



Jeffrey Z. Slavin
Mayor



4510 Cumberland Avenue
Chevy Chase, MD 20815
301-657-3211
town@townofsomerset.com



Rich Charnovich
Town Manager/Clerk-Treasurer

February 6, 2017 Council Meeting Minutes

Town Officials Present

Jeffrey Slavin, Mayor
Marnie Shaul, Council Vice President
Barbara Condos, Council Member
Dudley Fowlkes, Council Member
Barbara Zeughauser, Council Member
Franny Peale, Council Member
Tolbert Feather, Arborist
Doug Lohmeyer, Engineering Consultant
Ron Bolt, Town Attorney

Public comment period: Alison Fortier, Falstone, spoke concerning the proposed State Highway Administration proposed project near Greystone Street and River Road.

Consent Agenda

1. Approval of the January 3, 2017 Council Meeting Minutes
2. Approval of the Mayor's nomination of Matthew Zaft to serve on the Pool Committee for a term ending December 31, 2019
3. Approval of the Mayor's nomination of Matthew Zaft to serve as Pool Committee Chair for calendar year 2017

4. Approval of the Mayor's nomination of Dr. Alexis Carmer to serve on the Pool Committee for a term ending December 31, 2018
5. Approval of the Mayor's nomination of Anne Hawkins to serve on the Pool Committee for a term ending December 31, 2019
6. Approval of the Mayor's nomination of Seth Cohen to serve on the Pool Committee for a term ending December 31, 2018
7. Approval of the Mayor's nomination of Debbie Berger Fox to serve on the Pool Committee for a term ending December 31, 2019
8. Approval of the Mayor's nomination of Carrie Wofford to serve on the Tennis Committee for a term ending December 31, 2019
9. Approval of the Mayor's nomination of Abby Nolan to serve on the Tennis Committee for a term ending December 31, 2019
10. Approval of the Mayor's nomination of Phyllis Wiesenfelder to serve on the Board of Supervisor of Elections for a term ending December 31, 2019
11. Approval of the Mayor's nomination of Josh Rosenthal to serve on the Board of Supervisor of Elections for a term ending December 31, 2019
12. Approval of the Mayor's nomination of Kristen Khanna to serve on the Parks and Natural Resources Committee for a term ending December 31, 2019
13. Approval of the Mayor's nomination of Alan Dock to serve on the Parks and Natural Resources Committee for a term ending December 31, 2019
14. Approval of the Mayor's nomination of Donna Harman to serve on the Parks and Natural Resources Committee for a term ending December 31, 2019. Motion Zeughauser, second Shaul to approve the consent agenda, items 1 thru 14. Motion passed 5-0.

Non Consent Agenda

15. Nominations for 3 Town Council seats: Phyllis Wiesenfelder, Chair of the Board of Supervisor of Elections, was in attendance to oversee the nominations. Council Member Condos nominated Franny Peale, second Council Member Zeughauser. Council Member Zeughauser nominated Marnie Shaul, second Council Member Peale. Council Member Shaul nominated Barbara Zeughauser, second Council Member Fowlkes. Only 3 nominations were made and nominations were then closed. Election to be held March 21, 2017 from 5 pm to 9 pm in the Town Hall.

16. Town Manager Charnovich presented the January Financial Report.
17. 4919 Cumberland Avenue variance request: It is noted for the record Montgomery County approved a variance for this. Motion Peale, second Shaul to approve a 15-foot

rear yard setback variance to construct a second story at the rear of the house. A copy of the variance decision is to be appended to these minutes confirming that the variance meets the Town of Somerset test located in the Town Code, section 6-312(e). Motion passed 5-0.

18. 4919 Cumberland Avenue Permits: Applicants are requesting a building permit to construct a second story at the rear, left corner of the house and to obtain a dumpster permit. Motion Shaul, second Zeughauser to approve the building and dumpster permits and to include the reports of the plan reviewer and arborist. Motion passed 5-0.
19. 4818 Cumberland Avenue applications: Applicants requested the following permits: demolition, building, driveway apron, dumpster, 4 retaining walls, and 8 tree removals. Several residents spoke on this application including Mary Stuart Mccamy, property owner at 4818 Cumberland, Perry Urken, resident at 4816 Cumberland Avenue, and Maggie Barse, representing her parents who live at 4815 Cumberland Avenue. Concerns about the project including the number of trees being removed, the size of the structure to be built, storm water, street parking, and the ability to keep the street open at all times for emergency vehicles. Motion Zeughauser, second Shaul, to approve all permits for the project, add a designated parking space for the duration of the project on the street near 4815 Cumberland Avenue, make sure road is clear at all times for emergency vehicles as testified that it will be by Sandy Spring builders, and to include a total of 12 trees for reforestation on the site, including 4 hollies on the side of 4816 Cumberland Avenue to help with screening. Motion passed 5-0.
20. 4715 Cumberland Historic Preservation Application: Applicants are requesting to install a generator in the side yard, install an additional wooden fence in the rear yard, and relocate the front walkway. Motion Shaul, second Zeughauser to recommend this plan to the Historic Preservation Commission. Motion passed 5-0.
21. 4515 Dorset Avenue Application: Applicant is requesting to install a shed in the rear yard. Motion Zeughauser, second Condos, motion passed 5-0.
22. 4807 Dorset Avenue Historic Preservation Application: Applicant is requesting to install a shed in the rear yard. Local Advisory Panel recommended either shed location after applicant testified they weren't sure of the exact location yet. The shed permit would need to come back to the Town Council for consideration after HPC makes a determination. Motion Peale, second Zeughauser. Motion passed 5-0.
23. Balodemas Architects proposal for architectural and engineering services for the second floor in the Town Hall: Balodemas submitted a proposal for architectural and engineering services for a potential renovation of the second floor in the Town Hall. Motion Zeughauser, second Shaul to approve the proposal. Motion passed 5-0. Agreement is appended to these minutes outlining scope and costs.
24. 2017 Community Pools Pool Management Agreement: Motion Condos, second Shaul to approve a contract for pool management services for the 2017 season. Motion passed 5-0. Contract will be appended to these minutes.
25. Environmental Committee "A Day in the Life of a Storm Drain" Project: Robin Barr, Chair of the Environmental Committee, was in attendance to discuss the project. The cost of the project would now be far greater than originally anticipated. The pros and

cons of the project were discussed at the meeting, and it was determined that this item would be tabled for the time being due its cost.

