

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

This Agreement, made this _____ day of _____, 2025 by and between Save the Sound, a 501(c)(3) organization with offices located at 127 Church Street, Suite 200 New Haven, Connecticut 06510 (hereinafter referred to as the "Owner") and _____, a corporation organized and existing under the laws of the State of _____ and an engineering firm licensed to practice professional engineering in the State _____ with and office and place of business located at _____ (hereinafter referred to as the "Engineer").

NOW THEREFORE, in consideration of the conditions and mutual promises contained in this Agreement, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1 SCOPE OF WORK

Owner requires professional engineering services for the project known as _____ (the "Project").

In relation to the Project, Engineer will provide consulting, investigation, permitting, and design services in accordance with this Agreement and the following documents which are attached hereto and incorporated herein by reference:

- Exhibit A – Scope of Work
- Exhibit B – Person-Day and Fee Scheduled
- Exhibit C – Applicable Grants

(hereinafter this Agreement and the exhibits referenced above shall be referred to the "Contract Documents.") In case of conflict between this Agreement and the other Contract Documents, this Agreement shall govern.

Engineer shall assume full and complete responsibility for the accuracy of all items produced under this Agreement. The seal of the Professional Engineer, who is employed by the Engineer and the Engineer designates as the Engineer-of-Record shall be affixed on the title sheet(s) of all plans, specifications and/or other documents prepared pursuant to this Agreement.

In performing the services required under this Agreement, plans, specifications, and other documents prepared by Engineer shall conform to all applicable federal, state, and local laws and regulations, especially those requirements necessary to obtain funding reimbursements and/or approval of the design documents from authorities providing grants for the performance of the work required for the Project.

In providing the services required under this Agreement, Engineer shall meet with Owner as often as reasonably necessary and shall also be available upon request to meet and consult with other persons or entities, including federal, state and/or local officials as necessary for the proper performance of the work hereunder, and/or as necessary to assist Owner with fulfilling the requirements of its grant(s).

ARTICLE 2 SITE INVESTIGATION/INFORMATION NOT GUARANTEED

Owner shall provide the Engineer with all information in its possession regarding Project's requirements. If necessary, Owner shall assist the Engineer in obtaining any additional information that the Engineer requires. Owner shall not be responsible for and shall not warrant the accuracy or content of any of the information or data set forth in the documents that it provides or assists the Engineer in obtaining. Notwithstanding the foregoing, Engineer shall be entitled to obtain and rely upon all information that is reasonable and customary for an engineer to utilize in the performance of its work provided such information is obtained from reliable sources.

Owner shall provide the Engineer with reasonable access to all areas within the Project site (the "Site").

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The relationship between Owner and Engineer is characterized by a unique degree of trust and confidence because of Engineer's superior knowledge, skill, and/or expertise. As a result, Engineer is under a duty to act in the best interests of Owner. Engineer covenants and agrees that it will perform its services under this Agreement in accordance with the applicable standard of care of a similarly situated engineer.

ARTICLE 4 DESIGN SERVICES

After a thorough assessment of the existing conditions during a comprehensive data collection phase, Engineer shall develop its conceptual design that it will develop into plans sufficient for permitting that will be finalized into complete Construction Documents. During the performance of this Agreement, Engineer shall be responsive to inquiries from Owner.

Engineer recognizes that one of its most important obligations to Owner is to ensure the Project is completed in accordance with the requirements of the Grants. If necessary, Engineer shall "Value Engineer" the drawings and/or specifications in order for the Project to be completed in accordance with Owner's budget. According to the U.S. General Services Administration:

Value engineering can be defined as an organized effort directed at analyzing designed building features, systems, equipment, and material selections for the purpose of achieving essential functions at the lowest life cycle cost consistent with required performance, quality, reliability, and safety.

If at any time the Project starts to deviate from the Owner's budget, Engineer shall immediately notify the Owner and start taking corrective action, but all design changes shall be subject to final approval by Owner.

All of the materials prepared by the Engineer under this Agreement, including any partially completed documents, shall be the sole and exclusive property of Owner upon payment to the Engineer of the work completed as set out in this agreement. Engineer shall label all drawings and documents accordingly and provide native files of same to Owner.

