the acts, negligence, and/or omissions of its employees and any subcontractors and their employees.

**8. Record Documents.** Contractor shall maintain in a safe place at the Property one record copy of all drawings, specifications, addenda, written amendments, and the like in good order and annotated to show all changes made during construction, which will be delivered to Owner upon completion of the Work. Owner shall have the right to inspect and review such documents upon notice to Contractor.



**9. Utilities.** (Check one) ☐ Contractor ☐ Owner shall pay for all permanent electric, water, phone, cable, sewer and gas service as needed to perform the Work. (Check one) ☐ Contractor ☐ Owner shall pay for the installation, connection and removal of all temporary utilities on the Property during the performance of the Work. All temporary utilities shall conform and adhere to the Applicable Laws.

**10. Hazardous Materials.** Except as otherwise provided in the Contract Documents, Contractor shall be responsible for all Hazardous Materials brought to the Property by Contractor. Hazardous Materials shall include radioactive materials, asbestos, polychlorinated biphenyls, petroleum products, crude oil, flammable materials, chemicals or solvents known to cause cancer or reproductive toxicity, pollutants, contaminants and toxic substances which are restricted, prohibited or regulated by any agency of government in its manufacture, use, maintenance, storage, ownership or handling. If Contractor discovers any Hazardous Materials on the Property, Contractor shall immediately notify Owner and may cease working until the material or substance has been rendered harmless. Owner shall defend, indemnify and hold harmless Contractor, any subcontractors, and their respective agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from contact with the Hazardous Substance in performance of the Work resulting in bodily injury, illness or death, or injury or property damage, *provided* such claim, damage, loss or expense is not the result of any negligent act or omission by the party seeking such indemnity.

**11. Warranty.** Contractor warrants that the Work shall be in accordance with the Contract Documents, applicable law and trade standards and free from material structural defects, improper workmanship or defective materials. Contractor shall replace, correct or repair any Work not in accordance with the Contract Documents, applicable law and trade standards or any defects caused by faulty materials, equipment or workmanship for a period of 2 year from the date of completion of the Work. Nothing in this Section 11 shall be construed to place a time limit with respect to any other obligation Contractor may have under this Agreement.

**12. Condition of the Property.** Contractor agrees to keep the Property and adjoining driveways free and clear of waste material and rubbish. Contractor shall confine the storage of materials and equipment and the operations of employees to the Property, and shall not unreasonably encumber the Property with materials or equipment. Contractor shall be fully responsible for any damage to the Property or areas contiguous thereto resulting from the performance of the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the Property as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the Property clean and ready for occupancy by Owner.

**13. Inspection.** Owner shall have a right to inspect the Work at any time and request that Contractor promptly correct any Work that is defective or does not conform to the Contract Documents. If required, the Work shall be inspected and certified by the appropriate state or local agency or health officer at each necessary stage.

**14. Right to Stop Work.** If Contractor fails to correct any defective Work or repeatedly fails to perform the Work in accordance with the Contract Documents, Owner shall have the right to order Contractor to stop performing the Work, or any portion thereof, until the cause for such order is eliminated.



**15. Subcontracts.** Contractor shall furnish to Owner a list of names of subcontractors proposed to perform principal portions of the Work. Contractor shall not employ any subcontractor to whom Owner reasonably objects. A subcontractor, for the purposes of this Agreement, shall be a person with whom Contractor has a direct contract for work at the Property. All contracts between Contractor and subcontractor shall be in accordance with the terms of this Agreement and the Contract Documents.

**16. Work Changes.** Owner reserves the right to order changes to the Work in the nature of additions, deletions or modifications, without invalidating this Agreement, and agrees to make corresponding adjustments in the Contract Price and time of termination if applicable. All changes will be authorized in a written "Change Order" signed by Owner and Contractor, which shall be incorporated by reference herein.

**17. Other Contractors.** Owner reserves the right to enter into other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work shall not be impeded, and shall give them access to the Property as necessary to perform their contracts.

**18. Indemnification.** Contractor agrees to defend, indemnify and hold harmless Owner and its agents and employees, from and against all claims, actions, liabilities, suits, demands, injuries, obligations, damages, losses, settlements, judgments, fines, penalties, costs and expenses, including reasonable attorneys' fees, arising out of any negligent act or omission by Contractor, a subcontractor or anyone directly or indirectly employed by them in the performance of the Work resulting in bodily injury, illness or death, or for property damage, including loss of use, unless caused by the sole negligence or willful misconduct of Owner.