26. Setting Tennis Court fee for 2017: Motion Peale, second Shaul to set the 2017 tennis court fee per household at \$25.00 as recommended by the Tennis Committee. Motion passed 5-0.
27. General Code Project Update: Council Member Peale informed the Council she has compiled a voluminous document of notes to share with the Town Attorney. The Town Manager would share all of the General Code materials and workshop notes with Town Attorney Bolt. Council Members Peale and Condos would schedule a meeting with Town Attorney Bolt and Town Manager Charnovich to talk about the process moving forward for the Code and Charter project.
28. Mayor Slavin provided his report and had it available in the room.
29. 4814 Falstone Building Permit extension: This item was not on the original agenda. Extension requested until May 1, 2017. Motion Peale, second Condos to approve the extension. Motion passed 5-0. A request was made by the property owners asking to pro-rate the building permit extension fee if the project finishes before May 1. Motion Peale, second Condos to pro-rate the fee. Town Manager Charnovich was requested to provide a report at the March council meeting on the historical approvals for this project. Motion passed 3-2, with Shaul and Zeughasuer dissenting.
30. Adourn at 10:50 pm

TOWN OF SOMERSET

Decision **Case No. W-2017-1**

Waiver Application of **Mahomud A. Pradhan and Debra Lynn Perry, Trustees**

Summary of Case

This proceeding involves an application for a waiver pursuant to Section 6-312(e) of the Code of the Town of Somerset. The applicants propose to add a second floor bedroom and bathroom over an existing screened porch at the rear of their house. The addition would encroach approximately 15 feet into the required 20-foot rear setback. Accordingly, a waiver is required.

The subject property is known as Lot 2 and part of Lot 3, Block 1, in the "Somerset Heights" subdivision, also known as 4919 Cumberland Avenue, Chevy Chase, Maryland 20815.

Applicable Law

The application seeks waiver from the requirements of Section 6-312(c) which provides that the required rear setback for a primary building is 20 feet.

Procedural History

The applicants submitted a waiver request to the Town on January 7, 2017. Notice of the hearing was included in the Town Journal published on January 30, 2017. The notice indicated that a public hearing would be held by the Town Council in the Town Hall on February 6, 2017 to consider the captioned request. The hearing was held as scheduled.

Summary of Evidence

The applicants submitted the following: (i) the aforementioned waiver request; (ii) site plans, floor plans, and elevation drawings depicting the proposed construction; (iii) a copy of the building permit issued by Montgomery County, and the applicants' variance application and variance approval (Montgomery County Board of Appeals, Case No. A-6445) related thereto; and (iv) a photograph of existing conditions. A report prepared by staff was entered into the record. Letters in support of the request were submitted by Paige Whitley and David Dollar of 4922 Cumberland Avenue, William and Lucretia Marmon of 4921 Cumberland Avenue, Caroline and Howard Cooper of 4918 Cumberland Avenue, Josiane Faulbert and Francois Locoh-Donou of 4915 Cumberland Avenue, and Paul and Liliana Baldassari of 4914 Cumberland Avenue.

At the hearing, Doug Lohmeyer, Building Permit Administrator, described the applicants' plans and explained why a waiver would be required. The applicants appeared at the hearing and provided testimony in support of the request.

The applicants assert that their property is subject to extraordinary situations or conditions. They explain that the existing house does not conform to the required 20-foot rear setback. The house, as originally constructed, is located approximately only 2 feet from the rear property line.

According to the applicants, the strict and literal application of the Town Code would result in peculiar or unusual practical difficulties. They assert that because the existing house does not conform to the required rear setback, no rear addition would be possible without a waiver.

The applicants contend that approval of the waiver would not unduly adversely affect the use, enjoyment, or value of nearby properties. The applicants explain that because the house is existing and has currently has two floors, a small addition on top of the one-story portion would blend into the existing massing and not adversely impact any neighbors. They contend that the addition would be hidden behind an existing two car garage and would not be visible from the street or the neighboring properties. The applicants' lot abuts park land to the rear.

The applicants assert in their application that the requested waiver is the minimum reasonably necessary to avoid the aforementioned exceptional conditions or situations. The plans reflect that the existing footprint would not be expanded.

Findings of Fact

Based upon the testimony and evidence of record, the Town Council makes the following findings in connection with this matter:

1. The existing house does not conform to the required rear setback. The existing house was constructed only approximately 2 feet from the rear property line;
2. The proposed location of the addition would not be readily visible from the street, or from properties located to the west, based on the existing construction. The addition would not increase the existing footprint of the house. The addition would be no taller than the highest point of the existing main building;
3. The adjoining neighbors to the west and east, who would be the most directly impacted, indicated their support for the request. The request is also supported by the confronting neighbors. The subject property backs to park land. No objections to the request have been raised.

Conclusions

Based upon the foregoing findings, the Town Council concludes that:

1. The property is subject to extraordinary situations or conditions. It is improved by a house that does not conform to the required rear setback. The lot backs to park land;

2. The strict and literal application of the Town Code would result in peculiar or unusual practical difficulties. Due to the location of the existing house, no rear addition to the existing one-story portion would be possible without a waiver. Given the proposed location of the addition, and the adjoining park land, strict adherence to the Code is not necessitated; there would be no compelling counterbalancing public interest in mandating literal compliance with the Code;

3. The waiver request is the minimum reasonably necessary to overcome the aforesaid exceptional conditions, given the presence of the existing encroaching first floor and the design and location of the addition; and

4. The waiver request would not unduly adversely affect the use, enjoyment or value of nearby properties. It is supported by all the adjoining and confronting neighbors. A County variance has been granted for the proposed construction. A review of the plans submitted for the record reveals that the addition would blend with the existing architecture and would not materially interfere with light and air between residences or other structures, and would be compatible with the scale, massing, and character of the Town and nearby residences and other structures.

Grant of Waiver

Accordingly, the waiver described above is GRANTED, provided however, that:

1. Before the Town Manager issues a building permit for the construction, the applicants must have a valid Montgomery County building permit in accordance with the plans submitted for the record, if required by the County;

2. The construction described above shall be constructed and maintained in accordance with the applicants' representations in support of the request and the plans and specifications submitted for the record in this matter. Any changes, modifications, additions, or deletions to the construction shall require the prior written consent of the Town;

3. A building permit for the construction authorized by this Decision shall be obtained from the Town within twelve (12) months of the date of this Decision or the waiver shall be void, unless an extension is granted in writing by the Town Manager. The construction shall comply with all requirements of the Town Code, except as otherwise allowed by this Decision. The terms and conditions of this Decision shall be conditions of the building permit;


4. If the applicants, their successors or assigns, violate any of the terms and conditions of the waiver approval and fail to remedy such violation within thirty (30) days of written notification from the Town of such violation, then the Town may revoke the waiver. In the event that the Town revokes the waiver, the applicants, their successors or assigns shall

promptly remove the approved construction. If the Town is required to enforce this Decision then the applicants, their successors or assigns shall reimburse the Town for all costs to enforce, including attorneys' fees.

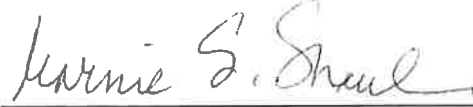
The foregoing Decision was adopted by the Town Council with the following members voting in favor: Marnie Shaul, Barbara Condos, Dudley Fowlkes, Franny Peale, and Barbara Zeughauser.

