

**CITY OF NEWTON
PURCHASING DEPARTMENT**

***CONTRACT FOR THE
NEWTON COMMONWEALTH FOUNDATION***

**C-4118
Sterling Golf Management, Inc.
Attn: Kevin Osgood
212 Kenrick Street
Newton, Ma 02458
617-630-1950**

**Contract Period: Fully Executed – December 31, 2024
Contract Value: Percentage of Operator's Gross Revenues**

**REQUEST FOR PROPOSAL
OPERATION OF
NEWTON COMMONWEALTH GOLF COURSE
*REQUEST FOR PROPOSAL #22-27***

December 2021

Ruthanne Fuller, Mayor

City of Newton



Ruthanne Fuller
Mayor

Purchasing Department
Nicholas Read *Chief Procurement Officer*
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449
purchasing@newtonma.gov

Telephone
(617) 796-1220
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(617) 796-1227
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(617) 796-1089

July 21, 2022

Sterling Golf Management, Inc.
Attn: Kevin Osgood
212 Kenrick Street
Newton, Massachusetts 02458
617-630-1950
kosgood@sterlinggolf.com

Re: Contract #C-4118 – Operation of Newton Commonwealth Golf Course (RFP #22-27)

Dear Mr. Osgood:

Please be advised the City of Newton, in accordance with the contractual provisions.

The Purchasing Department for the City of Newton is now emailing contracts and executing them digitally wherever possible. If you do not wish to process your contract in this manner, please contact us immediately and the City will send you a paper contract. Otherwise, either (i) execute the contract with an electronic signature, if you have the ability to do so, and return it to the Purchasing Department by e-mail; or (ii) **sign and date and return the hard copy** to the Purchasing Department. Whichever option you choose, the City's execution of the contract will be exclusively by e-signature, and you will receive a final digital version of the fully executed contract by email. In addition, all the following documents must be received in paper or digital form before the City will execute the extension:

- Certification of Authority.** Corporate officer or authorized person to sign and affix corporate seal. Attach any related corporate vote by your Board of Directors.
- Certification of Tax Compliance**
- Certificate of Insurance** naming the "City of Newton as additional insured". No contract shall be processed without this statement. An original to be sent directly to the Purchasing Department. Certificate must include a written guarantee that the City will receive at least 10 days' notice before the CANCELLATION date of any policy of insurance covered by the contract. **Please reference C-4118.**
- Performance Bond**, each in the amount of **\$400,000.00** Please reference Contract No. **C-4118** on bonds.

ALL DOCUMENTS MUST BE RETURNED BY: August 2, 2022

Please note that any contract you sign and return has to be processed by several City departments before being signed by the Mayor. You will not receive a fully executed contract or be eligible for payment until this process is complete. If you have any questions regarding the completion of your contract documents, please contact our Contract Administrator, Jennifer Hill. The Contract is not effective until contract (bond if required) has been approved by the Mayor and her signature to that effect has been affixed to said contract.

Sincerely,

Nicholas Read
Chief Procurement Officer

Contract #C-4118

**MANAGEMENT CONTRACT
FOR THE
NEWTON COMMONWEALTH GOLF COURSE**

This Contract is made effective as of December 31, 2021 by and between Sterling Golf Management, Inc. and the Newton Commonwealth Foundation, Inc., a public instrumentality of the City of Newton and a Massachusetts charitable corporation organized under Chapter 180 of the Massachusetts General Laws (hereinafter the "Foundation"), with a principal place of business c/o the City of Newton Parks and Recreation Department, 70 Crescent Street, Newton, Massachusetts.

WHEREAS, the Foundation was created to assume the responsibilities of the City of Newton (hereinafter "City") with regard to the management and maintenance of the golf course property known as Newton Commonwealth Golf Course (hereinafter the "Golf Course"); and

WHEREAS, the City owns the Golf Course and has executed an agreement to provide management of the Golf Course through December 31, 2021; and

WHEREAS, the Foundation and the City issued a Request for Proposals numbered 22-27 for management and maintenance of the Golf Course pursuant to G.L. c.30B; and

WHEREAS, following evaluation of both the technical and price proposals for management and maintenance of the Golf Course, the City found the proposal submitted by Sterling Golf Management, Inc. to be most advantageous to the City and awarded the contract to Sterling Golf Management, Inc.;

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties agree as follows:

1. Scope

Sterling Golf Management, Inc. (hereinafter the "Management Firm") shall be responsible for the operation, management and maintenance of the Golf Course in accordance with the terms and conditions herein provided, the Request for Proposal to Provide Professional Services (hereinafter "RFP") and the Technical and Price proposals (the "Response") submitted by the Management Firm in response to the RFP. The RFP and the Response are attached and incorporated into this Agreement. The terms and provisions of this Agreement shall take precedence over any inconsistent terms or provisions in the RFP or the Response.

2. Term

The term of this Contract shall commence on January 1, 2022, and shall terminate on December 31, 2024, unless otherwise terminated as herein provided.

3. Consideration; Management Fee

(a) The Management Firm shall pay to the Foundation annually sums representing a percentage of gross revenue received from the operation of the golf course as set forth in the Management Firms Price Bid Proposal attached hereto as Attachment A. Gross revenue shall include all revenues received by the Management Firm, except revenue from pro shop sales, pull cart and golf club rentals, tournament fees, income earned from professional tournaments, lessons given by the staff, and outside income earned by any golf professional on the staff.

(a)(i) For any play during the Off-Season (12/1 to 3/31) (see Paragraph 5 below), gross revenues shall be apportioned as provided in Attachment A.