**19. Contractor's Insurance.** Contractor agrees to maintain at its own expense during the entire period of construction at the Property:

**A. General Liability Insurance.** Such general liability insurance as will protect Contractor from claims for property damage and bodily injury, with limits of liability not less than \$1,000,000 for each occurrence.

(Check all that apply)

☒ **B. Workers' Compensation Insurance.** Such workers' compensation and employee insurance as required by law.

☐ **C. Automobile Liability Insurance.** Such automobile liability insurance with limits of liability not less than \$ \_\_\_\_\_.

☐ **D. Other Insurance.** \_\_\_\_\_.

Contractor shall name Owner as an additional insured (☒ except for the workers' compensation insurance). Proof of such insurance shall be filed by Contractor with Owner within a reasonable time after execution of this Agreement.

**20. Waiver of Subrogation.** Owner and Contractor each waive any and all claims or rights to recovery against the other Party for any loss or damage to the extent such loss or damage is covered by insurance or would be covered by any insurance required under this Agreement. Owner and Contractor shall cause



each insurance policy carried by Owner or Contractor relating to the Property to include or allow a full waiver of any subrogation claims.

**21. Time of Essence.** All times stated in this Agreement or in the Contract Documents are of the essence. Contractor agrees that such times are reasonable for performing and completing the Work.

**22. Liquidated Damages.** (Check one)

☐ Owner is entitled to liquidated damages. In the event the Work is not completed by the date set forth in Section 3 of this Agreement, plus any extensions thereof as allowed in this Agreement, Owner shall suffer damages uncertain in amount and difficult to measure and prove accurately. Owner and Contractor agree that in lieu of actual damages, and not as a penalty, for delay in the performance of the Work, Contractor shall pay Owner the sum of \$ \_\_\_\_\_ for each calendar day completion of the Work is delayed. Contractor agrees that the liquidated damages specified herein are reasonable in amount and are not disproportionate to actual anticipated damages. Owner shall have the right to deduct any liquidated damages from any amount due or that may become due to Contractor. Liquidated damages shall be the sole and exclusive remedy for Owner for delay in completion of the work past the agreed upon date.

☒ Owner is NOT entitled to liquidated damages.

**23. Extension of Time.** The times stated in this Agreement may be extended for such reasonable time as Contractor may determine when performance of the Work by Contractor is delayed by a Change Order, labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions, unavoidable casualties, or other causes beyond Contractor's control or which justify the delay.

**24. Early Termination for Breach of Contract.**

**A. Contractor's Termination.** Contractor may, on 15days' written notice to Owner, terminate this Agreement before the completion of the Work when for a period of 60 days after a progress payment is due, through no fault of Contractor, Owner fails to make the payment. On such termination Contractor may recover from Owner payment for all Work completed and for any loss sustained by Contractor for materials, equipment, tools or machinery to the extent of actual loss thereon, plus loss of a reasonable profit.

**B. Owner's Termination.** Owner may, on 15 days' notice to Contractor, terminate this Agreement before the completion of the Work, and without prejudice to any other remedy Owner may have when Contractor defaults in the performance of any provision of this Agreement, or fails to carry out performance of the Work in accordance with the provisions of the Contract Documents.

Excess Payment (Check all that apply)

☒ If the unpaid balance on the Contract Price at the time of the termination exceeds the expense of finishing the Work, Owner shall pay such excess to Contractor.

☒ If the expense of finishing the Work exceeds the unpaid balance of the Contract Price at the time of termination, Contractor shall pay the difference to Owner.



**25. Disputes.** Any dispute arising from this Agreement shall be resolved through: (Check one)

☐ Court litigation. The dispute shall be resolved in the courts of the State of \_\_\_\_\_.

Attorneys' Fees

☐ If either Party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other Party its expenses (including reasonable attorneys' fees and costs) incurred in connection with the action and any appeal.

☐ Arbitration. The dispute shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

☒ Mediation. The dispute shall be resolved through mediation.

☐ Mediation then arbitration. The dispute shall be resolved through mediation. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

**27. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together, shall constitute one and the same document.

**28. Headings.** The section headings herein are for reference purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision of this Agreement.