TOWN OF SOMERSET TOWN COUNCIL

Attest:



Rich Charnovich
Manager and Clerk-Treasurer

By: 

Marnie Shaul, Vice President

Date: 2-13-17

BALODEMAS ARCHITECTS

— C H A R T E R E D —

4301 Connecticut Ave NW | Suite 149 | Washington, DC 20008 | 202-363-4820 Fax 4821 | www.balarch.com

January 11, 2017

Somerset Town Council
Mr. Rich Charnovich
Manager & Clerk-Treasurer
Town of Somerset
4510 Cumberland Avenue
Chevy Chase, MD 20815

Re: Proposal/Agreement - Architectural & Engineering Services
Renovation/Alteration - Town Hall Second Floor

Rich,

We are pleased to submit this proposal for architecture and engineering services for the renovation and alteration of the second floor of the Town Hall. If accepted, this proposal, along with the attached Standard Terms & Conditions, will serve as our agreement.

Our services and fees are based on the scope and goals of the potential second floor renovations that we discussed last Friday:

1. Limit use of second floor to avoid duplication as part of future expansion.
2. Meeting space for 8-10 people.
3. Records storage. Amount of required storage yet to be determined by Town.
4. Workspace for one or two people, either in a separate office or collocated in the meeting and/or records room.
5. Fully renovate upstairs rest room. Bath or shower not required.
6. Refurbish second floor windows.
7. Insulate exterior walls and roof.
8. Add HVAC system for second floor.

Balodemas Architects, Chtd. (BAC) and our consultants will provide the following services by phase for the fees listed in each:

Phase 1 - Feasibility Analysis & Schematic Design

1. Perform site investigation.
2. Perform ADA, building code, and fire code code analyses.
3. Analyze floor capacity for records storage and options for reinforcing framing.
4. Report findings of code and structural requirements to Council for decision-making prior to design.
5. Prepare minimum two alternate schematic floor plans options showing alternate approaches to achieving project scope and goals.
6. Develop HVAC system concept and floor area requirements for equipment.
7. Prepare budgetary cost estimate for each area of work.

8. Meet with Council to review schematic design.
9. Develop revised schematic design based on Council direction.
10. Present revised schematic design to Council and citizens at one public Council meeting.

Fee for Phase 1 \$ 9,800*

* Includes \$1,000 for structural engineer & \$1,500 for mech/elec engineer

Phase 2 - Construction Documents

1. Based on the approved schematic design, we will prepare construction drawings sufficient for building permit, including:
 - Architectural plans, elevations, wall sections and details showing scope of demolition and new work.
 - Design of framing alterations by a Maryland-registered Structural Engineer.
 - Mechanical engineering plans and details by a Maryland-licensed mechanical engineer showing new HVAC and plumbing systems.
 - Electrical engineering plans, details and schedules by a Maryland-licensed electrical engineer showing power and lighting.
2. Assist with selection of flooring, tile, cabinets, countertops, appliances, plumbing fixtures, light fixtures and paint colors.

Fee for Phase 2 \$ 14,500**

** Includes \$2,000 for structural engineer & \$4,500 for mech/elec engineer

Phase 3 - Building Permit Acquisition for Alteration of Math Room

1. Prepare building permit application.
2. Submit application form and drawings to Montgomery County.
3. Follow-up as necessary to obtain building permit.

Fee for Phase 3 \$ 1,500

Phase 4 - Bidding & Negotiation

On an as-needed, as-directed basis, BAC will:

1. Solicit interest from experienced general contractors (GC's).
2. Evaluate GC pricing.
2. Work with Town and GC on cost saving measures/"value engineering".
3. Review draft Owner/GC agreement.

Fee for Phase 4 Hourly, as directed (see rates below)

Phase 5 - Construction Contract Administration

On an as-needed, as-directed basis, BAC will:

1. Make periodic site visits to review construction progress for general conformance to plans.
2. Attend construction progress meetings.
3. Review shop drawings and other submittals from General Contractor.
4. Review and certify GC's applications for payment.
5. Review Contractors' requests for information and change order proposals.
6. Investigate unforeseeable conditions and prepare supplemental drawings.
7. Perform final inspection and prepare punch list at completion of construction.
8. Report on construction progress to the Town Council at regular Town Meetings.

Fee for Phase 5 Hourly, as directed (see rates below)

Additional Services

Any service not listed in the tasks and phases above will be considered an Additional Service, including changes in the program or budget and other revisions inconsistent with prior approvals or instructions. Additional Services shall be paid as set forth below under Standard Rates.

Standard Rates

Hourly rates for tasks identified as "Hourly" above and for Additional Services shall be as follows:

Principal Architect/Engineer	\$225/Hr
Senior Architect/Engineer	\$175/Hr
Project Manager	\$155/Hr
Architect/Engineer	\$130/Hr
Designer/Drafter	\$100/Hr
Admin	\$80/Hr

These rates shall change annually on January 1, beginning January 1, 2018.

Assumptions/Excluded Services

1. The following services are not included in our current scope:
 - Land surveying
 - Civil engineering
 - Geotechnical testing and analysis
 - Landscape design
 - Materials testing during construction
 - Destructive testing to reveal hidden conditions
 - Designs or other support for any utility service upgrades.
2. In the course of its investigations related to specific tasks, BAC will bring any construction deficiencies noted to the attention of the Owner's representative. However, BAC has not been tasked to undertake a property condition assessment is therefore not responsible for identifying existing deficiencies or for design services to remedy any such deficiencies.
3. No services are included for obtaining variances, special exceptions, code modifications, or other non-standard approvals from the Department of Permitting Services or other authorities having jurisdiction.
4. Third-party testing during construction is not included.
5. Unforeseeable design changes directed by the county and other regulatory authorities during the permit review process or by inspectors during construction will be handled as an Additional Service.

Other Terms

1. Our fees for each Phase and for any Additional Services are set out above. In addition, expenses incurred by us in relation to the Project will be billed to you at one point one (1.10) times the amount expended, and are considered separate from our compensation. Expenses include, but are not limited to, blueprinting, photography, shipping and permit fees.
2. Fees and expenses will be billed monthly and are payable within thirty (30) days of receipt. All invoices over thirty (30) days past due shall accrue simple interest at the rate of one percent (1.5%) per month.

3. Inquiries and questions regarding any invoice shall be made within sixty (60) days of receipt of the invoice. Failure to notify us within this time period shall constitute a waiver of any claim with respect to the content or accuracy of the invoice, as well as acceptance of the services provided.
4. If the fixed fee services covered by this Proposal have not been completed by January 1, 2018, the compensation for our services beyond that time shall be equitably adjusted.
5. Incorporated by reference as part of this Proposal are the Standard Terms and Conditions attached as Exhibit A.
6. This Proposal and the attached Standard Terms and Conditions represent the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral.
7. This Agreement may be amended only by written instrument signed by all of the parties.
8. The individual signing the agreement below has contracting authority for the Town of Somerset.