(b) Management Firm shall remit monies due the Foundation on a monthly basis. Each monthly payment shall be computed in accordance with Attachment A. Monies shall be payable on or before the 15th day of the month following the end of the month for which payment is made.

(c) As provided in Attachment A, in no event shall the total amount paid by the Management Firm to the Foundation in any calendar year during the term of this Contract be less than \$400,000. Should the total of monthly payments in any year be less than \$400,000, the Management Firm shall make an additional payment to the Foundation prior to December 31st of any year of this Contract to bring the total amount paid to the Foundation in that year to that amount.

(d) Payments are due on the dates above specified. Interest for late payments shall be at the rate of 1-1/2% per month.

(e) The Management Firm shall submit to the Foundation at such intervals and in such form as the Foundation may determine financial reports to verify the revenue collected by the Management Firm.

4. Course Fees and Charges

Fees for pre-paid green fees, green fees, riding cart rentals, club rentals, and food and beverage must be approved by the Foundation. The Foundation shall establish all fees for the forthcoming season prior to April 1 for each year of the agreement.

5. Seasons for Golf Course

The primary operating period for the Golf Course shall be daily, daylight to dusk, seven (7) days per week, weather permitting, beginning April 1st and ending November 30th, each year of the Contract. The period from April 1st through November 30th shall be considered "In Season". The Golf Course may be operated from December 1 through March 31 (considered the "Off Season"), provided use of the Golf Course does not damage the greens, tees, or other turf areas. Changes to the operating schedule shall only be made with the written approval of the Foundation. However, when weather conditions render the Golf Course unusable for golfing, the Management Firm shall permit to occur and facilitate such recreational activities as shall be determined by the Foundation and which may be set out in rules and regulations to be published by the Foundation.

The Foundation reserves the right to undertake or provide for a more active recreational use of the Golf Course. The Foundation shall be responsible for the payment of any additional insurance premiums necessitated by the Foundation's sanction of such more active recreational use. The Management Firm shall have the specific authority, subject to review by the Foundation herein granted, to ensure that the Golf Course is not damaged by any said recreational use.

6. Operation of the Golf Course

(a) The Management Firm shall operate the premises as a public golf course during the term of this Contract, and shall keep and maintain the Golf Course, the club house, the parking areas, the golf carts, all greens, grounds and shrubbery, and all furnishings, fixtures and property used in connection therewith, in good condition throughout such term, such operation and maintenance to be accomplished with energy, fidelity, diligence and to golf course management standards as determined by the New England Golf Course Superintendent's Association Handbook, giving said Golf Course at all times the benefit of the Management Firm's special knowledge and experience, and employing such special skills as may be required. The Management Firm shall not use the premises for any other enterprise, nor shall the Management Firm use or allow to be used the premises for the conduct of any business other than Newton Commonwealth Golf Course business. The Management Firm shall not use the premises for storage of equipment not solely intended for use on the premises.

(b) The Management Firm represents that Kevin Osgood, President of the Management Firm (Manager), will serve as the on-site manager, and that he satisfies all requirements for the on-site manager identified in RFP #22-27; the Foundation hereby approves of Mr. Osgood as Manager. No other business endeavors should be run on the property that are unrelated to golf operations and associated responsibilities such as concessions unless prior written permission is obtained by the Foundation.

(c) All rules, regulations and policies relating to the operation of the Golf Course shall be determined by the Foundation following consultation with and/or recommendation by the Management Firm. The Management Firm shall abide by and enforce said rules and regulations. If the Management Firm desires to change any rules, regulations or policies or any fees or charges charged at the Golf Course, it shall first submit a written request to the Foundation, with reasons attached.

No change in fees or charges or in the rules, regulations or policies shall be instituted by the Management Firm until the Foundation has approved the charge in writing. Food and beverage charges shall also be subject to approval by the Foundation.

(d) In its operation and management of the Golf Course, the Management Firm shall be subject to, but not responsible for, the enforcement of any Conservation Restrictions of record which may apply to this property.

(e) The Foundation shall have the right to enter upon the Golf Course for the purpose of making such inspections as it deems necessary. If the Foundation determines that the Management Firm has failed to maintain any portion of the Golf Course to the standards set forth in this Contract, the Foundation shall have the right, in its discretion and after notice to the Management Firm, to make such improvements as are necessary to return the Golf Course to its proper condition. The Foundation shall have the right to recoup the cost of any such action from the Performance Bond posted by the Management Firm as a condition of this Contract.

6. **Inner Club**

The Newton Commonwealth Inner Club is an independent group with its own Board of Directors. They operate a USGA handicap system and tournaments throughout the season. Approximately 10 tournaments are held at 8:00 a.m. on Saturdays or Sundays. The Management Firm has the right to approve the requested tournament schedule before each season. It is the intent of the Foundation for the Inner Club to continue to operate independently with no revenues being derived by the Management Firm for their operation.

7. **Season Ticket Holders**

There are currently no more than sixty (60) season ticket holders, who receive unlimited golf and a three day advance tee time beyond the general public for an annual payment. The number of season ticket holders is number capped at sixty and will not increase. Any member on the Board of the Foundation does have the right to purchase a season ticket for him/herself at any time. Any season tickets not renewed will be filled from the waiting list by Newton residents only. Season tickets will be good only between April 1 and November 30.

8. **Neighborhood Relations**

The Golf Course shall be operated at all times to ensure good relations with the surrounding neighborhood. The Manager shall be responsible for receiving and responding to any complaints or problems the residents surrounding the Golf Course or patrons have regarding the Course's operation. The Manager shall at all times be courteous to residents of the neighborhoods surrounding the Golf Course and patrons, and shall be guided by the Foundation with regard to the resolution of complaints.