ARTICLE 5 CONTRACT AMOUNT

Owner shall compensate the Engineer for the satisfactory performance of the professional services set forth herein in a total amount not to exceed _____ (\$) _____ (“Contract Amount”). The Contract Amount shall consist of “not to exceed” amounts for each individual Task as listed in **Exhibit B**. The Engineer’s professional services shall not exceed the amounts stated above without the STS’ express written authorization. Owner shall not be liable for any charges that are incurred in excess of the “not to exceed” amounts for each Task listed in Exhibit B without Owner’s express written authorization. By way of clarification, the “not to exceed” provisions of this Agreement apply to each line item. Thus, Engineer is not entitled to payment for any services that exceed the total allocated in its specific line item even if the total compensation requested by the Engineer is less than the original Contract Amount. Any increases in any individual line item must be approved by Owner before the work is performed for the Engineer to be entitled to payment.

ARTICLE 6 PROGRESS PAYMENTS

For the services performed under this Agreement, Owner shall make payment to the Engineer on the basis of itemized invoices, certified by a principal of the Engineer, setting forth the services performed. Itemized invoices shall include line items for each task performed, which provide a description of the task performed, the date the task was performed, the identity of the person who performed the task, the hourly rate for the person who performed the task, the amount of time expended performing the task for which the Engineer is requesting payment, and the cost of task calculated by multiplying the time charged by the applicable hourly rate. Owner may, prior to making any payment under this Article, require the Engineer to submit such additional information as is reasonably necessary to substantiate the requested payment.

ARTICLE 7 FINAL PAYMENT

After completion of the Project, Engineer shall submit its final invoice for the engineering services provided under this Agreement. Compensation previously paid shall be adjusted to reflect additions or deductions based upon final accounting of all invoices for work performed in accordance with this Agreement. Acceptance by the Engineer of final payment for the services performed under this Agreement shall constitute the Engineer’s full and complete release of Owner and its officers and agents, of all claims, demands and liabilities related to this Agreement.

ARTICLE 8 TIME FOR COMPLETION

Engineer shall not commence performance of any services, nor shall it incur any charges in connection therewith, until such time as it receives Owner’s written authorization to proceed. Upon receipt of the Owner’s authorization to proceed, Engineer shall immediately commence work. Engineer shall perform each Task in the time specified in Exhibit B. Time is of the essence for the completion of the Construction Documents and the commencement of the Project.

Engineer shall complete the Tasks _____ by no later than _____. Engineer shall provide its full attention and diligent performance of all its duties and obligations under this Agreement. There will not be any periods of time after the Owner's authorization to proceed during which Engineer is not actively working towards the "deliverables" under this Agreement.

This Agreement shall remain in full force and effect, unless earlier terminated, until the documents prepared under this Agreement have been accepted by Owner and Contractor has achieved Final Completion.

ARTICLE 9 CHANGES TO THE WORK

Owner may, from time to time, request changes in the scope of services to be performed by the Engineer hereunder. Any such change, including any increase or decrease in the services to be performed and the corresponding amount of compensation to be paid therefor shall be mutually agreed upon by and between Owner and the Engineer, and shall be incorporated in a written amendment to this Agreement signed by both parties.

Additional services beyond the scope of this Agreement shall be performed by the Engineer only with the prior written authorization of Owner. In the event Engineer does not obtain Owner's permission for any additional service, Owner shall not be liable to Engineer for the cost of any such service.

Engineer agrees that, should the scope of the services under this Agreement be reduced, such reduction will be reflected in a commensurate reduction of the compensation paid to the Engineer hereunder.

ARTICLE 10 DEFECTIVE PLANS AND SPECIFICATIONS

Engineer acknowledges and agrees that Owner guarantees the plans and specifications for the Project to Contractor. Engineer's obligations under this Agreement are to provide Construction Documents that allow Owner to fulfill its obligations to Contractor. Any document prepared by Engineer that does not fulfill Owner's requirements to Contractor shall be deemed deficient and shall be corrected by Engineer at Engineer's expense. Engineers agree to perform the services with the reasonable skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the services at the time when and the location in which the services were performed.

ARTICLE 11 TERMINATION

Owner may at any time, and for any reason, direct the discontinuance of the services contemplated under this Agreement for a period of time. Such direction shall be in writing and shall specify the period during which the services shall be discontinued. The services shall be resumed on the dates specified in such direction, or upon such other date as Owner may thereafter specify in writing.