If this proposal is acceptable, please sign and return a copy to me. Thank you again for this opportunity.

Respectfully,


BALODEMAS ARCHITECTS, Chtd.



Lou Balodemas, AIA, President

Attachment: Exhibit A, Standard Terms and Conditions

Acceptance:

Agreed to this	<u>B. 14</u>	day of	<u>February</u>	, 2017
By:		Print:	<u>Mayor Jeffrey Z Skvird</u>	

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Exhibit A – Standard Terms and Conditions

1. **Standard of Care.** Architect will perform services under this Agreement, consistent with that level of care and skill ordinarily exercised by members of the Architect's profession, practicing under similar circumstances in the same or similar locality in the same period of time. No guarantees are included or intended in this Agreement or in any representation, opinion or otherwise of Architect. This warranty is in lieu of all other warranties and representations, either express or implied.
2. **Client's Responsibilities**
 - A. Client shall provide full information regarding the requirements and budget for the Project and Architect, its consultants and their respective directors, officers, shareholders, employees, representatives and agents (hereafter "Architect") shall be entitled to rely on the accuracy and completeness thereof. Client, for its own benefit may, from time to time on its own or retain others to perform certain tests, inspections, and analyses or other information and materials for use by Architect. Architect may and is expected to rely on such tests, inspections, analyses, opinions, data, reports, materials and other information without the need for independent evaluation and/or verification. Moreover, Client agrees to indemnify, defend and hold Architect harmless from any and all losses, damages, and claims of any nature which may in any way arise out of or in connection with the use by Architect of the tests, inspections, analyses, opinions, data, reports, materials and other information prepared by Client or others and furnished to Architect in connection with this Project.
 - B. Architect's Scope of Services does not provide for continuous supervision or exhaustive inspection of the work performed by the Contractor or subcontractors.
 - C. If Client or Contractor becomes aware of any discrepancies, errors, or omissions in the Contract Documents, or of any unanticipated job or site conditions, or of any fault or defect in the Project or nonconformance with the design documents, or of any proposed field revisions, prompt written notice thereof shall be given by Client to Architect.
 - D. Client has the responsibility for the cost of construction and any costs that vary from or exceed any estimates or budgets.
3. **Contractor's Responsibilities**
 - A. Architect shall be responsible only for the design shown in Architect's Contract Documents. Client shall specifically hold Architect harmless from any and all claims or damages arising from or relating to the Contractor's failure to properly perform the work. Furthermore, Architect shall not be responsible for or have control over the means, methods, procedures of construction, dimensions, quantities or instructions for installation or performance of equipment or systems designed by the Contractor or site safety precautions employed by the Contractor or subcontractors on the Project, which remain the sole responsibility of the Contractor.
 - B. Architect's visits to the construction site shall be for the sole purpose of becoming generally familiar with the progress and quality of the construction work within Architect's scope and to determine in general if the work, when completed, will be in accordance with the Contract Documents.
4. **Use of Architect's Documents**
 - A. Documents prepared by Architect are Instruments of Service for use solely with respect to this Project. Architect retains all common law, statutory and other reserved rights, including the copyright thereto. Client will not use or permit the reuse of the Instruments of Service except by mutual agreement in writing with Architect.
 - B. Provided Client is not in default under this Agreement, Client may retain copies solely for information and reference in connection with occupancy and maintenance of the Project. However, such documents are not intended or represented to be suitable for use by Client or others on extensions of the Project, for completion or implementation of the Project by others, or any other project. Client further agrees to waive all claims against Architect resulting in any way from unauthorized changes or use of the Instruments of Service or completion of the Project without Architect's involvement.
5. **Construction Administration Services.** If the Architect is required to assist the Client in bidding or in determining whether cause exists to terminate a contractor, pursuant to the terms of this Agreement or the construction contract, then the Client agrees to indemnify, defend and hold the Architect harmless from any and all losses, damages and claims of any nature, which may in any way arise out of the Architect's rendering of good faith advice to the Client on these topics.
6. **Termination, Suspension or Abandonment**
 - A. In the event Architect does not receive payment when due, Architect may terminate or suspend services without breach of contract upon giving Client seven (7) days written notice. In the event services are terminated or suspended, Architect has no obligation to deliver documents and any consequences (including delay) resulting from such termination or suspension of the Project are the sole responsibility of Client. Architect shall be compensated for all services performed up to the date of termination together with all reimbursable expenses then due.
 - B. Failure of Client to make payments to Architect in accordance with this Agreement shall be considered substantial nonperformance and is sufficient cause for

Architect to either suspend or terminate services.

7. Limitation of Liability. There are a variety of risks which potentially affect Architect by virtue of entering into an Agreement to perform professional services on Client's behalf. In order for Client to obtain the benefit of a fee which does not need to account for unlimited risks, Client agrees to limit Architect's liability to Client. To the fullest extent permitted by law, the total liability of Architect with regard to the Project under any and all theories of liability shall be limited to the total fee paid to Architect only, not including consultants, for the Project. Limitations on liability provided in the Agreement are business understandings between the parties and shall apply to all theories of liability, including breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. The limits of liability may be negotiated with appropriate compensation to Architect. No director, officer, employee, agent, consultant or representative of Architect or its consultants shall have any individual liability to Client. Each party waives consequential damages for claims, disputes or other matters in question arising out of relating to this agreement. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, any other person.
8. Insurance. Client is obligated to carry adequate liability, property and fire insurance on the property where the Project is located. Client must present Architect with a certificate of insurance upon the signing of this Agreement. Client hereby releases Architect from any liability for any loss or damage to any building, structure or tangible personal property notwithstanding that such loss, damage or liability may arise out of the act or omission of Architect, if such loss or damage is covered by insurance benefiting Client or was required to be covered by insurance pursuant to this Agreement.
9. Litigation.
 - A. All claims, disputes or other matters in question arising out of this Agreement shall be determined by the federal or state court located in the State of Maryland which has jurisdiction over this matter. Both parties consent to personal jurisdiction and venue in the courts referenced above.
 - B. This Agreement shall be governed by the laws of the State of Maryland.
 - C. Both parties specifically waive their right to a jury trial to resolve any and all claims, including but not limited to those sounding in contract, tort or statute, against the other arising out of or connected in any way to the Project or this Agreement because the parties hereto believe that the complex commercial and professional aspects of their dealings with one another make a jury determination neither desirable nor appropriate.
10. Limitation on Years to Bring Claim. Any and all claims and/or causes of action between the parties arising out of or relating to this Agreement shall be brought by either party within two (2) years of substantial completion of the Project or termination of this Agreement whichever is sooner.
11. Assignment of Claims. Neither party shall assign nor transfer its interest or any claim arising under or related to this Agreement, including interest in and claims for any moneys due or to become due, without the written consent of the other party. Any such assignment or transfer shall be deemed void and invalid, the assignee shall acquire no rights as a result of any such assignment and the non-assigning party shall not recognize any such assignment.
12. Certificate of Merit. Client shall make no claim for professional negligence, either directly or in a third party claim, against Architect unless Client has first provided Architect with a written certification executed by an independent design professional currently practicing in the discipline of the alleged defective design and licensed in the District of Columbia. This certification shall: a) contain 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 the allegedly defective 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.
13. Access to Site. Architect shall have access to the Project site at all reasonable hours and shall be permitted to photograph the Project during construction and upon completion for its records and future use. Architect shall have the right to take photographs and make other reasonable promotional use of the Project, and Architect shall be given appropriate credit on all construction signs or other promotional materials concerning the Project.
14. Hazardous Materials. Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
15. Hidden Conditions. The Instruments of Service are based on observable conditions. A condition is hidden if it is concealed by existing finishes or cannot be investigated by reasonable visual observation. In the event Architect, in the performance of the services, uncovers a hidden condition, Architect shall not be responsible for costs associated with repairing, restoring, removing or otherwise correcting said condition. Architect shall have no responsibility for hidden conditions or any subsequent damage to persons or property related to any hidden conditions.