9. **Signs**

The Management Firm shall not place any sign or advertisement upon any property of the City or upon any vehicle used by the firm directly for the concession under this Contract without written approval by the Foundation.

10. **Maintenance**

(a) Management Firm will accept all properties, facilities, and equipment "as is" in their presently existing condition. Management Firm shall, at its own expense, make all repairs necessary to maintain City-owned equipment, buildings, and structures, and has total responsibility for building maintenance to include, but not limited to, repair and replacement all the respective City-owned or Foundation-owned golf course properties, fixtures, plantings, furniture and related equipment and the heating, utility, and plumbing systems. It is acknowledged by the Management Firm that Exhibit IV to RFP 22-27 sets forth standards for the maintenance, upkeep and repair of the golf course (greens, fairways, bunkers, rough, tees, irrigation, etc.), clubhouse, pro shop, and snack bar which are hereby incorporated as part of this Management Contract.

Exhibit IV not all inclusive and other standards as may be set forth in the RFP and/or the Management Contract are equally part of the contract. Management Firm will not make any alterations, additions, or improvements to the golf course and facilities without the prior consent of the Foundation and the City of Newton.

All alterations, additions, and improvements, whether temporary or permanent in character, shall at all times be deemed to be the property of the City and shall remain upon the premises at the termination of the agreement.

Management Firm shall be responsible for all repairs and improvement to maintain the buildings, fixtures and grounds in such condition as they were at the start of the Contract; the Foundation shall be responsible for all capital improvements.

- (b) The Management Firm shall keep the clubhouse access road and parking lot free from snow at its expense.
- (c) The Management Firm shall provide the Foundation with a monthly management report in a format approved by the Foundation that shall report on maintenance of greens, tees, fairways, roughs, building maintenance, levels of irrigation, fertilization, weed control, and other maintenance. Management reports may be required on a more frequent basis as determined by the Foundation and the City.

11. Utilities/Expenses

All utility expenses such as water, sewer, electricity, gas, waste disposal, telephone, cable television service, etc., which are or may be required to operate the golf course, will be borne by the management firm, including relocation of utilities, permits, connection fees, etc. The golf course has its own water source, connected to its irrigation system. The management firm will be responsible for any electricity associated with operating the pumps for this system. The irrigation system can also draw on City supplied water when necessary. When using this system, the operator will be required to pay the water and sewer charges to the City of Newton.

12. Equipment

- (a) The Management Firm shall provide and make available all the personal property and equipment which is peculiar to and needed by the Golf Course for its operation and maintenance in full accordance with RFP #22-27 and this contract; no City-owned or Foundation-owned vehicles or equipment shall be available for use by the Management Firm except as specifically set forth in the RFP. At a minimum, the Management Firm shall be required to provide and keep on site or otherwise make available as needed the equipment set forth in its Response to RFP #22-27. No equipment or vehicles other than those required for on-site use at the golf course may be stored on the premises.
- (b) In addition to required maintenance equipment, the Management Firm shall furnish at least sixty five (65) power golf carts, new or in "like new" condition, subject to approval by the Foundation, five (5) of which must be electrical for staff use in early mornings to minimize disturbing the residents in the areas surrounding the Golf Course. Thirty (30) of the non-staff golf carts so furnished shall be no older than four (4) years. The remaining thirty (30) non-staff golf carts shall be less than one (1) year old. All golf carts must be serviced at least weekly by an independent maintenance company hired by the Management Firm for such purpose, and acceptable to the Foundation. The Management Firm shall provide the Foundation with a copy of the maintenance contract with the independent maintenance company, which contract shall also be subject to the approval of the Foundation. The Foundation shall have the right to order the Management Firm to stop using and replace any golf cart it deems dangerous, unserviceable or not in keeping with the character of the Golf Course. No golf carts other than those required for on-site use at the golf course may be stored on the premises.
- (c) Within ten (10) days of the date of this Agreement, the Management Firm shall provide written evidence to the Foundation that it owns or leases all the equipment required in paragraph (a) above, and the required golf carts and that such equipment/golf carts will be available at the Golf Course site by April 30, 2022. All required equipment must be new or in "like new" condition and capable of reliably performing the required maintenance. The Management Firm shall be responsible for replacing any required equipment/golf carts which fail to perform reliably during the term of this Contract.

13. Capital Improvements

- (a) The Foundation has established an ongoing program of golf course and building improvements. Additional improvements are anticipated in the future. As has been the practice in the past, future improvements will be funded by monies paid to the Foundation by the management firm. As required by the Agreement the Foundation annually prepares a five year plan that itemizes the proposed improvements to be made by the Foundation in the coming years.
- (b) The Management Firm acknowledges that it does not have any claim against the Foundation, its agents, or contractors for interference in business or damages for interruption of services or interference in the operation of the golf course, pro shop, or food and beverage service as a result of any improvements made by the Foundation. The Foundation agrees to use its best efforts to minimize such interruptions or interference in business without waiving its right to make improvements to the golf course or its buildings. The Management Firm will be required to assist the Foundation in getting contractors and multiple quotes for any projects for which it requests assistance.

The Management Firm will also be responsible as the Clerk of Works to oversee the quality of work being performed in the best interest of the Foundation.

(c) The Management Firm shall perform the routine and extraordinary maintenance to the golf course and structures described in the section entitled Course Improvements of its Response to RFP #22-27.

14. Alterations

(a) The Management Firm agrees not to make any material and/or structural alterations, changes and/or additions to the Golf Course without prior written consent of the Foundation.

