

**ADDENDUM
TO
AGENDA**

CITY COUNCIL MEETING

TUESDAY, JANUARY 3, 2012

7:00 p.m.

City Council Chambers, City Hall - 45 Lyon Terrace
Bridgeport, Connecticut

ADDED:

MATTERS TO BE ACTED UPON (CONSENT CALENDAR):

- *18-11** Ordinance Committee Report re: Proposed Amendments to the Municipal Code of Ordinances Chapter 2.36, amend Section 2.36.010, Officers' and Unaffiliated Employee Salaries.
- *19-11** Ordinance Committee Report re: Proposed Amendments to the Municipal Code of Ordinances, amend Chapter 2.38, Code of Ethics.
- *30-11** Ordinance Committee Report re: Resolution concerning the Creation of a Charter Revision Commission for the City of Bridgeport.

AGENDA

CITY COUNCIL MEETING

TUESDAY, JANUARY 3, 2012

7:00 P.M.

CITY COUNCIL CHAMBERS, CITY HALL - 45 LYON TERRACE
BRIDGEPORT, CONNECTICUT

Prayer

Pledge of Allegiance

Roll Call

MINUTES FOR APPROVAL:

Approval of City Council Minutes: December 5, 2011

COMMUNICATIONS TO BE REFERRED TO COMMITTEES:

- 32-11** Communication from Labor Relations and Benefits Administration re: Proposed Agreement with Aetna Life Insurance to provide a Medicare Advantage Health Plan to Covered Medicare-Eligible Retirees of the City and Board of Education for the period of January 1, 2012 - December 31, 2012, referred to Contracts Committee.

MATTERS TO BE ACTED UPON (CONSENT CALENDAR):

- *05-11** Economic and Community Development and Environment Committee Report re: Acquisition of 115 Virginia Avenue from the State of Connecticut.
- *10-11** Economic and Community Development and Environment Committee Report re: Grant Submission: State of Connecticut Department of Public Health 2011-2014 Public Health Emergency Preparedness Grant.
- *11-11** Economic and Community Development and Environment Committee Report re: Grant Submission: State Department of Education 2011-2012 Youth Service Bureau Grant.
- *12-11** Economic and Community Development and Environment Committee Report re: Grant Submission: State of Connecticut Department of Public Health 2011-2012 Lead Poisoning Prevention and Control Grant.
- *14-11** Economic and Community Development and Environment Committee Report re: Grant Submission: US Conference of Mayors' Childhood Obesity Prevention Grant.
- *03-11** Miscellaneous Matters Committee Report re: Request to Appoint Twenty New Members to the 2012-2014 Citizen Union Membership.

MATTERS TO BE ACTED UPON (CONSENT CALENDAR) CONTINUED:

- *04-11** Miscellaneous Matters Committee Report re: Settlement of Pending Litigation with John Gale.
- *17-11** Miscellaneous Matters Committee Report re: Resolution regarding the Building of Solar Photo-Voltaic Electric Generation Facilities at Blackham School and Central High School.
- *28-11** Miscellaneous Matters Committee Report re: Legal Status Report Concerning Bridgeport Harbour Place I, LLC Pending Litigation.

CITY of BRIDGEPORT
CITY COUNCIL
PUBLIC SPEAKING SESSION
JANUARY 3, 2012
6:30 PM

Council President McCarthy called the public speaking session to order at 8:12 pm.

He announced that there weren't any speakers that signed up to speak for the public speaking session.

- ** COUNCIL MEMBER CURWEN MOVED TO CLOSE THE PUBLIC SPEAKING SESSION**
- ** COUNCIL MEMBER COLON SECONDED**
- ** MOTION PASSED UNANIMOUSLY**

The public speaking session closed at 8:15 pm.

RECEIVED
CITY CLERK'S OFFICE
2012 JAN 10 P 3:55
ATTEST
CITY CLERK

CITY COUNCIL MEETING

Tuesday, January 3, 2012

7:00 p.m.

**City Council Chambers, City Hall - 45 Lyon Terrace
Bridgeport, Connecticut**

ATTENDANCE: Council members: M. McCarthy, Taylor-Moye, Colon, Olson, Brantley, T. McCarthy, Austin, Lyons, Bonney, Blunt, dePara, Silva, M. Ayala, Martinez, Paoletto, Curwen, Baker

ABSENT: Council members: Brannelly, Vizzo-Paniccia, Holloway

Mayor Finch called the meeting to order at 8:19 pm.

- Prayer - Council member Blunt offered the prayer.
- Pledge of Allegiance - Council member Colon led the pledge of allegiance.
- Roll Call - the city clerk took the roll call and announced there was a quorum.

MINUTES FOR APPROVAL:

Approval of City Council Minutes: December 5, 2011

- ** COUNCIL MEMBER BRANTLEY MOVED TO ACCEPT THE MINUTES**
- ** COUNCIL MEMBER COLON SECONDED**
- ** MOTION PASSED UNANIMOUSLY**

Council President McCarthy asked for a moment of silence for: Manuel Perara. He expressed that he was a long time foreman in the City of Bridgeport and that he was a good solid resident, a good friend and man. He passed away on January 2, 2012

Council member Colon asked for a moment of silence for: George Peterson. She expressed that Mr. Peterson ran a business on Noble Avenue; Peterson's Funeral Home.

COMMUNICATIONS TO BE REFERRED TO COMMITTEES:

32-11 Communication from Labor Relations and Benefits Administration re: Proposed Agreement with Aetna Life Insurance to provide a Medicare Advantage Health Plan to Covered Medicare-Eligible Retirees of the City and Board of Education for the period of January 1, 2012 – December 31, 2012, referred to Contracts Committee.

**** COUNCIL MEMBER PAOLETTO MOVED TO REFER COMMUNICATIONS TO BE REFERRED TO COMMITTEES**

**** COUNCIL MEMBER LYONS SECONDED**

**** MOTION PASSED UNANIMOUSLY**

Council President McCarthy called for a caucus at 8:20 pm.

The caucus ended at 9:05 pm.

Mayor Finch reconvened the meeting at 9:10 pm.

MATTERS TO BE ACTED UPON (CONSENT CALENDAR):

Mayor Finch asked if there were any items to be removed from the consent calendar:

Council member Paoletto requested to remove item ***18-11** Ordinance Committee Report re: Proposed Amendments to the Municipal Code of Ordinances Chapter 2.36, amend Section 2.36.010, Officers' and Unaffiliated Employee Salaries.

Council member Baker requested to remove item ***03-11** Miscellaneous Matters Committee Report re: Request to Appoint Twenty New Members to the 2012-2014 Citizen Union Membership.

**** COUNCIL MEMBER CURWEN MOVED TO APPROVE THE REMAINING
CONCENT CALENDAR ITEMS**

**** COUNCIL MEMBER PAOLETTO SECONDED**

The city clerk read the remaining consent calendar items into the record.

***05-11** Economic and Community Development and Environment Committee Report re: Acquisition of 115 Virginia Avenue from the State of Connecticut.

***10-11** Economic and Community Development and Environment Committee Report re: Grant Submission: State of Connecticut Department of Public Health 2011-2014 Public Health Emergency Preparedness Grant.

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***14-11** Economic and Community Development and Environment Committee Report re: Grant Submission: US Conference of Mayors' Childhood Obesity Prevention Grant.

- *03-11 Miscellaneous Matters Committee Report re: Request to Appoint Twenty New Members to the 2012-2014 Citizen Union Membership. - *removed*
- *04-11 Miscellaneous Matters Committee Report re: Settlement of Pending Litigation with John Gale.
- *17-11 Miscellaneous Matters Committee Report re: Resolution regarding the Building of Solar Photo-Voltaic Electric Generation Facilities at Blackham School and Central High School.
- *28-11 Miscellaneous Matters Committee Report re: Legal Status Report Concerning Bridgeport Harbour Place I, LLC Pending Litigation.