The period during which such services shall have been discontinued shall be deemed added to the time for performance. In the event that Owner directs the discontinuance of the services hereunder for a period of time in excess of one (1) year, through no fault of Engineer, the parties may negotiate an adjustment in the fees payable hereunder due to a rise in the cost of performance. Discontinuance of services under this Article shall not give rise to any claim against Owner.

Owner may at any time and for any reason terminate this Agreement for convenience by written notice specifying the termination date, which shall be not less than seven (7) days from the date such notice is given. In the event of such termination, Engineer shall be paid for the services satisfactorily performed prior to termination. Such amount shall be fixed by Owner after consultation with the Engineer. Termination under this section shall not give rise to any claim against Owner for damages or for compensation in addition to that provided hereunder.

In the event that Owner determines that there has been a material breach by Engineer of any of the terms of this Agreement, or that the Engineer refuses or has failed to perform the required services or any part thereof in a timely, professional, and diligent manner, Owner has the right, power, and authority to terminate this Agreement for cause upon providing Engineer three (3) days written notice. By the terms of this Agreement, Owner may, but is not obligated to, provide the Engineer with the opportunity to cure the breach before the termination becomes effective. In the event Owner terminates the Agreement for cause, the Engineer shall be obligated to pay Owner for any losses, damages, costs, and expenses, including reasonable attorneys' fees, resulting from the Engineer's breach. The reasonable attorneys' fees and costs payable hereunder, include, but are not limited to, the Owner's re-procurement of services, any litigation with third parties arising out the Project, and/or any litigation directly with the Engineer.

For the purpose of completing the Project, Owner may take possession of and use or cause to be used any and all documents, plans and specifications or other items that may have been used or prepared in connection with the performance of this Agreement. This right is in addition to any other right or remedy Owner may otherwise have.

In the event of a termination for cause, all costs, expenses, losses, damages, attorneys' fees, and any and all other charges incurred by Owner under this Agreement shall be charged to the Engineer and deducted and/or paid by Owner out of any monies due or payable or to become due or payable under this Agreement to the Engineer. If any such costs shall exceed the sum due or to become due to the Engineer, the Engineer shall pay the excess amount to Owner. In computing the amounts chargeable to the Engineer, Owner shall not be held to a basis of the lowest prices for the completion of the services or any part thereof, but it shall charge to the Engineer, and Engineer shall be liable for all sums actually paid, or expenses actually incurred in affecting prompt completion of the subject project hereunder. Owner's rights described herein are in addition to any other rights and remedies provided by law.

Termination under this section shall not give rise to any claim against Owner for damages or compensation in addition to that provided hereunder.

ARTICLE 12 DISPUTE RESOLUTION

The parties recognize that claims are a part of the construction process and that disagreements may arise. The parties further recognize that it is preferable for them to reach an amicable resolution of same without the need to resort to formal dispute resolution procedures. In light of the foregoing, Owner and Engineer hereby agree that, after either party provides notice of a claim, they will participate in good faith negotiations in an attempt to reach an agreement.

In the event that such disputes are not resolved by good faith negotiations, the matter may be submitted to non-binding mediation before a third party neutral if both parties agree to same and are willing to share the costs. Any disputes that are not resolved by negotiation and/or mediation shall be resolved in the Connecticut Superior Court for the Judicial District of New Haven at New Haven.

ARTICLE 13 SUBCONTRACTING

Engineer shall not subcontract any of the services to be performed by it under this Agreement unless specified in the Scope of Work, Exhibit A, or without the express prior written approval of Owner, which approval shall not be unreasonably withheld.

In the event that Owner approves of the hiring of subconsultants, Engineer shall be as fully responsible to Owner for the acts and omissions of the subconsultants as it is for the acts and omissions of its direct employees and shall require any subconsultants approved by Owner to agree in its contract to observe and be bound by all obligations and conditions of this Agreement to which Engineer is bound.

ARTICLE 14 OWNERSHIP OF INSTRUMENTS OF SERVICE

The Design Documents and other documents that Engineer creates under this Agreement shall be considered works for hire. Thus, ownership of the copyright to the Design Documents and other documents created under this Agreement shall belong to Owner upon payment to the Engineer for such Design Documents. At the completion of the project and upon request at any time during the project, Engineer shall provide Owner with all computer files created in the performance of the services required hereunder, including, but not limited to, all CAD, Excel, Word, scheduling, modeling, graphical, and/or budgeting files in native editable format. In addition, Engineer grants to Owner an unlimited license to use any document created under this Agreement for the completion of the Project and/or similar projects. Engineer agrees to defend, indemnify, and hold harmless Owner from any and all claims from third parties and/or damages, including attorneys' fees, arising from Owner's use of the documents created hereunder.