(b) Title to all structural improvements on the premises shall remain in the City upon completion thereof and shall be left in place upon termination of this Contract. Title to trade fixtures, fixtures, equipment, and other personal property initially installed or procured by the Management Firm, including replacements thereof, which were not paid for by the Foundation, shall remain in the Management Firm.

15. Books and Records

The Management Firm shall keep the books of accounts and records of all operations and establish a system of bookkeeping and accounts in a manner considered to be good accounting practice according to the American Institute of Certified Public Accountants and satisfactory to the Foundation and shall permit inspection of said books and records by the Foundation as often as deemed necessary in the opinion of the Foundation. Upon request by the Foundation, the Management Firm shall also provide monthly financial reports on the operation of the Golf Course, in a form satisfactory to the Foundation. The Management Firm shall submit at the end of each year a certified, audited annual report, or as required by the Foundation, a profit and loss statement of operations under the terms of the contractual agreement, in a form considered to be good accounting practice according to the American Institute of Certified Public Accounts and satisfactory to the Foundation.

16. Insurance

During the term of this Contract, the Management Firm shall maintain in full force and effect at its own cost and expense the following minimum insurance coverage:

(a) Commercial General Liability insurance with not less than the following limits:

General aggregate	\$5,000,000
Products - completed operation aggregate	\$2,000,000
Personal and advertising - injury	\$2,000,000
Each occurrence	\$1,000,000
Fire damage	\$100,000
Medical expense	\$5,000

Coverage provided under the commercial general liability policy shall apply exclusively to the operations provided under the Golf Course Management Agreement to be entered into by the successful proposer.

(b) Workers compensation insurance shall be required in accordance with the Laws of the Commonwealth of Massachusetts.

(c) Automobile insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person \$1,000,000 per accident
Property damage	\$500,000 per accident

(d) Fire insurance shall be in an amount equal to the replacement cost of the clubhouse, maintenance building, and other structures.

- (e) Pesticide liability shall be provided separately, or as a part of the General Liability Coverage, in an amount not less than \$1,000,000.
- (f) Underground storage tank liability shall be provided separately, or as part of the General Liability Coverage in an amount not less than \$1,000,000.

The City, and the Foundation shall be named as additional insureds on all policies obtained by the Management Firm and certificates of insurance shall be annually furnished to the City and the Foundation by the Management Firm.

All policies shall be obtained from companies licensed to conduct business in the Commonwealth of Massachusetts. Companies providing insurance coverage shall be required to have nothing less than an "A" rating or better by the A.M. Best Company of Aldrich, New Jersey.

Insurance coverage in amount and form shall not be deemed acceptable until approved by the City Solicitor of the City of Newton.

The City and the Foundation reserve the right to require increased insurance coverage at any time during the term of this Contract if the present statutory cap on tort liability of municipalities is increased during the term of this Contract.

17. General Provisions

- (a) Except as otherwise provided in this Contract, the Management Firm shall have the exclusive right to operate, manage, and receive all income from the operation of the Golf Course, golf carts, pro-shop and snack bar.
- (b) In the conduct of the Golf Course and related operations, the Management Firm shall comply with all federal, state, and local laws and ordinances as the same are or may be applicable to the Golf Course or any facilities located thereon.
- (c) The Management Firm will when procuring goods or services related to the maintenance of the golf course or City owned buildings, equipment or property comply with applicable provisions of M.G.L. Ch. 30B, M.G.L. Ch. 30, Sec. 39M and M.G.L. Ch. 149, Sec. 44A-L. Such compliance will subject to audit and oversight by the City of Newton Chief Procurement Officer. Any procurement requiring publicly advertised bids or proposals will be submitted to the City of Newton Purchasing Department which will advertise and receive the bids or proposals. The award of any publicly bid contract is subject to the approval of the Mayor of the City of Newton.
- (d) The Management Firm shall be solely responsible for the procuring and filing of all licenses required for the operation of the Golf Course, golf carts, pro-shop and snack bar facilities.
- (e) The Management Firm understands and agrees that in the performance of its obligations under this Contract, the Management Firm is at all times acting as an independent contractor, that persons employed by the Management Firm shall in no event be considered to be employees of the City or the Foundation, and that the Management Firm shall be responsible for the payment of wages (and the withholding of taxes in connection therewith) and for the provision of any and all employee benefits. The Management Firm shall obtain and pay for Workmen's Compensation insurance, with the provisions and amount of the policy conforming to applicable statutes, covering all employees of the Management Firm.
- (f) The Management Firm shall be in charge of public play on the Golf Course and shall be authorized to enforce applicable ordinances, rules, and regulations for use of the golf course.
- (g) Assignment. It is understood and agreed between the parties that the services herein provided for are to be performed by the Management Firm and neither this Contract nor any services, rights or duties contained herein and provided hereunder may be assigned to any other person or party without the express written consent of the Foundation.
- (h) The parties hereto acknowledge that in the event the Agreement between the City of Newton and the Newton Commonwealth Foundation terminates prior to December 31, 2024, and while this contract is in effect, the Management Firm agrees to the full assignment of the Foundation's interest in this Management Agreement to the City of Newton or a party designated by the City in the event the Agreement is not renewed or replaced with a contract between the City and the Foundation.

In addition, the City of Newton shall have the right to use the Golf Course for special City events, including golf, for not less than five (5) weekdays, excluding holidays. The City shall have the option for an additional two (2) special event days to be negotiated between the City and the Foundation, each year of the agreement. Special City events shall be at no cost to the City of Newton or to the Foundation.