ADDENDUM TO AGENDA

ADDED:

MATTERS TO BE ACTED UPON (CONSENT CALENDAR):

- *18-11 Ordinance Committee Report re: Proposed Amendments to the Municipal Code of Ordinances Chapter 2.36, amend Section 2.36.010, Officers' and Unaffiliated Employee Salaries. - *removed*
- *19-11 Ordinance Committee Report re: Proposed Amendments to the Municipal Code of Ordinances, amend Chapter 2.38, Code of Ethics.

***30-11** Ordinance Committee Report re: Resolution concerning the Creation of a Charter Revision Commission for the City of Bridgeport.

Item 30-11 "Ordinance Committee Report re: Resolution concerning the Creation of a Charter Revision Commission for the City of Bridgeport" was passed unanimously by the seventeen (*17) members present and voting, thereby constituting adoption by a two-thirds vote of the entire membership of the Council, in accordance with C.G.S. §7-188(b)."

**** MOTION PASSED UNANIMOUSLY**

Mayor Finch returned to item ***03-11** Miscellaneous Matters Committee Report re: Request to Appoint Twenty New Members to the 2012-2014 Citizen Union Membership.

Council member Baker stated that the item passed in committee. He stated that he would like to add a name to the request to appoint twenty new members.

**** COUNCIL MEMBER BAKER MOVED TO AMEND FOR THE PURPOSE OF ADDING THE NAME OF (CHARLES T. HERBERT JR., 254 THORME STREET, BRIDGEPORT, CT 06606 – 134TH DISTRICT) TO THE REQUEST TO APPOINT TWENTY NEW MEMBERS TO THE 2012-2014 CITIZEN UNION MEMBERSHIP**
**** COUNCIL MEMBER T. McCARTHY SECONDED**
**** MOTION PASSED UNANIMOUSLY**

Mayor Finch returned to item ***18-11** Ordinance Committee Report re: Proposed Amendments to the Municipal Code of Ordinances Chapter 2.36, amend Section 2.36.010, Officers' and Unaffiliated Employee Salaries.

Council member Paoletto thanked everyone for coming out tonight for the Ordinance Committee public hearing and for presenting their thoughts and comments.

**** COUNCIL MEMBER PAOLETTO MOVED TO AMEND ITEM *18-11 FOR THE PURPOSE OF DELETING SPECIFIC WORDING FROM THE ORDINANCE THAT SHALL READ AS FOLLOWS:**

2.36.010 Officer's and unaffiliated employee salaries

- A. The following position salaries shall be established for all listed unaffiliated positions in this subsection. Position annual salaries and annual salaries for those acting in any of the positions set forth in this section shall be adjusted in accordance with the negotiated across-the-board increases granted to other city supervisors. The Labor Relations**

Office shall provide the City Clerk with updated ranges set forth in this section, effective as of each July 1st, to reflect such across-the-board increases. Salary ranges for any newly created positions shall be referred to the budget and appropriations committee for review. Salary ranges for acting or appointed positions shall fall within the ranges listed below. The full City Council shall have the power to approve or disapprove the salary ranges recommended by the Mayor and/or budget and appropriations committee. The Mayor may authorize salary increases within the salary ranges established by ordinance. No individual, serving in a position listed below, may receive remuneration from any other city board, commission or authority of the City of Bridgeport, including the Board of Education, in the form of wages, fee or other emoluments, without express prior approval by the City Council. The exception to this section is for a legally awarded pension from the City of Bridgeport or any of the boards, commissions or authorities, including the Board of Education.

The following positions have been deleted from the ordinance under the following category:

MANAGEMENT APPOINTED OFFICIALS

Director of Auditing

MAJOR DEPUTY CLASS

Labor Relations Attorney

TECHNICAL CLASS

Dentist

- B. **Take Home Vehicles.** The City of Bridgeport avails to certain individuals in the class of officers and unaffiliated employees the use of a take home vehicle. The improper use of said vehicle can place extreme financial burdens on the City of Bridgeport. In order to protect itself from unnecessary hardship, the City of Bridgeport requires the following for any individual partaking in this benefit:
1. **Mandatory random quarterly testing for drugs and alcohol.**

2. **Mandatory on scene reporting to the local law enforcement authorities of any vehicle accident.**
3. **Mandatory testing for drugs and alcohol within twenty-four (24) hours of any motor vehicle accident; mandatory testing within two hours of any motor vehicle accident that involves injuries to an individual.**
4. **Mandatory suspension of the use of a vehicle for failure to abide by the above.**
5. **The City reserves the right to establish a charge for excess mileage at a rate and a mileage limit to be determined.**

**** COUNCIL MEMBER BRANTLEY SECONDED**

Council member T. McCarthy stated that he would recuse himself from voting on item 18-11 due to a conflict of interest.

Council member Baker recalled the questions that were asked during committee. He said that some answers were given and some weren't. He said he thought the matter was rushed through and there weren't enough details presented pertaining to the positions that were added. He went on to say that he felt in order to move the city forward, they needed to change some positions and put qualified people in the job classifications. He emphasized that as council members, they should be kept informed of how they are moving the city forward. He said the item should be tabled for the purpose of having some more questions answered. He further stated that he owed it to his constituents to give them answers. He said he would vote against the item and he requested that it be tabled and brought back to committee.

Council member Lyons stated that they needed to move Bridgeport forward in many ways. However, a lot of the unions have done a lot to move the city forward and they have made concessions. She said she felt that in the future, if they hire additional people; they should conduct a salary analysis to ensure that they are in sync with other municipalities and to maintain a balanced pay scale. She said she thought they should look into the matter more. She stated that she wouldn't vote for the item at this time.

Council member dePara stated that although efforts were achieved with the new language, he felt the decision was best made at budget time to justify the additional duties associated with the positions.

Council member Silva thanked the people that came out tonight to speak on the topic during the Ordinance Committee public hearing. He also thanked his colleagues for listening to the concerns of the people. He said he agreed with Council members dePara and Baker in that the matter should be returned to committee. He stressed that the needed the proper time to look at the ordinance and word it properly, noting that the matter shouldn't be rushed to save face. He emphasized that they were there to move the city forward.

Council member Olson said he objected to the portion of the ordinance asking the city council to give up the authority regarding the 15% pay increase. He noted that that portion of the ordinance has been eliminated. He further agreed that the matter should be taken up during budget time; however; he said he would like to move forward.

Council member Baker asked for City Attorney Anastasi opinion regarding conflict of interest. Attorney Anastasi said it wasn't appropriate for the city attorney to make comments on a person's conflict of interest. He stated that he could be consulted through his office or through the Ethics Commission forum.

Council member Brantley said she thought long and hard about the matter. She expressed that as long as they needed to pick up trash from contractors who come to our city, they need to make a decision of whether or not they will continue to pay a salary to the Public Works Department. She further stated that as long as they can change the 15% pay increase she was satisfied with that. She commended the people that were responsible for striking the 15% out of the ordinance.

- ** MOTION PASSED WITH TWELVE VOTES IN FAVOR; FOUR VOTES IN OPPOSITION AND ONE ABSTENTION (COUNCIL MEMBER T. McCARTHY)**

- ** COUNCIL MEMBER CURWEN MOVED TO APPROVE AS AMENDED**

- ** COUNCIL MEMBER PAOLETTO SECONDED**

- ** MOTION PASSED WITH TWELVE VOTES IN FAVOR; FOUR VOTES IN OPPOSITION AND ONE ABSTENTION (COUNCIL MEMBER T. McCARTHY)**

ADJOURNMENT

**** COUNCIL MEMBER T. McCARTHY MOVED TO ADJOURN
** COUNCIL MEMBER PAOLETTO SECONDED
** MOTION PASSED UNANIMOUSLY**

The meeting adjourned at 9:35 pm.