**29. Notices.** Any notice or communication given or made to any Party under this Agreement shall be in writing and delivered by hand, sent by overnight courier service or sent by certified or registered mail, return receipt requested, to the address stated above or to another address as that Party may subsequently designate by notice and shall be deemed given on the date of delivery.

**30. Assignment.** No Party hereto shall have the right to assign its rights or delegate its duties hereunder without the written consent of the other Party, which consent shall not be unreasonably withheld.

**31. Binding Effect.** This Agreement shall be binding and enure to the benefit of the Parties and their respective legal representatives, heirs, administrators, executors, successors and permitted assigns.

**32. Governing Law.** This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed in accordance with the laws of the State of Vermont, without regard to its conflicts of laws provisions.

**33. Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable part had not been included in this Agreement.



**34. Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior negotiations, understandings and agreements.

**35. Amendments.** This Agreement may not be amended or modified except by a written agreement signed by the all of the Parties.

**36. Waiver.** No Party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing. Waiver by any Party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any other subsequent breach or violation.

**37. Survival.** The obligations of Contractor expressly identified in this Agreement, or those by operation of law, shall survive the completion of Work or termination of this Agreement.

**38. Industry Language.** The language used for terms of this Agreement, unless otherwise defined, shall be construed according to the customary meaning within the construction industry in the area where the Project is located and for the type of Work being performed.

**39. Independent Contractor.** Contractor acknowledges that it is an independent contractor and is not an agent, partner, joint venture nor employee of Owner. Contractor shall have no authority to bind or otherwise obligate Owner in any manner nor shall Contractor represent to anyone that it has the right to do so. Contractor further agrees that in the event that the Company suffers loss or damage as a result of a violation of this provision Contractor shall indemnify and hold harmless Owner from any such loss or damage.

**40. Rights of Third Parties.** Nothing in this Agreement shall create or give to any third party a claim or right of action against Contractor or Owner.

**41. Confidentiality.** (Check one)

☐ As a result of Contractor's participation in the Work, Contractor will have access and contribute to information and materials of a highly sensitive nature, including Confidential Information. Contractor hereby warrants that Contractor and its employees and agents shall not (without in each instance obtaining the Owner's prior written consent) disclose, make commercial or other use of, or give or sell to any person, firm, or corporation, any Confidential Information received directly or indirectly from Owner or acquired or developed in the course of the performance of this Agreement unless: (1) required to do so pursuant to Applicable Laws (and then only after Contractor has given Owner prompt written notice of the legal compulsion and, at Owner's expense, provided by Owner with cooperation in any attempt Owner may make to gain a protective order acceptable to Owner); or (2) it is rightfully in the possession of Contractor from a source other than Owner prior to the time of disclosure of the information to Contractor under this Contract; or (3) it was in the public domain prior to the time of Contractor's receipt; or (4) it became part of the public domain prior to the time of Contractor's receipt by any means other than an authorized act or omission on the part of Contractor; or (5) it is supplied to Contractor after the time of Contractor's receipt by a third party who was not under any obligation to Owner to maintain such



information in confidence; or (6) it was independently developed by Contractor prior to the time of its receipt from Owner. All Confidential Information, regardless of form, shall be the property of Owner and shall be returned to Owner upon its request, or in any event, at the completion or earlier termination of this Agreement.

☒ Contractor will NOT have access and contribute to Confidential Information.

**42. Other.** \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

\_\_\_\_\_  
**Owner Signature**

\_\_\_\_\_  
**TOWN OF WESTMINSTER**

**Owner Full Name**

  
\_\_\_\_\_  
**Owner Representative Signature**

\_\_\_\_\_  
Louis Bordeaux, Town Manager

**Owner Representative Name and Title**



\_\_\_\_\_  
**Contractor Signature**

\_\_\_\_\_  
Timothy E Lillis

**Contractor Full Name**

\_\_\_\_\_  
**Contractor Representative Signature**

\_\_\_\_\_  
**Contractor Representative Name and Title**





**Certificate of Completion**

Contractor Name: \_\_\_\_\_

Property Address: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Contract Date: \_\_\_\_\_, 20\_\_\_\_

Completion Date: \_\_\_\_\_, 20\_\_\_\_