(i) The Management Firm shall comply with all requirements of The City of Newton noise ordinance in effect that currently restricts the Management Firm from running motorized equipment before the hours of 7:00 a.m. weekdays and 9:00 a.m. on weekends and holidays and after dusk any day of the week. The Management Firm will be required to comply with any lawful amendments to the current ordinance.

18. Liability and Indemnity

(a) The Management Firm shall save the Foundation and the City harmless from all loss and damage occasioned by the use or escape of water or by the bursting of pipes, as well as from any claim or damage resulting from neglect in not removing snow and ice from the club house, the access road to the club house, or by any nuisance made or suffered on the Golf Course.

(b) The Management Firm agrees, to the extent not expressly prohibited by law, that it shall indemnify and hold harmless the City and the Foundation and their respective officers, agents, servants and employees from all liability for any damage either to persons or property sustained by the Management Firm or by other persons due to the Golf Course or any part thereof or any appurtenances thereof being out of repair or due to the happening of any accident in or about the Golf Course or club house (hereafter jointly referred to as the "premises") or due to any act or neglect of any person occurring on the premises or arising out of performance of the Management Firm's obligations under this Contract. This provision shall apply particularly (but not exclusively) to damage caused by water, snow, frost, steam, sewage, gas, sewer gas or odors or by the bursting or leaking of pipes, faucets and plumbing fixtures, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the causes specifically enumerated above or to some other cause of an entirely different kind. The Management Firm further agrees that all personal property upon the premises shall be at the risk of the Management Firm only, and that neither the City nor the Foundation shall be liable for any damages thereto or theft thereof.

In addition, the Management Firm agrees to defend with counsel approved by the City and the Foundation, save harmless and indemnify the City and the Foundation from all claims of liability for injury, loss, accident or damage to any person or property and from any claims, actions, proceedings, and expenses and costs in connection therewith (including, without limitation, reasonable counsel fees) arising from the omission, fault, willful act, negligence or other misconduct of the Management Firm and persons for whose conduct the Management Firm is legally responsible occurring on the premises or arising out of performance of the Management Firm's obligations under this Contract. In addition, the Management Firm agrees to defend with counsel approved by the City and the Foundation from any claims of liability for injury, loss, accident or damage to any person or property, and from any claims, actions, proceedings and expenses and costs in connection therewith (including, without limitation, reasonable counsel fees), arising from any use made or thing done or occurring on the premises which is not due solely to the omission, fault, willful act, negligence or other misconduct of the City and/or the Foundation or any persons for whose conduct the City and/or the Foundation is legally responsible.

19. Faithful Performance Bond

The Management Firm will, at or before the execution of this Contract, furnish to the City an acceptable Performance Bond, or equivalent security, in the amount of Four Hundred Thousand & no/100s Dollars (\$400,000.00), as security for faithful performance and non-negligent performance of this Contract. The bond shall be in force at all times during the Contract.

Should the Management Firm be unable to provide a corporate surety bond, it may substitute the bond with another form of security instrument that is satisfactory in amount and form to the City Solicitor.

20. Equal Opportunity in Hiring

The Management Firm shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin and shall comply with all local, state and federal laws and regulations pertaining to non-discrimination and equal opportunity in the areas of employment, subcontracting and use of City facilities. The Management Firm shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin.

Further, the Management Firm shall, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex or national origin.

21. Termination

(a) In the event the Golf Course is not managed in a manner deemed by the Foundation to be in accordance with this Contract or any of its terms or conditions, or in the event that the Consideration required in Paragraph 3 above is not paid when due, the Foundation shall have the right at any time during said term to cancel this Contract upon forty-five (45) days' notice in writing to the Management Firm setting forth what has been deemed unsatisfactory by a breach of the Contract. In the event the Management Firm fails to cure the default complained of, or matters deemed unsatisfactory, within the time set forth in Paragraph 22 herein, termination of this Contract shall be automatically effective without further notice to the Management Firm. The Foundation may then take possession of the Golf Course and may take any such other actions and pursue any remedies as provided in law or equity. The Management Firm shall pay any costs and reasonable attorney's fees in connection with any such default. The Foundation shall also be entitled to recoup any loss it suffers by reason of the Management Firm's default from the security provided in Paragraph 19.

(b) In the event that during the term of this Contract any physical or mental incapacity prevents the Manager, Mr. Osgood, from overseeing the operation of the Golf Course, this Contract may be terminated by the Foundation upon forty-five (45) days' notice in writing to the Management Firm, and the Contract shall automatically terminate without further notice on the 45th day following receipt thereof by the Management Firm. In such event, however, the Management Firm shall not be liable to the Foundation for any additional payments provided for by this Contract. No such notice shall be sent to the Management Firm until the following have occurred: (i) at least 2/3 of the members of the Foundation present at a duly noticed meeting vote that the Contract should be terminated because of the physical or mental capacity of Mr. Osgood to oversee the operation of the Golf Course; (ii) within thirty (30) days after said vote, the Foundation nominates a medical doctor to evaluate Mr. Osgood, the Management Firm nominates a medical doctor, and the two medical doctors nominate a third medical doctor or, alternatively, the Foundation and the Management Firm agree upon one medical doctor; and (iii) the medical doctor (if only one is appointed) or a majority of the three medical doctors appointed issue a written report concluding that Mr. Osgood is physically or mentally incapable of continuing to oversee the operation of the Golf Course in the manner required by this Contract.

(c) The Management Firm shall peaceably and immediately give up and surrender to the Foundation the premises and every part thereof at the termination of this Contract for any reason.