Respectfully submitted,

Diane Graham
Telesco Secretarial Services



BILL FINCH
Mayor

CITY OF BRIDGEPORT
LABOR RELATIONS AND BENEFITS ADMINISTRATION

45 Lyon Terrace, Bridgeport, Connecticut 06604

LAWRENCE E. OSBORNE
Director
(203) 576-7843

JANET M. FINCH
Human Resources
Manager
(203) 576-8474

RICHARD D. WEINER
Benefits Manager
(203) 576-7007

COMM. #32-11 Referred to Contracts Committee on 01/03/2012

December 23, 2011

Honorable Fleeta Hudson
City Clerk
City of Bridgeport
45 Lyon Terrace
Bridgeport, CT 06604

Dear Madam Clerk:

Attached please find an original and thirteen copies of an Aetna Medicare (PPO) Group Agreement between Aetna Life Insurance Company and the City of Bridgeport to provide a Medicare Advantage Health Plan to covered Medicare-eligible retirees of the City and Board of Education.

The term of the Agreement is from January 1, 2012 to December 31, 2012.

I respectfully request that these documents be referred to the Contracts Committee at the Council meeting of January 3, 2012.

Sincerely,

Richard D. Weiner
Benefits Manager

RECEIVED
CITY CLERK'S OFFICE
DEC 23 A 9:12

**AETNA LIFE INSURANCE COMPANY
(CONNECTICUT)**

AETNA MEDICARE (PPO) GROUP AGREEMENT

This **Group Agreement** is entered into by and between Aetna Life Insurance Company and the **Contract Holder** specified in the attached Cover Sheet. This **Group Agreement** shall be effective on the **Effective Date** specified in the Cover Sheet, and shall continue in force until terminated as provided herein.

In consideration of the mutual promises hereunder and the payment of **Premiums** and fees when due, **We** will provide coverage for benefits in accordance with the terms, conditions, limitations and exclusions set forth in this **Group Agreement**.

Upon acceptance by **Us** of **Contract Holder's** Group Application, and upon receipt of **Contract Holder's** written acceptance, this **Group Agreement** shall be considered to be agreed to by **Contract Holder** and **Us**, and is fully enforceable in all respects against **Contract Holder** and **Us**.

SECTION 1. DEFINITIONS

- 1.1 “**Aetna Medicare PPO plan**” or “**Plan**” means the Aetna Medicare Advance Preferred Provider Organization Plan offered by **Aetna** to **Contract Holder** under this **Group Agreement**.
- 1.2 The terms “**Aetna**”, “**Us**”, “**We**” or “**Our**” mean Aetna Life Insurance Company, an affiliate or a third party vendor.
- 1.3 “**CMS**” means the Centers for Medicare and Medicaid Services.
- 1.4 The terms “**Contract Holder**”, “**Effective Date**”, “**Initial Term**”, “**Premium Due Date**” and “**Subsequent Terms**” will have the meaning set forth in the attached Cover Sheet. If any of such terms are undefined in the Cover Sheet, such undefined terms shall have the following meaning:
 - “**Effective Date**” means the date health coverage commences for the **Contract Holder**.
 - “**Initial Term**” is the period following the **Effective Date** as indicated on the Cover Sheet.
 - “**Premium Due Date(s)**” is the **Effective Date** and each monthly anniversary of the **Effective Date**.
 - “**Subsequent Term(s)**” means the periods following the **Initial Term** as indicated on the Cover Sheet.

- 1.5 “**Covered Benefits**” is a general term we use to mean all of the health care services and supplies that are covered by **Our Plan**, subject to all of the terms and conditions of the **EOC** and this **Group Agreement**.
- 1.6 “**EOC**” means the Evidence of Coverage, which is a document outlining coverage for **Members** under the **Plan**, that is issued pursuant to this **Group Agreement**, and includes the Schedule of Copayments, and any riders, amendments, or endorsements.
- 1.7 “**Grace Period**” is defined in the Premiums and Fees section below.
- 1.8 “**Group Agreement**” means the **Contract Holder’s** Group Application, this document, the attached Cover Sheet; the **EOC** and Schedule of Copayments issued hereunder; the Rate Documents issued by **Us** in connection with this **Group Agreement**; the Plan Design and Benefit Summary; and any riders, amendments, endorsements, inserts or attachments issued pursuant hereto, all of which are incorporated into or incorporated by reference into and made a part of this **Group Agreement**. All documents incorporated into this **Group Agreement** are either attached hereto or available to **Contract Holder** upon request. The Rate Documents are attached hereto and made a part hereof.
- 1.9 “**Member**” is a Medicare beneficiary who: (1) has enrolled in **Our Plan** and whose enrollment in the **Plan** has been confirmed by CMS, and (2) is eligible to receive coverage under the **Plan**, subject to the terms and conditions of the **EOC** and this **Group Agreement**.
- 1.10 “**Party, Parties**” means **Aetna** and **Contract Holder**.
- 1.11 “**Premium(s)**” is defined in the **Premiums and Fees** section below.
- 1.12 “**Renewal Date**” means the first day following the end of the **Initial Term** or any **Subsequent Term**.
- 1.13 “**Term**” means the **Initial Term** or any **Subsequent Term** set forth in the Cover Sheet to this **Group Agreement**.
- 1.14 Capitalized and bolded terms not defined in this **Group Agreement** shall have the meaning set forth in the **EOC**. In the event of a conflict between the terms of this **Group Agreement** and the terms of the **EOC**, the terms of this **Group Agreement** shall prevail.

SECTION 2. COVERAGE

- 2.1 **Covered Benefits.** We will provide coverage for **Covered Benefits** to **Members** subject to the terms and conditions of this **Group Agreement**. Coverage will be provided in accordance with the reasonable exercise of **Our** business judgment, consistent with applicable law. **Members** covered under this **Group Agreement** are subject to all of the conditions and provisions contained herein and in the incorporated documents.

- 2.2 **Policies and Procedures.** We have the right to adopt reasonable policies, procedures, rules, and interpretations of this **Group Agreement** and the **EOC** in order to promote orderly and efficient administration. We will provide copies (either in electronic or hard copy format, at **Our** discretion) of all such policies, procedures, rules and interpretations upon reasonable request.

SECTION 3. **PREMIUMS AND FEES**

- 3.1 **Premiums.** **Contract Holder** shall pay Us on or before each **Premium Due Date** a monthly advance premium (the "**Premium**") determined in accordance with the **Premium** rates and the manner of calculating **Premiums** specified by **Aetna**. **Premium** rates and the manner of calculating **Premiums** may be adjusted in accordance with the **Changes in Premium and Membership Adjustments** sections below. **Premiums** are subject to adjustment, if any, for partial month participation as specified in the **Membership Adjustments** section below. Membership as of each **Premium Due Date** will be determined by Us in accordance with **Our Member** records. A check does not constitute payment until it is honored by a bank. We may return a check issued against insufficient funds without making a second deposit attempt. We may accept a partial payment of **Premium** without waiving **Our** right to collect the entire amount due.

This **Group Agreement** is subject to the annual renewal of the **Aetna's** Medicare Advantage Contract with the federal government. **Covered Benefits** and/or **Premiums** are also subject to change at the beginning of a **Term** of this **Group Agreement**. Increases in **Member** Premiums and/or decreases in **Covered Benefits** are only permitted at the beginning of a **Term** of this **Group Agreement**. Should **CMS** cancel **Aetna's** contract as a Medicare Advantage contractor or should **Aetna** decide not to continue as a Medicare Advantage contractor, **Members** shall be given notice of such termination in accordance with the **Aetna** Medicare Advantage **EOC** and any applicable laws, rules and regulations, including, without limitation, **CMS** requirements. **Aetna** will make best efforts to afford **Contract Holder** a reasonable opportunity to provide any such notice to its **Members** before **Aetna** provides the notice.