TOWN OF SOMERSET & COMMUNITY POOL SERVICES, LLC AGREEMENT FOR POOL MANAGEMENT SERVICES

THIS AGREEMENT, entered into this 8th day of February 2017, is between the TOWN OF SOMERSET, a municipal corporation of the State of Maryland in Montgomery County located at 4510 Cumberland Avenue, Chevy Chase, MD 20815 ("OWNER"), and COMMUNITY POOL SERVICE, LLC, a licensed pool operation and management contractor located at 7668 Standish Place, Suite C, Rockville, MD 20855 ("CONTRACTOR"), for the operation and management of OWNER'S pool located at 5545 Warwick Place, Chevy Chase, MD 20815 (the "Pool").

SECTION I. GENERAL SPECIFICATIONS

A. CONTRACTOR shall manage, staff, and operate the Pool from Saturday May 20, 2017 ("Opening Day") through Sunday September 17, 2017 ("Closing Day")(collectively and inclusively the "Open Season").

B. CONTRACTOR shall provide personnel for a total of One Hundred Forty (140) hours of pre-season cleaning and preparation prior to Opening Day, which services are set forth in more detail below, SECTION II.

C. CONTRACTOR shall schedule 308 hours of staffing for the Pool per week during the Open Season ("Hours of Operation"), which staffing shall consist of

Manager:	1	40 hrs/wk
Assistant Manager:	1	40 hrs/wk
Lifeguards:	5	40 hrs/wk
Relief Lifeguard:	1	28 hrs/wk

At least one (1) manager and two (2) Lifeguards shall be on duty at all times. During hours of above-normal Pool usage ("weekday peak hours") and on weekends, this staffing shall be supplemented by at least one (1) additional Lifeguard. During swim meets outside of scheduled Hours of Operation, either one (1) Manager or one (1) Assistant Manager shall staff the Pool. Such staffing does not include CONTRACTOR's provision of a Head Coach(es) or Assistant Coach(es) for OWNER's Swim Team, which terms and responsibilities are set forth in Section IV.

D. Scheduled Hours of Operation during the Open Season shall consist of:

When School is in Session:

Monday – Thursday:	1:00 PM – 8:00 PM
Friday:	1:00 PM – 9:00 PM
Saturday:	10:00 AM – 9:00 PM
Sunday:	10:00 AM – 8:00 PM

When School is Not in Session:

Monday – Sunday:	10:00 AM – 9:00 PM
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Holidays and Closing Day:

Memorial Day:	10:00 AM – 8:00 PM
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Fourth of July:	10:00 AM – 6:00 PM
Labor Day:	10:00 AM – 8:00 PM
Closing Day:	10:00 AM – 7:00 PM

CONTRACTOR shall also schedule, at a minimum, an additional thirty (30) minutes of staffing, both before and after normal Hours of Operation, each day, for any necessary opening and closing procedures and/or operations.

E. OWNER agrees to pay CONTRACTOR the sum of Eighty-Seven Thousand Seven Hundred Dollars (\$87,700) for the scheduled Open Season, payable as follows:

01-March-2016	\$ 7,308.35
01-April-2016	\$14,626.66
01-May-2016	\$14,626.66
01-June-2016	\$14,626.66
01-July-2016	\$14,626.66
01-August-2016	\$14,626.66
01-September-2016	\$ 7,308.35

F. Upon written request by OWNER and mutually agreed to by CONTRACTOR, CONTRACTOR shall operate the Pool beyond the Open Season. The rate for any such extension of date(s) shall be set at not more than 1.0% per day, as calculated against the total amount due under this Agreement, Section I.E (the "Per Day Operating Cost"). If OWNER requests additional weekends only, an additional 1% shall be assessed to compensate for midweek maintenance.

F. During normal Hours of Operation, CONTRACTOR shall, upon request by OWNER, supply supplemental staffing at a rate of \$25.00 per hour for each Lifeguard and \$30.00 per hour for each Manager, not including any eligible overtime. Outside of normal Hours of Operation, supplemental staffing shall be at a rate of \$35.00 per hour for each Lifeguard or Manager. Any fees incurred for supplemental staffing are in addition to the scheduled monthly payments, and shall be made payable within thirty (30) days of an invoice for the services rendered.

G. OWNER shall pay any applicable increase in insurance, payroll taxes, minimum wage or chemical costs which CONTRACTOR would incur after execution of this Agreement due to a change in Federal, State, or County law. CONTRACTOR will provide OWNER with written authenticated evidence of any such cost increase. In the event that the minimum wage is increased above current staffing rates after execution of this Agreement, the parties shall adjust the total Agreement amount to reflect such increase, including any taxes and/or insurance costs for the same.

SECTION II. OPENING FOR THE SEASON

CONTRACTOR shall assure the Pool is ready and operational in time for Opening Day by completing the following services:

A. The Manager shall be selected in consultation with the Owner and contracted by CONTRACTOR by March 1, 2017.

B. The Manager and Regional Director (Philip Carter) shall attend monthly meetings as needed during the months leading up to the Open Season.

C. Blue Box training shall occur by May 1, 2017 with staff, Regional Director, and OWNER present. If Blue Box training does not occur by May 1, 2017, CONTRACTOR will credit OWNER One Thousand Dollars (\$1,000.00) as liquidated damages and not as a penalty.

D. A full week of cleaning/training shall occur beginning May 7, 2017. Cleaning/training will occur daily, for a minimum of four (4) hours per day for six (6) days. If cleaning/training does not occur CONTRACTOR will credit OWNER Five Hundred Dollars (\$500.00) per day as liquidated damages and not as a penalty.

E. Conduct and submit to OWNER a written inspection report necessary to render the pool and filter system operational. OWNER is responsible for needed repairs and costs thereof. This report, if approved in part or total must be returned to CONTRACTOR immediately.

F. Reassemble bathhouse and pool fresh water system, check for proper operation and advise OWNER of needed repair(s) which repairs are OWNER's responsibility. OWNER is responsible for turning on fresh water system to the bathhouse facility.