22. Default

Each of the following shall be deemed an event of default, for which this Contract may be terminated pursuant to the procedure set forth in the termination section above:

(a) If the Management Firm shall default in the payment of fees or any other sums under this Contract for fifteen (15) days after notice thereof;

(b) If the Management Firm fails to keep in full force and affect all Insurance policies required in Paragraph 16;

(c) If the Management Firm fails to post the security required in Paragraph 19;

(d) If the Management Firm fails to cure a material breach in the performance or observance of any other term, covenant or condition of this Contract within thirty (30) days after notice thereof, or, if such breach is not capable of being completely cured or remedied within said thirty (30) day period, if the Management Firm shall not have diligently commenced curing such default within such thirty (30) day period and shall not thereafter with reasonable diligence and in good faith proceed to remedy or repair such default;

(e) If the Management Firm abandons the premises, or fails to maintain the premises and to keep the premises open to the public for daily use for thirty (30) days after notice thereof;

(f) Thirty (30) days after the filing of, execution or occurrence of: (a) a voluntary or involuntary petition in bankruptcy or for reorganization or for an arrangement by or against the Management Firm; (b) adjudication of the Management Firm as a bankrupt or insolvent or insolvency in any bankruptcy proceeding; (c) a petition or other proceeding by or against the Management Firm for, or in the appointment of, a trustee, receiver, guardian, server or liquidator of the Management Firm with respect to all or substantially all of his property;

(d) a petition or other proceeding by or against the Management Firm for its dissolution or liquidation, or the taking of possession of the property of the Management Firm by any governmental authority in connection with dissolution or liquidation; (e) the taking by any person of the Golf Course property or any portion thereof upon execution, attachment, or other process of law or equity.

23. Non-Waiver of Defaults

Waiver by the Foundation of any breach by the Management Firm of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach the same or any other term, covenant or condition.

24. Force Majeure

Neither the Foundation nor the Management Firm shall be deemed in breach of this Contract if it is prevented from performing any of the obligations hereunder by reason of Acts of God, acts of the public enemy, acts of superior governmental authority, strikes or labor disputes, floods, riots, rebellion, sabotage, or any similar other circumstances not within its reasonable control.

25. Liens

The Management Firm shall keep the Golf Course and any improvements thereon free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by the Management Firm, his employees, agents and contractors, and the Management Firm agrees to reimburse the City and the Foundation for any attorney's fees incurred in defense of proceedings to enforce or foreclose such liens.

26. Taxes

Management firm shall be responsible for paying, prior to delinquency, any and all taxes and assessments levied or assessed against the Golf Course in connection with the Golf Course and the management firm's operation thereof. The City of Newton charges a Personal Property Tax for all property owned by the management company. This tax will cover golf cars, equipment, tables, chairs, etc. and is payable quarterly to the City.

27. Notices

Any notice required or permitted to be given under this Contract to either party shall be in writing and shall be sent by registered or certified mail, postage prepaid, or delivered by hand:

If intended for the Foundation, addressed to:

Chairperson
Newton Commonwealth Foundation, Inc.
c/o Department of Parks, Recreation & Culture
246 Dudley Road
Newton, Massachusetts 02459

With a copy to:

City Solicitor
Newton City Hall
1000 Commonwealth Avenue
Newton Center, MA 02159;

If intended for the Management Firm addressed to:

Sterling Golf Management, Inc.
Attn: Kevin Osgood
212 Kenrick Street
Newton, Massachusetts 02458
kosgood@sterlinggolf.com

28. Entire Agreement

This Contract constitutes the entire agreement of the parties hereto and may not be altered, amended or modified except by an agreement in writing, signed by all parties hereto and specifically referring to this Contract.

IN WITNESS WHEREOF, the parties hereby executed this Contract under seal as of the date first above written.

Sterling Golf Management, Inc.

Newton Commonwealth Foundation

By: _____

Name

Print Name: _____

Kevin F. Osgood

Title: _____

President

Date: _____

July 22, 2022

By: _____

Steven Meyer, Chairman

Date: _____

8/12/22

By: _____

Nicholas Read

Digitally signed by Nicholas Read
Date: 2022.08.11 15:28:39 -04'00'

Nicholas Read, Chief Procurement Officer

Date: _____

Approved as to legal form
and character.

Award made pursuant to G.L. C.30B, sec. 6

Contract Approved

By: _____

City Solicitor

By: _____

Mayor or her designee

Date: _____

Date: _____

CERTIFICATE OF AUTHORITY - CORPORATE

1. I hereby certify that I am the Clerk/Secretary of STERLING GOLF MANAGEMENT, INC.
(insert full name of Corporation)
2. corporation, and that Kevin F. Osgood
(insert the name of officer who signed the Agreement and bonds.)
3. is the duly elected President
(insert the title of the officer in line 2)
4. of said corporation, and that on 12/16/2021
(insert a date that is ON OR BEFORE the date the officer signed the Proposal.)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. Kevin F. Osgood the President
(insert name from line 2) (insert title from line 3)

of this corporation be and hereby is authorized to execute proposals in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any Agreement of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

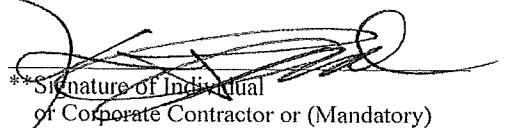
6. ATTEST: Carolyn G. Osgood
(Signature of Clerk or Secretary)*
7. Name: Carolyn G. Osgood
(Please print or type name in line 6)*
8. Date: 07/25/2022
(insert a date that is ON OR AFTER the date the officer signed the proposal.)