- 3.2 **Fees.** In addition to the **Premium**, We may charge the following fees:
- A billing fee may be added to each monthly **Premium** bill for the recovery of any surcharges for amounts paid through credit card, debit card or other similar means.
- 3.3 **Past Due Premiums and Fees.** If a **Premium** payment or any fees is not paid in full by **Contract Holder** on or before the later to occur of (i) the **Premium Due Date** or (ii) the 45th day after **Contract Holder** receives the invoice, a late payment charge of 1½% of the total amount due per month (or partial month) may be added to the amount due, beginning with the **Premium** due date. If all **Premiums** and fees are not received within 31 days following the **Premium Due Date** (the "**Grace Period**"), **Contract Holder's**

failure to make such payment will constitute a breach of this **Group Agreement** and this **Group Agreement** may be terminated by Us pursuant to the Termination by Us section hereof. Notwithstanding the foregoing, **Aetna** understands that **Contract Holder** has systems limitations that may prevent it from paying premiums in a timely fashion in the months of July, August and September. As such, if **Contract Holder** provides **Aetna** with written assurances that it cannot pay premiums in a timely fashion between July 1 and September 30 of any year as a result of systems limitations, **Aetna** will forego its right to receive late payment charges or to terminate for failure to pay premiums during that period.

If the **Group Agreement** terminates for any reason, **Contract Holder** will continue to be held liable for all **Premiums** and fees due and unpaid before the termination, including, but not limited to, **Premium** payments for any period of time the **Group Agreement** is in force during the **Grace Period**. **Members** shall also remain liable for **Member** cost sharing and other required contributions to coverage for any period of time the **Group Agreement** is in force during the **Grace Period**. We may recover from **Contract Holder** Our costs of collecting any unpaid **Premiums** or fees, including reasonable attorney's fees and costs of suit.

3.4 **Changes in Premium.** We may also adjust the **Premium** rates and/or the manner of calculating **Premiums** effective as of any **Premium Due Date** upon 30 days prior written notice to **Contract Holder**, provided that no such adjustment will be made except upon renewal for any Subsequent Term or as provided in the Rate Documents or to reflect changes in applicable law or regulation or a judicial decision having a material impact on the cost of providing **Covered Benefits** to **Members**. If the **Contract Holder** is unwilling to accept a change in **Premium**, it shall have the right to terminate the **Group Agreement** upon 90 days written notice to Us.

3.5 **Membership Adjustments.** We may, at **Our** discretion, make retroactive adjustments to the **Contract Holder's** billings for the termination of **Members** not posted to previous billings. However, **Contract Holder** may only receive a maximum of 2 calendar months credit for **Member** terminations that occurred more than 30 days before the date **Contract Holder** notified Us of the termination. We may reduce any such credits by the amount of any payments We may have made on behalf of such **Members** (including capitation payments and other claim payments) before We were informed their coverage had been terminated. Retroactive additions will be made at **Our** discretion based upon eligibility guidelines, as set forth in the **EOC**, and are subject to the payment of all applicable **Premiums**.

SECTION 4. **ENROLLMENT**

4.1 **Open Enrollment.** As described in the **EOC**, **Contract Holder** will offer enrollment in the **Aetna Medicare PPO plan**:

- at least once during the Initial Term and any Subsequent Term; and

- within 31 days from the date the individual and any dependent becomes eligible for coverage.

Eligible individuals and dependents who are not enrolled within the Open Enrollment Period or 31 days of becoming eligible, may be enrolled during any subsequent Open Enrollment Period. Coverage will not become effective until confirmed by Us. **Contract Holder** agrees to hold the Open Enrollment Period consistent with the Open Enrollment Period applicable to any other group health benefit plan being offered by the **Contract Holder** and in compliance with applicable law or as otherwise required by CMS. The **Contract Holder** shall permit **Our** representatives to meet with eligible individuals during the Open Enrollment Period unless the parties agree upon an alternate enrollment procedure. Other enrollment periods may apply in accordance with Medicare regulatory requirements.

4.2 **Waiting Period.** **Contract Holder** may impose a waiting period before individuals are eligible for coverage under this **Group Agreement**.

4.3 **Eligibility.** Active employees and their dependents are not permitted to enroll in the Plan, unless Contract Holder employs between two and nineteen (2-19) employees. The number of eligible individuals and eligible dependents and composition of the group, the identity and status of the **Contract Holder**, the eligibility requirements used to determine membership in the group, and the participation and contribution standards applicable to the group which exist at the **Effective Date** of this **Group Agreement** are material to the execution and continuation of this **Group Agreement** by Us. The **Contract Holder** shall not, during the term of this **Group Agreement**, modify the Open Enrollment Period, the waiting period as described on the Schedule of Copayments, or any other eligibility requirements as described in the **EOC** and on the Schedule of Copayments, for the purposes of enrolling **Contract Holder's** eligible individuals and eligible dependents under this **Group Agreement**, unless **We** agree to the modification in writing.

SECTION 5. **RESPONSIBILITIES OF THE CONTRACT HOLDER**

In addition to other obligations set forth in this **Group Agreement**, **Contract Holder** agrees to:

5.1 **(A) Records.** Use reasonable, diligent efforts to furnish to Us, on a monthly basis (or as otherwise required), on **Our** form (or such other form as **We** may reasonably approve) by facsimile (or such other means as **We** may reasonably approve), such information as **We** may reasonably require to administer this **Group Agreement**. This includes, but is not limited to, information needed to enroll members of the **Contract Holder**, process terminations, and effect changes in family status and transfer of employment of **Members**.

Contract Holder certifies, based on best knowledge, information and belief, that all enrollment and eligibility information that has been or will be supplied to Us is accurate,

complete and truthful. **Contract Holder** acknowledges that **We** can and will rely on such enrollment and eligibility information in determining whether an individual is eligible for **Covered Benefits** under this **Group Agreement**. To the extent such information is supplied to **Us** by **Contract Holder** (in electronic or hard copy format), **Contract Holder** agrees to:

- Obtain from all **Subscribers** a “Disclosure of Healthcare Information” authorization in the form currently being used by **Us** in the enrollment process (or such other form as **We** may reasonably approve).

We will not be liable to **Members** for the fulfillment of any obligation prior to information being received in a form satisfactory to **Us**. **Contract Holder** must notify **Us** of the date in which a **Member’s** eligibility ceases for the purpose of termination of coverage under this **Group Agreement**.

(B) Maintenance of Information and Records. **Contract Holder** agrees to maintain **Information and Records** (as those terms are defined in the Access to Information and Records Section below) in a current, detailed, organized and comprehensive manner and in accordance with applicable laws, rules and regulations, and to maintain such Information and Records for the longer of: (i) a period of ten (10) years from the end of the final contract period of any government contract of **Aetna** to offer an **Aetna Medicare PPO** plan, (ii) the date the U.S. Department of Health and Human Services, the Comptroller General or their designees complete an audit, or (iii) the period required by applicable laws, rules or regulations. This Provision shall survive the termination of this **Group Agreement**, regardless of the cause of the termination.

(C) Access to Information and Records. **Contract Holder** agrees to provide **Us** and federal, state and local governmental authorities having jurisdiction, directly or through their designated agents (collectively “Government Officials”), upon request, access to all books, records and other papers, documents, materials and other information (including, but not limited to, contracts and financial records), whether in paper or electronic format, relating to the arrangement described in this **Group Agreement** (“**Information and Records**”). **Contract Holder** agrees to provide **Aetna** and Government Officials with access to Information and Records for as long as it is maintained as provided in “Information and Records” Section above. **Contract Holder** agrees to supply copies of Information and Records within fourteen (14) calendar days of **Contract Holder’s** receipt of the request, where practicable, and in no event later than the date required by an applicable law or regulatory authority. This provision shall survive termination of this **Group Agreement**, regardless of the cause of termination.

5.2 **Forms.** Distribute materials to **Aetna Members** regarding enrollment, health plan features, including **Covered Benefits** and exclusions and limitations of coverage. **Contract Holder** shall, within no fewer than 10 days of receipt from an eligible individual, forward all completed enrollment information and other required information to **Us**.

5.3 **Policies and Procedures; Compliance Verification.** Comply with all policies and procedures established by Us in administering and interpreting this **Group Agreement**. **Aetna** will notify **Contract Holder** of any policies and procedures that **Contract Holder** is required to comply with under this Section 5.3. **Contract Holder** shall, upon request, provide a certification of its compliance with **Our** participation and contribution requirements and the requirements for a group as defined under applicable law or regulation.