ARTICLE 15 DOCUMENT RETENTION

Engineer agrees that it shall preserve all of its records and accounts concerning the performance and implementation of this Agreement for a period of eight (8) years after final payment is made under this Agreement. If any litigation, claim or audit, directly or indirectly pertaining to the subject project or the Engineer's services in connection therewith, is started before the expiration

of the eight (8) year period, the records shall be retained until all litigations, claims or audit findings involving the records have been finally resolved.

ARTICLE 16 INDEMNIFICATION

To the fullest extent permitted by law, Engineer shall indemnify, defend and hold harmless Owner, its officers, agents, servants and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, losses, costs or damages, including reasonable attorneys' fees to the extent caused by negligent acts or omissions of the Engineer, its employees, representatives, agents, or subconsultants, in connection with the performance of or the failure to perform the services under this Agreement including any amendments and supplements hereto. Notwithstanding the foregoing, Engineer shall not be required to indemnify Owner from the Owner's sole negligence. The provisions of this paragraph shall survive the expiration or early termination of this Agreement; shall be separate and independent of any other term or provision of this Agreement; and shall not be limited by reason of any insurance coverage.

The failure of the plans, designs, or documents to conform to applicable laws, regulations and professional standards shall be considered negligence on the part of and a breach by the Engineer for purposes of this Agreement.

ARTICLE 17 INSURANCE

Prior to commencing any services hereunder, Engineer shall secure at its own cost and expense, insurance coverage in the amounts and of the types listed below. Such insurance coverage shall be maintained continuously as is commercially available until the completion of the Engineer's services hereunder, except in the case of Errors and Omissions coverage which shall be maintained for eight (8) years after final completion.

Liability Insurance. Engineer shall, with respect to the operations the Engineer performs under the terms of this Agreement and also those performed for it by subconsultants and subcontractors, carry for the duration of this Agreement and any supplements thereto, general liability insurance coverage naming Owner, its agents, representatives, affiliates, indemnitees, and all other entities that Owner may require as an additional insured party with the following minimum liability insurance coverage. All additional insured coverage shall be primary and non-contributory with any other insurance and self-insurance. Said coverage is to be provided by an insurance company or companies satisfactory to Owner. Each insurance policy shall state that the insuring company shall agree to investigate and defend all insureds against claims for damages, even if groundless.

- (a) Liability insurance shall include policy limits of not less than \$2,000,000.00 per occurrence and \$4,000,000.00 in the aggregate for all damages arising out of bodily injury to or death of all persons in any one accident or occurrence, and for all damages arising out of injury to or destruction of tangible or intangible property in any one accident or occurrence.
- (b) The operation of all motor vehicles, including those hired or borrowed, used in connection with this Agreement shall be covered by Automobile Liability Insurance in the following amounts: Insurance providing for a total limit of One Million Dollars (\$1,000,000.00) for

all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all damages arising out of injury to or destruction of property in any one accident or occurrence.

Engineer agrees to waive claims and rights against Owner to the extent that the claim is covered by insurance provided hereunder. Engineer further agrees that its insurers shall have no right of subrogation against Owner because of this waiver. All such policies required hereunder shall contain the required waiver of subrogation.

Valuable Papers Insurance. Engineer shall secure and maintain until the complete design has been accepted by Owner, and until all original tracings, design computations, survey data, and other documents or data have been returned by Owner, a Valuable Papers insurance policy to assure Owner that all records, papers, maps, statistics, survey notes, all tracings, design and other data or documents related to the subject project will be reestablished, recreated or restored if made unavailable by fire, theft, or any other cause. When survey data is furnished by Owner, the Engineer shall retain in its possession duplications of all survey plans and field notes.

Engineer shall retain in its possession duplications of all products of its services under this Agreement if and when it is necessary for the originals to be removed from its possession during the time that this policy is in force. This policy shall provide coverage in the amount of Seventy-five Thousand Dollars (\$75,000.00) when the insured items are in the Engineer's possession and in the amount of Twenty Thousand Dollars (\$20,000.00) regardless of the physical location of the insured items.