G. Drain and/or acid clean the Pool, as necessary. No additional cost shall be assessed to OWNER for any needed draining and/or acid cleaning.

H. Fill the Pool. OWNER shall make available its on-site water facilities.

I. Place filtration and chlorination system in operation and check for proper operation. OWNER is responsible for the cost of any needed repair.

J. Install diving boards, ladders, handrails, lifeguard chairs, skimmer lids, and safety and lane ropes.

K. Clean bathhouse and pool area.

L. Arrange for and be present at any local or state Health Department pre-opening inspections which may be required.

M. Remove pool cover(s) and store on-site at OWNER's facility, which cover(s) CONTRACTOR shall also re-install after Closing Day.

N. Obtain any and all necessary Health Department, Fire, and Hazmat permit(s). CONTRACTOR shall be responsible for any assessed costs or fees required to obtain such permit(s).

SECTION III. OWNER'S RESPONSIBILITIES

In the event that equipment or repairs are required for the Pool to open, CONTRACTOR shall promptly notify OWNER of such need. OWNER is responsible for providing such equipment and completing all repairs. CONTRACTOR cannot guarantee the Pool to be ready for Opening Day if such equipment and repairs are not finalized by April 15, 2017.

In the event any necessary repairs are not completed by OWNER prior to the scheduled Health Department pre-opening inspection, and the Pool does not pass inspection as a result of such uncompleted repairs, OWNER shall be responsible for re-scheduling and being present for any additional inspection(s) and related costs or fees therefore.

OWNER shall be responsible for the following items, to be provided and completed not later than April 15, 2017, unless otherwise noted, to guarantee the Pool ready for Opening Day:

A. Provide CONTRACTOR with a copy of any Health Department violations within two (2) weeks from the date of this Agreement or when notice is received by OWNER.

B. Remove trash from all Pool area receptacles within a reasonable amount of time.

C. Provide CONTRACTOR with access to the Pool and its facilities, including four (4) sets of keys and any alarm code(s). CONTRACTOR shall maintain safe and confidential possession and control of all keys and alarm code(s) provided, to be returned to OWNER after the end of all services rendered under this Agreement.

D. Prepare bathhouse for use, including:

1. Complete all building repairs, such as broken windows or doors, toilet partitions, and damaged tile or dry wall.
2. Complete any needed plumbing repairs. Hot water heaters must be operational in order to pass opening inspection.
3. Paint interior and exterior of bathhouse if required.
4. Inspect electrical system and repair as required. Supply and install light bulbs as required.
5. Provide working locks on all doors, gates and windows.
6. Insure all fencing meets local codes and prevents unauthorized entry into the pool area. Repair as necessary.

E. OWNER shall provide, in good working condition, all necessary equipment for the safe operation of the Pool and its facilities, including but not limited to filtration equipment, pool ladders, rescue tubes, backboard with straps, head immobilizer, deep water divider ropes, lane and safety ropes, elevated guard station(s), and a lifeguard umbrella for each guard station.

F. Complete any needed repairs inside the Pool area, such as the concrete deck, area lights, and drinking fountains.

G. Supply free and adequate parking for scheduled and requested Pool personnel.

H. Provide all Pool members with a pass or other adequate method of admission, such as entry with OWNER's software and system log.

I. Provide CONTRACTOR with a copy of its premise liability insurance policy for the Pool and its facilities.

J. Provide CONTRACTOR with an Automated External Defibrillator ("AED") if so required by State, County or municipal code. In the event OWNER is so required and fails to provide one to CONTRACTOR, CONTRACTOR reserves the right to supply an AED and invoice OWNER for reasonable costs and expenses therefore. CONTRACTOR recommends that all facilities, regardless of code or regulation, have an AED on site.

K. Provide an operational telephone for use at all times by Lifeguards. Such phone must be hard-wired, and able to call 911 and CONTRACTOR's office (including the clock-in system). OWNER will provide restrictions through its carrier to prevent long distance, 900 service, toll and internet calls.

L. Provide water, electricity, and gas (if required) for the operation of the Pool and facilities.

SECTION IV. PERSONNEL

A. All lifeguards, managers, and assistant managers provided by CONTRACTOR for work or services under this Agreement shall be employees of CONTRACTOR, and only of CONTRACTOR. CONTRACTOR shall be responsible for paying such employees, including all Social Security, Workers' Compensation, and other taxes incident to their work. CONTRACTOR shall be responsible for compliance with all applicable Equal Employment Opportunity laws, wage and hour laws, and other Federal, State, and local requirements therefore.

B. In addition to managers, assistant managers, and lifeguards, CONTRACTOR shall also provide for and employ the Head Coach and Assistant Coach(es) for OWNER's Swim Team. CONTRACTOR shall be responsible for managing payroll and all applicable taxes, insurance, and any other compensation and/or coverage required by Federal, State, and local laws, for OWNER's Head Coach and Assistant Coach(es). OWNER shall reimburse CONTRACTOR for the gross earnings of the Head Coach and Assistant Coach(es), plus twenty-four percent (24%) of that amount for taxes, insurance, and administrative fees, to be billed to OWNER on a monthly basis and due within thirty (30) days of invoice.

C. All personnel shall have proper license and/or certification.

D. CONTRACTOR shall have sole discretion over individual employees' work hours within, pursuant to, and necessary for the staffing agreed to in Section I and during all Hours of Operation.

E. Lifeguards shall be entitled to a thirty (30) minute break for every seven (7) hour shift worked, while still assuring the necessary on-duty staffing requirements of this Agreement are met at all times, as set forth in Section I.C., and in compliance with any and all Federal, State, and local regulations for monitoring, oversight, and supervision of the Pool and its facilities, members, and guests, during any such break.

F. CONTRACTOR shall not be responsible for providing personnel to staff and/or monitor OWNER's wading pool, unless specifically authorized in writing by OWNER in supplement to this Agreement.

SECTION V. INSPECTIONS AND AUDITS OF POOL OPERATIONS

CONTRACTOR agrees to conduct a minimum of three (3) Pool Inspections per week by its supervisory personnel as follows:

1. Pool Manager and Regional Director will attend monthly board meetings during Open Season. If a monthly meeting does not occur CONTRACTOR will credit OWNER Five Hundred Dollars (\$500.00) per meeting as liquidated damages and not as a penalty.
2. Regional Director will conduct at least one (1) written inspection per week during Open Season. If a weekly written inspection does not occur CONTRACTOR will credit OWNER One Hundred Dollars (\$100.00) per inspection as liquidated damages and not as a penalty.
3. Area Supervisor will conduct a minimum of two (2) weekly written inspections with signature of OWNER during Open Season. If a weekly written inspection does not occur CONTRACTOR will credit OWNER One Fifty Dollars (\$50.00) per inspection as liquidated damages and not as a penalty.