5.4 **Written Notice to Members.** **Contract Holder** shall distribute to **Members** any written notice that **Aetna** provides to **Contract Holder** for distribution to **Members** (including, but not limited to, the Annual Notice of Change (ANOC) and any other written notice required under applicable laws) within the timeframe indicated by **Aetna**. **Contract Holder** will provide **Members** with written notice describing any changes made to **Premiums** or **Covered Benefits** at least thirty (30) days prior to the effective date of such change(s) or as required under applicable Medicare laws, rules and regulations. **Contract Holder** will provide **Members** with any written notice required under applicable laws or policies and procedures established by Us in administering and interpreting this **Group Agreement**. The written notices described in this Section are hereinafter collectively referred to as the “**Written Notices**”. If **Contract Holder** does not distribute **Written Notices** to **Members** as required under this Section, **Contract Holder** will be liable for payment of all **Premiums** or other costs incurred by **Aetna** as a result of **Contract Holder’s** failure to distribute the **Written Notices**. If **Contract Holder** does not distribute the **Written Notices** as required under this Section, **Aetna** may, in its discretion, distribute such **Written Notices** to **Members**, and **Contract Holder** shall reimburse **Aetna** for any expenses incurred by **Aetna** in connection with such distribution.

CMS requires that all **Members** receive from **Aetna** a combined ANOC and **EOC** no later than the sooner of: (1) fifteen (15) days prior to the Open Enrollment Period, (2) October 31st of each calendar year, or (3) such shorter timeframe required under applicable laws, rules or regulations. To allow **Aetna** to comply with this **CMS** requirement, **Contract Holder** agrees to inform **Aetna** of its decision to renew or terminate the **Plan** (“**Notice Date**”) no later than the **Notice Date** set forth in the 2012 **Plan** renewal letter sent in calendar year 2011 by **Aetna** to **Contract Holder** (“**Renewal Letter**”).

5.5 **Member Plan Materials.** **Contract Holder** shall assure that any **Member Plan** materials that have not been approved by **CMS** comply with the following alternative disclosure standards: the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”) or any alternative disclosure standards applicable to state or local entities that provide employee /retiree benefits.

5.6 **ERISA Requirements.** Maintain responsibility for making reports and disclosures required by the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), including the creation, distribution and final content of summary plan

descriptions, summary of material modifications and summary annual reports, unless **Contract Holder's Plan** is specifically exempt thereunder.

5.7 **Enrollment & Disenrollments Transactions.** To the extent that **Contract Holder** directly accepts enrollment and/or disenrollment requests from **Members** that **Contract Holder** forwards to **Aetna** for processing and submission to **CMS**, **Contract Holder** agrees to comply with all applicable laws, rules and regulations and **CMS** instructions that relate to the handling and processing of enrollment and disenrollment requests that apply to the **Plan** ("Enrollment/Disenrollment Requirements"), including, without limitation, all Enrollment/Disenrollment Requirements that relate to the timeframes that apply to handling, processing and submission of enrollment and disenrollment requests for the **Plan**. **Contract Holder** agrees to forward enrollment and disenrollment forms completed by **Members** to **Aetna** no later than 90 days after the **Member's** effective date. **Contract Holder** acknowledges that if there is a delay between the time a **Member** submits an enrollment/disenrollment request to **Contract Holder** and when the enrollment/disenrollment request is received by **Aetna**, the enrollment/disenrollment transaction may not be processed by **CMS**, unless **Aetna** requests and **CMS** approves a retroactive enrollment/disenrollment transaction for the **Member**. **Contract Holder** further acknowledges that **Aetna**, in its sole discretion and judgment, will determine whether to submit retroactive enrollment and disenrollment transaction requests to **CMS**, and will make such determinations in accordance with applicable Medicare laws, rules and regulations, including **CMS** instructions.

Contract Holder acknowledges that, per Enrollment/Disenrollment Requirements, the effective date of enrollments and disenrollments in the **Plan** cannot be earlier than the date the enrollment or disenrollment request was completed by a **Member**. If approved by **CMS**, the effective date of an enrollment or disenrollment may be retroactive up to, but may not exceed, ninety (90) days from the date that **Aetna** received the enrollment or disenrollment request from **Contract Holder**, and the enrollment or disenrollment form must be completed and signed by the **Member** prior to the requested enrollment or disenrollment effective date.

Contract Holder acknowledges that **CMS** does not permit **Contract Holder** to retroactively terminate a **Member's** coverage under the **Plan** if the **Member** no longer meets **Contract Holder's** eligibility criteria to remain enrolled in the **Plan**. To meet these **CMS** requirements, **Contract Holder** agrees to provide **Aetna** with advanced written notice if **Contract Holder** chooses to terminate a **Member's** coverage under the **Plan** based on loss of eligibility, and **Contract Holder** acknowledges that the **Member's** coverage termination effective date will be determined in accordance with Medicare laws, rules and regulations and **CMS** requirements.

All of the requirements described in this Section 5.7 also apply equally to any third party administrator or other entity retained by **Contract Holder** to accept enrollment/disenrollment requests for the **Plan** from **Members** on **Contract Holder's** behalf.

SECTION 6. TERMINATION

- 6.1 **Termination by Contract Holder.** This **Group Agreement** may be terminated by **Contract Holder** by providing **Us** with 60 days' prior written notice. The notice of termination shall specify the effective date of such termination, which shall be on the 1st day of a calendar month and may not be less than 60 days from the date of the notice. Further, to allow **Aetna** to comply with **CMS** requirements, **Contract Holder** agrees to inform **Aetna** of its decision to renew or terminate the **Plan** as required under Section 5.5 of this **Group Agreement**.
- 6.2 **Renewal of Group Agreement.** This **Group Agreement** is renewable annually, upon written notice from the **Contract Holder** given at least sixty (60) days prior to the end of the **Initial Term** or **Subsequent Term**, subject to agreement on **Premiums** for the renewal term, unless **Aetna** will no longer offer any **Aetna Medicare PPO** plan in any service areas covered under this **Group Agreement**, because: (1) **CMS** terminates or otherwise non-renews the **Aetna's** Medicare Advantage contract with **CMS**, or (2) **Aetna** provides **CMS** with notice of its intention to non-renew its Medicare Advantage contract or reduce the service areas referenced in its Medicare Advantage contract with **CMS**.
- 6.3 **Termination by Us.** This **Group Agreement** may be terminated by **Us** as of the last day of the **Grace Period** if the **Premium** remains unpaid at the end of the **Grace Period**.

This **Group Agreement** may also be terminated by **Us** as follows:

- Upon 90 days' written notice to **Contract Holder** if **Contract Holder** has performed any act or practice that constitutes fraud or made any intentional misrepresentation of a material fact relevant to the coverage provided under this **Group Agreement**;
- Immediately upon notice to **Contract Holder** if **Contract Holder** no longer has any enrollee under the **Plan** who resides in the **Service Area**;
- Upon 90 days' written notice to **Contract Holder** if **Contract Holder** (i) breaches a provision of this **Group Agreement** and such breach remains uncured at the end of the notice period; (ii) ceases to meet **Our** requirements for an employer group or association; (iii) fails to meet **Our** contribution or participation requirements applicable to this **Group Agreement** (which contribution and participation requirements are available upon request); (iv) fails to provide the certification required by the Policies and Procedures; Compliance Verification section within a reasonable period of time specified by **Us**; (v) provides written notice to **Members** stating that coverage under this **Group Agreement** will no longer be provided to **Members**; or (vi) changes its eligibility or participation requirements without **Our** consent;
- Upon 180 days' written notice to **Contract Holder** (or such shorter notice as may be permitted by applicable law, but in no event less than 30 days) if **We** cease to

offer a product or coverage in any market in which **Members** covered under this **Group Agreement** reside;

- Upon 90 days' written notice to **Contract Holder** for any other reason which is acceptable to the Centers for Medicare and Medicaid Services and consistent with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or by applicable federal rules and regulations, as amended; or
- Upon 90 days' written notice to **Contract Holder** if **Contract Holder** is a member of an employer-based association group, the **Contract Holder's** membership in the association ceases.