AFFIX CORPORATE
SEAL HERE

* The name and signature inserted in lines 6 & 7 must be that of the Clerk or Secretary of the corporation.

CERTIFICATION OF TAX COMPLIANCE

Pursuant to M.G.L. c.62C, §49A and requirements of the City, the undersigned acting on behalf of the Contractor certifies under the penalties of perjury that the Contractor is in compliance with all laws of the Commonwealth relating to taxes including payment of all local taxes, fees, assessments, betterments and any other local or municipal charges (unless the Contractor has a pending abatement application or has entered into a payment agreement with the entity to which such charges were owed), reporting of employees and Contractors, and withholding and remitting child support.*


** Signature of Individual
of Corporate Contractor or (Mandatory)

Print Name: Kevin F. Osgood

By: President
Corporate Officer
(Mandatory, if applicable)

Print Name: Kevin F. Osgood

04-3176886
*** Contractor's Social Security Number
(Voluntary) or Federal Identification Number

Date: JULY 22, 2022

- * The provision in this Certification relating to child support applies only when the Contractor is an individual.
- ** Approval of a contract or other agreement will not be granted until the City receives a signed copy of this Certification.
- *** Your social security number may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/29/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Core Benefits Group Inc 2 Village Green Road Suite A1 Hampstead NH 03841		CONTACT NAME: MameeAnn Betke PHONE (A/C, No, Ext): (603) 329-4933 E-MAIL ADDRESS: mbetke@mycoreinsurance.com		FAX (A/C, No): (603) 329-4924	
INSURED Sterling Golf Management Inc 212 Kenrick Street Newton MA 02458-2732		INSURER(S) AFFORDING COVERAGE		NAIC #	
		INSURER A: Merchants Preferred Insurance Co		12901	
		INSURER B: Merchants Mutual Insurance Company		23329	
		INSURER C: Hartford		10448	
		INSURER D:			
		INSURER E:			
		INSURER F:			

COVERAGES

CERTIFICATE NUMBER: 22-23

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			CMP9157780	01/01/2022	01/01/2023	EACH OCCURRENCE	\$ 1,000,000	
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:							MED EXP (Any one person)	\$ 5,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PERSONAL & ADV INJURY	\$ 1,000,000	
	OTHER:						GENERAL AGGREGATE	\$ 2,000,000	
							PRODUCTS - COMP/CP AGG	\$ 2,000,000	
								\$	
B	AUTOMOBILE LIABILITY			MCA0000341	01/01/2022	01/01/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$ 20,000	
	<input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident)	\$ 40,000	
	<input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	\$	
							Medical Payments	\$ 5,000	
B	<input checked="" type="checkbox"/> UMBRELLA LIAB			CUP9150809	01/01/2022	01/01/2023	EACH OCCURRENCE	\$ 5,000,000	
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR					AGGREGATE	\$ 5,000,000	
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input type="checkbox"/> CLAIMS-MADE						\$	
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			04WECAE3TTV	01/01/2022	01/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER		
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT	\$ 500,000	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$ 500,000	
							E.L. DISEASE - POLICY LIMIT	\$ 500,000	
A	Liquor Liability			CMP9157780	01/01/2022	01/01/2023	Each Occurrence:	\$1,000,000	
	Herbicide & Pesticide Liab						Each Occurrence:	\$1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Officer. Kevin Osgood, is excluded from Workers Compensation.

City of Newton is named as Additional Insured for General Liability, as per written contract/agreement, as their interest may appear pursuant to the operation of the named insured.

Pesticide Liability \$1,000,000

*10 day cancellation notice for nonpayment of premium

CERTIFICATE HOLDER**CANCELLATION**

City of Newton- City Hall 1000 Commonwealth Ave. Newton MA 02459	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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ANNUAL PERFORMANCE BOND

Bond No. SUR1001461

KNOW ALL BY THESE PRESENTS, That we Sterling Golf Management, Inc., as Principal, and Frankenmuth Mutual Insurance Company, of MI authorized to do business in the State of Massachusetts, as Surety, are held and firmly bound unto City of Newton, Massachusetts, Purchasing Department, as Oblige, in the maximum penal sum of Four Hundred Thousand Dollars (**400,000.00**), lawful money of the United States of America, for which payment well and truly to be made we bind ourselves, our heirs, executors and assigns, jointly and severally, firmly by this Surety Bond.

WHEREAS, the Principal has entered, or is about to enter, into a written agreement with the Oblige to perform in accordance with the terms and conditions of the RFP #22-27 Operation of Newton Commonwealth Golf Course (hereinafter referred to as the Contract), said Contract is hereby referred to and made a part hereof,

NOW, THEREFORE, the condition of this obligation is such that if the above named Principal, its successors and assigns, shall well and truly perform its obligations as set forth in the above mentioned Contract, then this Bond shall be void; otherwise to remain in full force and effect pursuant to its terms. Notwithstanding anything to the contrary in the Contract, the Bond is subject to the following express conditions:


1. Whereas, the Oblige has agreed to accept this Bond, this Bond shall be effective for the definite period of January 1, 2022 to December 31, 2022. The Bond may be extended, at the sole option of the Surety, by continuation certificate in accordance with annual contract values for additional periods from the expiry date hereof. However, neither: (a) the Surety's decision not to issue a continuation certificate, nor (b) the failure or inability of the Principal to file a replacement bond or other security in the event the Surety exercises its right to not renew or cancel this Bond (pursuant to paragraph 2 below), shall itself constitute a loss to the Oblige recoverable under this Bond or any extension thereof.
2. This Bond may be canceled at any time upon thirty (30) days advance written notice from the Surety to the Oblige.
3. The above referenced Contract has a term ending December 31, 2024. Regardless of the number of years this Bond is in force or the number of continuation certificates issued, this Bond shall have the final and definite expiration date of December 31, 2024, unless earlier nonrenewed or canceled pursuant to paragraph 1 or 2 above.
4. No claim, action, suit or proceeding, except as hereinafter set forth, shall be had or maintained against the Surety on this instrument unless such claim, action, suit or proceeding is brought or instituted upon the Surety within one year from termination or expiration of the bond term.
5. Regardless of the number of years this Bond is in force or the number of continuation certificates issued, the liability of the Surety shall not be cumulative in amounts from period to period and shall in no event exceed the amount set forth above, or as amended by rider.
6. Any notice, demand, certification or request for payment, made under this Bond shall be made in writing to the Surety at the address specified below. Any demand or request for payment must be made prior to the expiry date of this Bond.

Surety Address: Frankenmuth Mutual Insurance Company
701 US Route One, Suite 1
Yarmouth, ME 04096
Attn: Kathleen Maloney

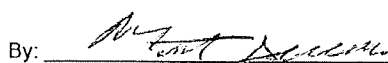
7. If any conflict or inconsistency exists between the Surety's obligations or undertakings as described in this Bond and as described in the underlying Contract, then the terms of this Bond shall prevail.

SIGNED, SEALED AND DATED this 1st day of January, 2022.

Principal Sterling Golf Management, Inc. Name & Corporate Seal

By:  President

Surety Frankenmuth Mutual Insurance Company Name & Corporate Seal

By:  Matthew Serodio, Attorney-in-Fact

FRANKENMUTH MUTUAL INSURANCE COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that Frankenmuth Mutual Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the State of Michigan, having its principal office at 1 Mutual Avenue, Frankenmuth, Michigan 48787, does hereby nominate, constitute and appoint:

Matthew Serodio, Kevin Fosman, Laura Hester, Jenn Quinney

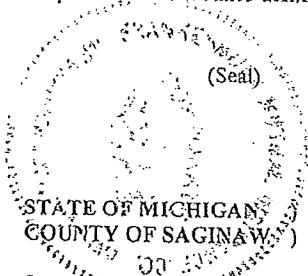
Their true and lawful attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal, acknowledge and deliver any and all bonds, contracts and undertakings of suretyship, with the exception of Financial Guaranty Insurance, provided, however, that the penal sum of any one such instrument shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000)

This Power of Attorney is granted pursuant to the following Resolution duly adopted at a meeting of the Board of Directors of Frankenmuth Mutual Insurance Company:

"RESOLVED, that the President, Senior Vice President or Vice President and each of them under their respective designations, hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer of the Company, qualifying the attorney(s) named in the given power of attorney, to execute on behalf of, and acknowledge as the act and deed of Frankenmuth Mutual Insurance Company on all bonds, contracts and undertakings of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 10th day of September, 2018.



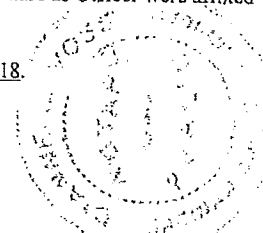
Frankenmuth Mutual Insurance Company
By Frederick A. Edmond, Jr.,
President and Chief Operating Officer

STATE OF MICHIGAN
COUNTY OF SAGINAW) ss:

Sworn to before me, a Notary Public in the State of Michigan, by Frederick A. Edmond, Jr., to me personally known to be the individual and officer described in, and who executed the preceding instrument, deposed and said the Corporate Seal and his signature as Officer were affixed and subscribed to said instrument by the authority of the Company.

IN TESTIMONY WHEREOF, I have set my hand, and affixed my Official Seal this 10th day of September, 2018.

Dianne L. Voss (Seal)
Dianne L. Voss, Notary Public
Saginaw County, State of Michigan
My Commission Expires July 23, 2024



I, the undersigned, Vice President of Frankenmuth Mutual Insurance Company, do hereby certify that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and is in full force and effect as of this date.

IN WITNESS WHEREOF, I have set my hand and affixed the Seal of the Company, this 1st day of January, 20 22

Andrew H. Knudsen
Andrew H. Knudsen, Vice President

ALL CORRESPONDENCE RELATED TO BOND VALIDATION AND/OR A CLAIM SHOULD BE DIRECTED TO THE DIRECTOR OF SURETY, 701 US ROUTE ONE, SUITE 1, YARMOUTH, ME 04096



Frankenmuth Mutual Insurance Company
Ansur America Insurance Company
Patriot Life Insurance Company
Patriot Insurance Company

SURETY BOND SEAL ADDENDUM
Frankenmuth Mutual Insurance Company

Due to logistical issues associated with the use of traditional seals during the COVID-19 pandemic, Frankenmuth Mutual Insurance Company has authorized its Attorneys-in-Fact to affix Frankenmuth Mutual Insurance Company's, corporate seal to any bond executed on behalf of Frankenmuth Mutual Insurance Company, by any such Attorney-in-Fact, by attaching this Addendum to said bond.

Through December 31, 2022, to the extent this Addendum is attached to a bond that is executed on behalf of Frankenmuth Mutual Insurance Company, by its Attorney-in-Fact, Frankenmuth Mutual Insurance Company, hereby agrees that the seal below shall be deemed affixed to said bond to the same extent as if its raised corporate seal was physically affixed to the face of the bond.

Dated this First day of January, 2022.



Frankenmuth Mutual Insurance Company

Sign: *[Signature]*
Attorney-in-fact