Errors and Omissions. The Engineer shall carry Errors and Omissions Insurance (Professional Liability Insurance) protecting against liability for work performed during the course of this Agreement in the minimum sum of **Two Million Dollars (\$2,000,000.00)**. Said policy shall remain in full force and effect from the date of this Agreement for a period of eight (8) years after the work has been accepted by Owner or, if this Agreement is amended to include additional work to be performed by the Engineer, for eight (8) years following the acceptance of the completed design or any other work called for by such Amendment, subject to the continued commercial availability of such insurance. It is understood that the amount of coverage and period of coverage for this Project under such insurance policy may not be changed, except upon the prior written approval of Owner.

Said coverage shall not contain any pollution, environmental, product or services exclusions or limitations.

Umbrella Excess Liability: If the contract amount is in excess of \$100,000.00, then umbrella and/or excess liability insurance shall contain limits of not less than \$5,000,000.00 each occurrence, offense, or event.

All insurance shall be taken out and maintained at no cost or expense to Owner and the Engineer shall be responsible for the full amount of any deductible or any self-insurance that may exist.

It is understood that the above insurance may not include standard liability coverage for pollution and/or environmental impairment. However, the Engineer agrees to acquire and maintain pollution and environmental impairment coverage as part of this Professional Liability Insurance if such insurance is applicable to the services to be performed by the Engineer under this Agreement as soon as such coverage is available.

Failure of the Engineer to maintain insurance coverage in accordance with the terms of the Agreement shall not relieve the Engineer of its obligation to defend and indemnify Owner from any and all claims arising out of any act or omission of the Engineer.

Certificate of Insurance: As evidence of the insurance coverage required by this contract, Engineer shall furnish Certificate(s) of Insurance to Owner prior to commencement of services under this Agreement. The Certificate(s) will specify all parties who are endorsed on the policy as Additional Insureds (or Loss Payees). The Certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. Renewals of expiring Certificates shall be filed thirty (30) days prior to expiration. Owner reserves the right to require complete, certified copies of all required policies at any time.

ARTICLE 18 SEVERABILITY

In the event that any provision of any part of a provision of this Agreement shall be determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to applicable law by an authority having jurisdiction, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provisions or parts of provisions of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

ARTICLE 19 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties hereto. No oral representations or other agreements have been made by Owner except as stated in the Agreement. This Agreement may not be changed in any way except as herein provided, and no term or provision hereof may be waived by Owner except in writing signed by its duly authorized officer or agent.

ARTICLE 20 NOTICES

All notices of any nature referred to in this Agreement shall be in writing and sent by registered or certified mail, postage prepaid, to the respective addresses set forth above or to such other addresses as the respective parties hereto may designate in writing.

ARTICLE 21 PROVISIONS REQUIRED BY LAW

Each and every provision and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though such

provisions and clauses were included herein. If, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon the written consent of the parties, this Agreement shall forthwith be physically amended to make such insertion. This Agreement shall be construed in accordance with the laws of the State of Connecticut and the parties agree to use the Courts of the State of Connecticut as exclusive remedy for litigated disputes.

ARTICLE 22 CORPORATE RESOLUTION

Engineer represents to Owner as follows:

That the Engineer is a legally existing business entity under the laws of its respective states of recording and has not previously filed, nor is presently contemplating filing, nor has received notice of a petition of, nor contemplates receiving notice of a petition of, bankruptcy, liquidation, receivership, or any other action for the protection of creditors or debtors;

That the Engineer has the financial resources to complete the work required by this Agreement;

That the Engineer has, and has exercised, the required power and authority and has complied with all applicable legal requirements necessary to adopt, execute and deliver this Agreement and to assume the responsibilities and obligations created hereunder; and

That this Agreement is duly executed and delivered by an authorized individual, in accordance with such individual's powers to bind the organization hereunder, and constitutes a valid and binding obligation enforceable in accordance with its terms, conditions and provisions.

IN WITNESS WHEREOF, the Owner and the Engineer have duly executed this Agreement on the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

SAVE THE SOUND, INC

CONTRACTOR'S NAME

By: _____

By: _____

Leah Lopez Schmalz

President

Date: _____

Date: _____

Its Duly Authorized

(Affix corporate seal of Engineer if a corporation)