6.4 **Effect of Termination.** No termination of this **Group Agreement** will relieve either party from any obligation incurred before the date of termination. When terminated, this **Group Agreement** and all coverage provided hereunder will end at 12:00 midnight on the effective date of termination. **We** may charge the **Contract Holder** a reinstatement fee if coverage is terminated and subsequently reinstated under this **Group Agreement**.

6.5 **Notice to Members.** It is the responsibility of **Contract Holder** to notify the **Members** of the termination of the **Group Agreement** in compliance with all applicable laws, **CMS** requirements and **Aetna's** policies and procedures. However, **We** reserve the right to notify **Members** of termination of the **Group Agreement** for any reason, including non-payment of **Premium**. In accordance with the **EOC** and applicable **CMS** requirements, the **Contract Holder** shall provide written notice to **Members** of their rights upon termination of coverage.

It is also the responsibility of **Contract Holder** to notify **Members** of the involuntary termination of their coverage under the **Group Agreement** in compliance with all applicable laws, **CMS** requirements, and **Aetna's** policies and procedures. However, **We** reserve the right to notify **Members** of the involuntary termination of their coverage under the **Group Agreement** for any reason.

SECTION 7. **PRIVACY OF INFORMATION**

7.1 **Compliance with Privacy Laws.** **We** and **Contract Holder** will abide by all applicable laws and regulations regarding confidentiality of individually identifiable health and other personal information, including the privacy requirements of HIPAA.

7.2 **Disclosure of Protected Health Information.** **We** will not provide protected health information ("PHI"), as defined in HIPAA, to **Contract Holder**, and **Contract Holder** will not request PHI from **Us**, unless **Contract Holder** has either:

- provided the certification required by 45 C.F.R. § 164.504(f) and amended **Contract Holder's Plan** documents to incorporate the necessary changes required by such rule; or

- provided confirmation that the PHI will not be disclosed to the “plan sponsor”, as such term is defined in 45 C.F.R. § 164.501.

7.3 **Brokers and Consultants.** To the extent any broker or consultant employed by the **Contract Holder** receives PHI in the underwriting process or while advocating on behalf of a Member, **Contract Holder** understands and agrees that such broker or consultant is acting on behalf of **Contract Holder** and not **Us**. We are entitled to rely on **Contract Holder’s** representations that any such broker or consultant is authorized to act on **Contract Holder’s** behalf and entitled to have access to the PHI under the relevant circumstances.

SECTION 8. INDEPENDENT CONTRACTOR RELATIONSHIPS

8.1 **Relationship Between Us and Network Providers.** The relationship between **Us** and **Network Providers** is a contractual relationship among independent contractors. **Network Providers** are not agents or employees of **Us** nor are **We** an agent or employee of any **Network Provider**.

Network Providers are solely responsible for any health services rendered to their **Members**. **We** make no express or implied warranties or representations concerning the qualifications, continued participation, or quality of services of any **Physician, Hospital** or other **Network Provider**. A **Provider’s** participation may be terminated at any time without advance notice to the **Contract Holder** or **Members**, subject to applicable law. **Network Providers** provide health care diagnosis, treatment and services for **Members**. **We** administer and determine **Plan** benefits.

8.2 **Relationship Between the Parties.** The relationship between the **Parties** is a contractual relationship between independent contractors. Neither **Party** is an agent or employee of the other in performing its obligations pursuant to this **Group Agreement**.

SECTION 9. MISCELLANEOUS

9.1 **Delegation and Subcontracting.** **Contract Holder** acknowledges and agrees that **We** may enter into arrangements with third parties to delegate functions hereunder such as utilization management, quality assurance and provider credentialing, as **We** deem appropriate in **Our** sole discretion and as consistent with this **Group Agreement** and applicable laws and regulations. **Contract Holder** also acknowledges that **Our** arrangements with third party vendors (i.e. pharmacy, behavioral health) are subject to change in accordance with applicable laws and regulations.

9.2 **Accreditation and Qualification Status.** **We** may from time to time obtain voluntary accreditation or qualification status from a private accreditation organization or

government agency. **We** make no express or implied warranty about **Our** continued qualification or accreditation status.

9.3 **Prior Agreements; Severability.** As of the **Effective Date**, this **Group Agreement** replaces and supersedes all other prior agreements between the **Parties** as well as any other prior written or oral understandings, negotiations, discussions or arrangements between the **Parties** related to matters covered by this **Group Agreement** or the documents incorporated herein. If any provision of this **Group Agreement** is deemed to be invalid or illegal, that provision shall be fully severable and the remaining provisions of this **Group Agreement** shall continue in full force and effect.

9.4 **Amendments.** This **Group Agreement** may be amended as follows:

- This **Group Agreement** shall be deemed to be automatically amended to conform with all laws, rules and regulations promulgated at any time by any state or federal regulatory agency or authority having supervisory authority over **Us**;
- By written agreement between both **Parties**; or
- By **Us** upon 30 days' written notice to **Contract Holder** and written acceptance of **Contract Holder**.

The **Parties** agree that an amendment does not require the consent of any **Member** or other person. Except for automatic amendments to comply with law, all amendments to this **Group Policy** must be approved and executed by **Us**. No other individual has the authority to modify this **Group Policy**; waive any of its provisions, conditions, or restrictions; extend the time for making a payment; or bind **Us** by making any other commitment or representation or by giving or receiving any information.

9.5 **Clerical Errors.** Clerical errors or delays by **Us** in keeping or reporting data relative to coverage will not reduce or invalidate a **Member's** coverage. Upon discovery of an error or delay, an adjustment of **Premiums** shall be made. **We** may also modify or replace a **Group Policy**, **EOC** or other document issued in error.

9.6 **Claim Determinations and Administration of Covered Benefits.** **We** have complete authority to review all claims for **Covered Benefits** as defined in the **EOC** under this **Group Policy**. In exercising such responsibility, **We** shall have discretionary authority to determine whether and to what extent eligible individuals and beneficiaries are entitled to coverage and to construe any disputed or doubtful terms under this **Group Policy**, the **EOC** or any other document incorporated herein. **We** shall be deemed to have properly exercised such authority unless **We** abuse **Our** discretion by acting arbitrarily and capriciously. **Our** review of claims may include the use of commercial software (including Claim Check) and other tools to take into account factors such as an individual's claims history, a **Provider's** billing patterns, complexity of the service or treatment, amount of time and degree of skill needed and the manner of billing. The administration of **Covered Benefits** and of any appeals filed by **Members** related to the

processing of claims for **Covered Benefits** shall be conducted in accordance with the **EOC** and any applicable laws, rules and regulations.

- 9.7 **Misstatements.** If any fact as to the **Contract Holder** or a **Member** is found to have been misstated, an equitable adjustment of **Premiums** may be made. If the misstatement affects the existence or amount of coverage, the true facts will be used in determining whether coverage is or remains in force and its amount.
- 9.8 **Incontestability.** Except as to a fraudulent misstatement, or issues concerning **Premiums** due:
- No statement made by **Contract Holder** or any **Member** shall be the basis for voiding coverage or denying coverage or be used in defense of a claim unless it is in writing.
 - No statement made by **Contract Holder** shall be the basis for voiding this **Group Policy** after it has been in force for two years from its effective date.
- 9.9 **Assignability.** No rights or benefits under this **Group Policy** are assignable by **Contract Holder** to any other party unless approved by **Aetna**.
- 9.10 **Waiver.** **Our** failure to implement, or insist upon compliance with, any provision of this **Group Policy** or the terms of the **EOC** incorporated hereunder, at any given time or times, shall not constitute a waiver of **Our** right to implement or insist upon compliance with that provision at any other time or times. This includes, but is not limited to, the payment of **Premiums** or benefits. This applies whether or not the circumstances are the same.
- 9.11 **Notices.** Any notice required or permitted under this **Group Policy** shall be in writing and shall be deemed to have been given on the date when delivered in person; or, if delivered by first-class United States mail, on the date mailed, proper postage prepaid, and properly addressed to the address set forth in the Group Application or Cover Sheet, or to any more recent address of which the sending party has received written notice or, if delivered by facsimile or other electronic means, on the date sent by facsimile or other electronic means.
- 9.12 **Third Parties.** This **Group Policy** shall not confer any rights or obligations on third parties except as specifically provided herein.
- 9.13 **Non-Discrimination.** **Contract Holder** agrees to make no attempt, whether through differential contributions or otherwise, to encourage or discourage enrollment in the **Aetna Medicare PPO plan** of eligible individuals and eligible dependents based on health status or health risk.
- 9.14 **Applicable Law.** This **Group Policy** shall be governed and construed in accordance with applicable federal law and the applicable law, if any, of the state specified in the Cover Sheet or, if no state law is specified, **Our** domicile state.