Such inspections shall cover all phases of pool operations. In addition, Safety Audits will be performed throughout the Open Season by certified Auditors and Lifeguard Instructors.

At a minimum of once per week during Open Season, CONTRACTOR will meet with a representative of OWNER to discuss Pool operations and any related problems. This meeting may be combined with one of the Pool Inspections above. At such meeting(s), CONTRACTOR will provide to OWNER recommendations for a safer and/or more efficient and/or beneficial operation of the Pool. Any scheduled meeting(s) shall not limit OWNER from submitting earlier and/or additional and/or supplemental complaints and/or concerns.

SECTION VI. DAILY MAINTENANCE AND OPERATIONS

At a minimum, CONTRACTOR shall:

- A. Maintain proper filter operation by backwashing and/or cleaning pump strainer as required.
- B. Maintain water quality in conformance with required standards.
- C. Maintain required health department records.
- D. Clean bathrooms and pool office as required.
- E. Clean pool area inside pool enclosure.
- F. Vacuum pool bottom, clean waterline tiles and skimmer baskets as necessary.
- G. Provide courteous, reasonable, and mature enforcement of OWNER's written rules, as are reasonable, safe, and in accordance with all Federal, State and local laws and regulations. A copy of OWNER's rules shall be provided at the time of the signing of this Agreement.

H. Secure the Pool and its facilities, including arming and/or disarming OWNER's alarm system, at the opening and close of each day the Pool is opened.

I. Log the entry of Pool Members and any guests with OWNER's system and computer software, including the assessment of any non-member and/or guest fees which may be due.

SECTION VII. CHEMICALS, SUPPLIES, AND MATERIALS

A. CONTRACTOR shall, as often as necessary to maintain water quality, health, and/or sanitation standards prescribed by State and/or local health department(s), be responsible for the ordering, payment, and costs of any and all: chlorine; muriatic acid; soda ash; test reagents; diatomaceous earth; spring, summer and winter algicide; cyanuric acid; baking soda; calcium hypochlorite; bromine; Oxishock; test kits; and any other chemicals deemed necessary by the CONTRACTOR.

B. In addition, CONTRACTOR shall, as often as necessary to maintain health and/or sanitary operation of the Pool as prescribed by State and/or local health department(s), be responsible for the ordering, payment, and costs of any and all: first aid kits; cleaner; disinfectant; paper products; soap; towel and tissues, including dispensers; and any other expendable items.

SECTION VIII. CLOSING AND WINTERIZATION OF POOL

At the conclusion of the Open Season and after Closing Day, CONTRACTOR shall close and winterize the Pool by performing, at a minimum, the following services:

A. Disconnect piping at fixtures as required, and drain all piping which can be drained.

B. Add anti-freeze to toilet bowls and tanks, urinals and sink traps.

C. Remove and store in compound the pool ladders, handrails, lifeguard chairs, safety rope and diving board(s).

D. Drain pool to appropriate winter level. OWNER is responsible during winter months to keep water level below tile line.

E. Open all valves in filter room which require opening.

F. Turn off the main water, unless otherwise instructed in writing by OWNER. CONTRACTOR shall promptly notify OWNER if the main water cutoff is inaccessible. CONTRACTOR shall, upon proper notice to OWNER, not be responsible for any freeze damage due to a failure to turn off the main water.

G. Backwash and drain filter tank and filter piping.

H. Uncover and drain the hair and lint strainer.

I. Inspect all visible plumbing. CONTRACTOR shall notify OWNER of all plumbing inspected so that OWNER may reasonably determine whether any plumbing has been omitted from inspection. CONTRACTOR shall not, upon proper notice to OWNER, be held responsible for any freeze

damage to pipes which are below drain points, behind walls, or in ceilings, such that they are not visible upon reasonable effort and inspection.

- J. Install winter algaecide and motor protectants at OWNER'S expense.
- K. Store chlorinators, chemical feeders and flow meters on premises.
- L. Store pool maintenance, testing equipment and supplies on premises.
- M. Store all pool deck furniture in bathhouse.
- N. Notify OWNER when closing procedures have been completed.
- O. Submit to OWNER a detailed inspection report of the condition of the Pool, and all facilities and related equipment.
- P. Secure the Pool cover.

SECTION IX. EMERGENCIES AND INCLEMENT WEATHER

A. OWNER and/or CONTRACTOR may close the Pool in an emergency situation or during inclement weather, as defined by and in accordance with Federal, State, and local laws and operating regulations. No adjustment shall be made to charges or payments due to CONTRACTOR under Section I for any such closure.

B. In the event that the Pool may not safely open before 4:00 PM on any regularly scheduled day of operation due to inclement weather, including but not limited to cloud cover, temperatures below 65 degrees Fahrenheit, steady rain, thunder, and/or lightning, CONTRACTOR shall have the discretion to close the Pool for the remainder of the day, without credit, set-off, or deduction against the total Agreement amount.

C. In the event that the Pool is closed for a period of more than ten (10) consecutive days due to mechanical failure, necessary repair(s), by order of any Federal, State, or local regulatory body, or such similar cause(s) outside of CONTRACTOR's control, CONTRACTOR shall refund to OWNER fifty percent (50%) of the Per-Day Operating Cost, beginning on the eleventh (11) day of such closure through until the Pool is reopened for normal operation.

SECTION X. ADDITIONAL CONTRACTOR SERVICES

In addition to those duties, services, and obligations set forth above, CONTRACTOR shall also:

- A. Keep a record of Pool members and any guests, including the assessment of any applicable fees or costs, through the use of OWNER's logging system and computer software.
- B. Complete any accident report forms, and provide a copy of the same to OWNER and participating insurance companies.

C. Conduct swimming lessons, by certified and/or licensed instructors, to be offered privately or in groups, and only in such manner as to not interfere with regular Pool operations, including the use and enjoyment of its members and their guests. Any fees or charges for such lessons shall be collected and retained by CONTRACTOR.

D. Provide notice to and advise OWNER of any needed swimming pool repair(s) or equipment. Upon written request by OWNER, CONTRACTOR shall also arrange for such repair(s) and/or procurement of equipment.

E. CONTRACTOR shall, at no additional cost, supply one (1) C.A.T. Controller for use by OWNER on the Pool for the duration of this Agreement and any renewal thereof. Upon expiration of this Agreement or any renewal thereto, CONTRACTOR shall removal the C.A.T. Controller, and shall repair, fix, or replace any of OWNER's equipment or surfaces impacted by the C.A.T. Controller's installation and/or removal, to their original condition.

SECTION XI. INSURANCE AND LIABILITY

A. CONTRACTOR shall maintain public Liability Insurance in the amount of twenty-two million dollars (\$22,000,000) to cover accidents and/or injuries of Pool members and/or their guests, including loss of life, within areas to be supervised by CONTRACTOR under this Agreement, due to the negligence of CONTRACTOR, its employees, agents, or subcontractors.