- 9.15 **Inability to Arrange Services.** If due to circumstances not within **Our** reasonable control, including but not limited to major disaster, epidemic, complete or partial destruction of facilities, riot, civil insurrection, disability of a significant part of **Our Network Providers** or entities with whom **We** have contracted for services under this **Group Policy**, or similar exigent causes, the provision of medical or **Hospital** benefits or other services provided under this **Group Policy** is delayed or rendered impractical, **We** shall not have any liability or obligation on account of such delay or failure to provide services, except to refund the amount of the unearned prepaid **Premiums** held by **Us** on the date such event occurs. **We** are required only to make a good-faith effort to provide or arrange for the provision of services, taking into account the impact of the event.
- 9.16 **Use of the Aetna Name and all Symbols, Trademarks, and Service Marks.** **We** reserve the right to control the use of **Our** name and all symbols, trademarks, and service marks presently existing or subsequently established. **Contract Holder** agrees that it will not use such name, symbols, trademarks, or service marks in advertising or promotional materials or otherwise without **Our** prior written consent and will cease any and all usage immediately upon **Our** request or upon termination of this **Group Agreement**.
- 9.17 **Dispute Resolution.** The parties shall make a good faith effort to resolve all disputes under this Group Agreement by informal mediation. If the parties are unable to resolve the dispute in such manner, either party may seek resolution before a court located in Fairfield County, Connecticut having competent jurisdiction over the parties. This provision shall survive early termination of this Group Agreement.

Any Claim alleging wrongful acts or omissions of **Network** or **Out-of-Network Providers** shall not include **Aetna**. **Contract Holder** may not recover any damages arising out of or related to the failure to approve or provide any benefit or coverage beyond payment of or coverage for the benefit or coverage where (i) **We** have made available independent external review and (ii) **We** have followed the reviewer's decision. **Contract Holder** may not participate in a representative capacity or as a member of any class in any proceeding arising out of or related to the **Group Agreement**. This agreement to arbitrate shall be specifically enforced even if a party to the arbitration is also a party to another proceeding with a third party arising out of the same matter.

- 9.18 **Workers' Compensation.** In accordance with 42 C.F.R. Section 422.108, as may be amended from time to time, and other applicable Medicare laws, rules and regulations, **Contract Holder** is responsible for protecting **Our** interests in any Workers' Compensation claims or settlements with any eligible individual. **We** shall be reimbursed for all paid medical expenses which have occurred as a result of any work related injury that is compensable or settled in any manner.

Upon **Our** request, **Contract Holder** shall also submit a monthly report to **Us** listing all Workers' Compensation cases for **Members** who have outstanding Workers'

Compensation claims involving the **Contract Holder**. Such list will contain the name, social security number, date of loss and diagnosis of all applicable eligible individuals.

9.19 **Electronic Enrollment and Disenrollment.** To the extent that the **Contract Holder** has elected to electronically enroll eligible employees or retirees and their eligible dependents (“**Eligible Party**” or **Eligible Parties**”) in the **Aetna Medicare PPO plan** (“**Enroll**” or “**Enrollment**”) and to electronically **Disenroll Members** from the **Aetna Medicare PPO plan**, and **Aetna** has agreed to accept **Enrollment** and **Disenrollment** information from **Contract Holder** through a roster and electronically process such **Enrollments and Disenrollments**, **Contract Holder** must meet certain administrative and legal requirements set forth in this Section of this **Group Agreement**.

Aetna will electronically **Enroll Eligible Parties** who have elected the **Aetna Medicare PPO plan** coverage (“**Electronic Enrollment**”) and electronically **Disenroll Members** from the **Aetna Medicare PPO plan** (“**Electronic Disenrollment**”), provided **Contract Holder** meets the following requirements:

- Uses **Aetna** enrollment and **Disenrollment** forms approved by **CMS** for **Electronic Enrollments and Disenrollments** (“**Aetna Enrollment and Disenrollment Forms**”). As permitted under **Medicare** laws, rules and regulations and this **Group Agreement**, **Contract Holder** may permit **Eligible Parties** to electronically submit an election form to enroll in an **Aetna Medicare Plan** (“**Online Enrollment Form**”) to **Contract Holder** (“**Online Election Process**”).
- Confirms that all **Aetna Enrollment and Disenrollment Forms** and **Online Enrollment Forms** contain all data required by **CMS**, prior to requesting that **Aetna** process any **Electronic Enrollments** or **Disenrollments**.
- Maintains and provides access to all original **Aetna Enrollment and Disenrollment Forms** and **Online Enrollment Forms** completed by **Eligible Parties** and **Members** in accordance with the **Records Section** of this **Group Agreement** and all applicable **Medicare** laws, rules and regulations.
- Submits **Electronic Enrollment and Disenrollments** to **Aetna** timely and accurately in accordance with **Medicare** laws, rules and regulations, **Aetna** policies and procedures, and this **Group Agreement**.
- Submits to **Aetna** all data elements that are required by **CMS** and **Aetna** with respect to each **Electronic Enrollment** and **Disenrollment**, including, but not limited to, the following data elements:
 - Name
 - Permanent Address
 - Medicare Claim Number (HICN)
 - Gender
 - Date of Birth
 - **Plan Selection**

- Provider Selection (if applicable)
- Group Number
- Class Code
- **Plan ID**
- Effective Date

Contract Holder agrees to be bound by all laws, rules and regulations of, and all requirements applicable to, the arrangements described in this **Group Agreement**, including, without limitation, **CMS** requirements relating to **Electronic Enrollment and Disenrollment**. If **Aetna** determines, in its sole discretion and judgment, that the **Electronic Enrollment** or **Disenrollment** information provided by **Contract Holder** is incomplete, the **Electronic Enrollment** or **Disenrollment** will not be processed.

Electronic Enrollments deemed by **Aetna** to be complete will be processed by **Aetna** for the first of the month following receipt of the electronic file from **Contract Holder**. **Electronic Enrollments** may be processed 90 days retroactively from the current **CMS** effective cycle date when the following conditions apply:

- The requested effective date is indicated on the **Aetna Enrollment Form** or **Online Enrollment Form** completed by an **Eligible Party**, and on the electronic file transmitted by **Contract Holder** to **Aetna**; and
- The **Aetna Enrollment Form** is signed or the **Online Enrollment Form** is received by an **Eligible Party** prior to the requested effective date or prior to the date the **Aetna Enrollment Form** or **Online Enrollment Form** was completed by the **Eligible Party**.

Electronic Disenrollments deemed by **Aetna** to be complete will be processed by **Aetna** for the first of the month following receipt of the electronic file. **Aetna** will only process **Electronic Disenrollments** where an **Eligible Party** has voluntarily elected to **Disenroll** from an **Aetna Medicare PPO Plan** by submitting a fully completed **Aetna Disenrollment Form** to **Contract Holder**. **Aetna** will not process **Electronic Disenrollments** where **Contract Holder** has elected to **Disenroll** an **Eligible Party** from an **Aetna Medicare PPO Plan** due to **Eligible Party's** failure to pay **Plan** premium or any other basis.