B. CONTRACTOR shall not be liable for any damages resulting from any mechanical failure, damage to the Pool due to faulty construction, failure of OWNER to repair equipment after notice by CONTRACTOR, defective workmanship, or hydrostatic/subsurface ground conditions.

C. OWNER shall inform CONTRACTOR of any scheduled activities to be held at the Pool or its facilities outside of normal Hours of Operation. OWNER assumes sole liability and shall indemnify and hold CONTRACTOR harmless from and against any and all claims, damages, liability, and judgments in connection with personal injury and/or damage to property arising from or out of maintenance, operation or use by OWNER and/or its agents, for any function at which alcohol is provided by OWNER.

D. CONTRACTOR shall indemnify and hold OWNER harmless from and against any and all claims, damages, liability, and judgments in connection with personal injury and/or damage to property, including loss of life, arising from or out of the negligence of CONTRACTOR, its agents, subcontractors, and/or employees.

G. CONTRACTOR shall be responsible for securing the Pool and its facilities at the close of every day during which the Pool was open, including but not limited to securing any gate(s) and arming OWNER's alarm. In the event CONTRACTOR, by and or through its employees, agents, and/or subcontractors, fails to properly secure the premises, CONTRACTOR shall be liable for any damage and/or injury to the Pool, its facilities, and/or persons, and for any theft or damage to OWNER's property arising from or due to such failure.

E. A Certificate of Insurance shall be provided to OWNER within two (2) weeks of the signing of this Agreement.

F. CONTRACTOR shall maintain Workers' Compensation Insurance in accordance with all Federal and State requirements.

SECTION XII. ADJUSTMENTS AND DEFAULT

A. Interest at the rate of two percent (2%) per month will be charged on all unpaid balances which are owing beginning thirty (30) days after the date of which said payment is to be due under Section I of this Agreement.

B. In the event OWNER fails to make three (3) consecutive payments, OWNER shall be deemed to be in default. Upon OWNER's default, CONTRACTOR, at its sole option, shall have the right to cease any and all services, supplies, and/or personnel to OWNER, and to avail itself of any and all remedies, both legal and equitable, to which it may be entitled at the time of default. OWNER shall be liable for any costs incurred by CONTRACTOR for instituting collection proceedings, including attorney's fees and expenses, or any fee charged to CONTRACTOR by a collection agency for services rendered. This provision shall not be construed to limit any rights and remedies CONTRACTOR may have under any other provisions of this Agreement or at law.

C. In the event that OWNER considers CONTRACTOR to have materially breached any provision of this Agreement, or to have failed to perform or unsatisfactorily performed any obligation under this agreement, OWNER shall have the right to terminate the services provided hereunder, provided: (1) a written complaint is made promptly to CONTRACTOR stating the precise nature of the deficiencies in performance and/or quality of service; (2) CONTRACTOR has not corrected the deficiencies within ten (10) days from the date written notification is received; and (3) OWNER has complied in all material respects with its obligations under this Agreement.

D. In the event of termination of performance by CONTRACTOR under the terms of this Agreement for nonpayment of any sum due hereunder by OWNER, it is expressly agreed and understood that CONTRACTOR shall be entitled to retain all sums of money previously received from OWNER, and shall be entitled to collect all sums of money due under the terms of the Agreement from the date of termination through Closing Day. OWNER acknowledges that, because of the particular nature of CONTRACTOR's business, the actual money damages that would be sustained by CONTRACTOR in the event of a breach, premature termination, or reduction of this Agreement by OWNER, would likely be substantial and difficult to determine. The parties therefore agree that, in the event OWNER breaches, or without justifiable cause terminates, this Agreement prior to the expiration of the term hereof, or fails to comply with the terms hereof in their entirety, OWNER shall pay to CONTRACTOR as reasonable liquidated damages (and not as a penalty) at the time of termination or breach of this Agreement by OWNER, liquidated damages in an amount equal to the total of: (1) one-half (1/2) the total Agreement price, less any payments made thereon, without offset or deduction; plus (2) charges for any chemicals, supplies or labor which are outstanding at the time of the termination; plus (3) costs, including reasonable attorney's fees, incurred by CONTRACTOR in enforcing its rights hereunder (in the sum of 20% of the sum due). In the event of a breach of this Agreement by OWNER before payment of the initial installment due hereunder for the Open Season or any renewal period thereafter, CONTRACTOR shall be entitled to the initial installment as liquidated damages.

E. CONTRACTOR acknowledges that, because of the particular nature of this Agreement and OWNER'S operations, the actual money damages that would be sustained by OWNER in the event of a breach by CONTRACTOR would likely be substantial and difficult to determine. The parties therefore

agree that, in the event CONTRACTOR breaches any of the provisions of Section II or Section V of this Agreement, or fails to comply with the terms thereof in their entirety, CONTRACTOR shall pay or credit to OWNER as reasonable liquidated damages (and not as a penalty) the amount(s) set forth in said Sections for the specified breach.

SECTION XIII. RENEWAL

This term of this Agreement shall be for one (1) year. OWNER shall have the option to renew the Agreement on an annual basis thereafter, with an increase of five percent (5%) of the total amount set forth in Section I, plus a pro-rated adjustment for any change in the number of days.

SECTION XIV. ADDITIONAL PROVISIONS

A. This Agreement may not be amended or modified except by written instrument and executed by both parties.

B. In the event that either party shall become bankrupt, insolvent, or shall make a voluntary assignment for the benefit of creditors, the other party may, at its option, terminate this Agreement upon fourteen (14) days' notice.

C. This Agreement is governed by the laws of Maryland, without regard to its conflict of laws doctrine. Each party consents to the exclusive jurisdiction of the courts sitting in Montgomery County, Maryland with respect to any disputes arising out of this Agreement. In any action or proceeding arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable legal fees and expenses.

D. OWNER hereby agrees to contract with CONTRACTOR as a management contractor and consultant to manage and operate the pool site during the term of this Agreement, and to provide consulting services regarding the operation of the Pool site. Each party acknowledges and affirms the legal capacity and authority to enter into this Agreement.

E. This Agreement may be executed on one or more counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

F. Neither OWNER nor CONTRACTOR shall have the right to assign, pledge or encumber in any way any duty, obligation, service, or the like set forth by this Agreement without the prior written consent of the other party.

G. This Agreement embodies the entire understanding of the parties, and supersedes any prior verbal or written representation(s) with regard to the services and terms contracted hereunder.

IN WITNESS WHEREOF, the parties hereto, by and through their duly authorized representatives or agents, agree to all terms and provisions of this Agreement.

TOWN OF SOMERSET
4510 Cumberland Ave.
Chevy Chase, MD 20815

COMMUNITY POOL SERVICE, L.L.C.
7668 Standish Place, Suite C
Rockville, MD 20855

By: Jeffrey Z. Slavin, Mayor *Town Manager*

By: Duane Robbins, President

Date: 2-8-17 2017

Date: 2-10-17 2017

Approved at
2-6-17
Council meeting