Contract Holder will produce, at **Aetna's** request, the original copy of any **Aetna Enrollment** or **Disenrollment Form** or record of the **Online Enrollment Form** completed by an **Eligible Party**.

Contract Holder agrees that it will transmit to **Aetna** only that information which is reflected on an **Aetna Enrollment** or **Disenrollment Form** or **Online Enrollment Form** that is completed and signed, as required, by an **Eligible Party**.

Contract Holder agrees to obtain from **Eligible Parties** information, including authorizations, reasonably necessary for **Aetna** to perform its obligations under the arrangements set forth in this **Group Agreement**.

Contract Holder agrees to indemnify and hold **Aetna** harmless for any costs, expenses, claims or judgements, including attorney's fees, that **Aetna** incurs as a result of **Contract Holder's** failure to comply with the terms of this provision.

9.20 **Medicare Secondary Payer Requirements**

- **Generally.** **Aetna** and **Contract Holder** agree to comply with all Medicare Secondary Payer ("MSP") provisions set forth in federal laws, rules and regulations and CMS instructions that apply to **Contract Holder**, the **Plan** and **Aetna** ("MSP Requirements").
- **MSP Requirements Applicable to Medicare Beneficiaries Diagnosed with End Stage Renal Disease (ESRD).** **Aetna** and **Contract Holder** agree to comply with all MSP Requirements applicable to **Contract Holder's** active employees and retirees and their dependents who are Medicare beneficiaries diagnosed with ESRD ("ESRD Beneficiaries" or "ESRD Beneficiary"), including, without limitation, those MSP Requirements set forth in 42 U.S.C. § 1395y(b)(1)(C), 42 C.F.R. §§ 411.102(a), 411.161, and 411.162 and 42 C.F.R. §§ 422.106 and 422.108 ("ESRD MSP Requirements").
- **Contract Holder** acknowledges and agrees that if an ESRD Beneficiary is eligible for or entitled to Medicare based on ESRD, the MSP Requirements require the commercial group health plan offered by **Contract Holder** ("GHP") to be the primary payer for the first thirty (30) months of the ESRD Beneficiary's Medicare eligibility or entitlement ("30-month coordination period"), regardless of the number of employees employed by **Contract Holder** and regardless of whether the ESRD Beneficiary is a current employee or retiree.
- In furtherance of **Aetna's** and **Contract Holder's** compliance with ESRD MSP Requirements, **Contract Holder** agrees to confirm to **Aetna** whether ESRD Beneficiaries are in their 30-month coordination period, and not seek to enroll ESRD Beneficiaries in the **Plan** during their 30-month coordination period unless coverage under the GHP is maintained for such ESRD Beneficiaries for that period. If **Contract Holder** seeks to enroll an ESRD Beneficiary in the **Plan**, **Contract Holder** agrees to provide **Aetna**, upon request, with information or documentation to verify compliance with ESRD MSP Requirements, including any MSP reporting or other requirements established by **CMS**.

***05-11 Consent Calendar**

Acquisition of 115 Virginia Avenue from the State of Connecticut.

Duplicate Copy:

Original lost in transit.

Use as Original.

**Report
of
Committee
on
ECB & Environment**

Submitted: January 3, 2012

Adopted: _____

Fleeta C. Hudson

Attest: _____

City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport:

The Committee on ECD and Environment begs leave to report; and recommends for adoption the following resolution:

***05-11 Consent Calendar**

**RESOLUTION OF THE CITY COUNCIL
REGARDING
THE ACQUISITION OF 115 VIRGINIA AVENUE
FROM THE
STATE OF CONNECTICUT**

WHEREAS, the State of Connecticut, acting herein by Denise L. Napier, its Treasurer, and duly authorized pursuant to Special Act 16-11, Section 12 offers the parcel at 115 Virginia Avenue ("Property") to the City of Bridgeport; and

WHEREAS, the City of Bridgeport ("City") desires to acquire the Property known as 115 Virginia Avenue, City Block #2860, Lot#71 from the State of Connecticut ("State"); and

WHEREAS, the State is willing to transfer the Property to the City for "municipal purposes" at a cost of a five hundred dollar (\$500.00) conveyance fee to the CT Department of Administrative Services ("DAS"); and

WHEREAS, the City proposes to use the approx. 3.1 acre Property as a "pocket park" to enhance the passive and active recreational opportunities of the North Bridgeport neighborhood; and

WHEREAS, said transfer will occur via a Quit Claim Deed (see copy attached) that will deliver the Property in an "as is, where is" condition; and

WHEREAS, the Bridgeport Planning & Zoning Commission ("P&ZC") has rendered a "favorable" recommendation on September 26, 2011 under C.G.S. Sec. 8-24 on the acquisition of the Property; and

WHEREAS, the acquisition of 115 Virginia Avenue from the State of Connecticut is deemed to be in the best interest of the City of Bridgeport; Now, therefore be it

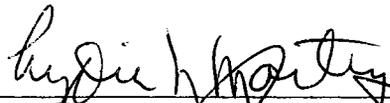


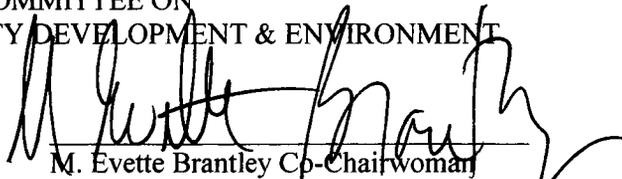
Report of Committee on ECD and Environment
***05-11 Consent Calendar**

-2-

RESOLVED, that the Bridgeport City Council hereby agrees to accept the Property under the conditions and terms of the Quit Claim Deed and hereby authorizes the Mayor of the City of Bridgeport to accept the Quit Claim Deed from the State of Connecticut and any and all other documentation necessary to complete the Property's transfer to the City.

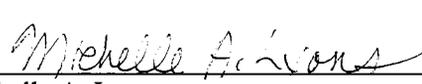
RESPECTFULLY SUBMITTED,
THE COMMITTEE ON
ECONOMIC AND COMMUNITY DEVELOPMENT & ENVIRONMENT

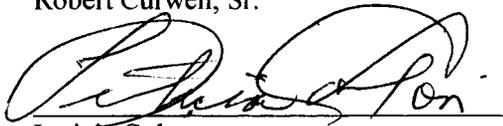

Lydia N. Martinez Co-Chairwoman


M. Evette Brantley Co-Chairwoman


Warren Blunt


Robert Curwen, Sr.


Michelle A. Lyons


Leticia Colon

Martin McCarthy

Council Date: January 3, 2012

QUIT CLAIM DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, THAT IT, THE STATE OF CONNECTICUT ("Grantor") acting herein by Denise L. Nappier, its Treasurer, duly authorized pursuant to Special Act 16-11, Section 12, for good and valuable consideration, received to its full satisfaction of the CITY OF BRIDGEPORT ("Grantee"), does by these presents, for itself and its successors and assigns, justly and absolutely grant, remise, release and forever QUIT CLAIM unto it the said Grantee, its successors and assigns forever, all such right and title as it, the said Grantor, has or ought to have in or to that certain piece or parcel of land being approximately 3.1 acres, with all of the improvements thereon and all appurtenances thereto, situated in the City of Bridgeport, County of Fairfield, and State of Connecticut, known as 115 Virginia Avenue, Lot 71 in Block 2860 of City of Bridgeport Tax Assessor's Map 68, as more particularly bounded and described in Schedule A attached hereto and made a part hereof (the "Property").

Grantee shall use the Property for municipal proposes. The Property shall revert to the State of Connecticut in the event (a) the Property is not used for the express purpose set forth herein; (b) ownership of the entire Property is not retained by Grantee; or (c) all or a portion of the Property is leased out.

TO HAVE AND TO HOLD, the Property unto it, the Grantee, its successors and assigns, to the only use and behoove of it, its successors and assigns forever, so that neither it the Grantor, nor any person or persons in its name and behalf, shall or will hereafter claim or demand any right or title to the Property or any part thereof, but they and any one of them shall by these present be excluded and forever barred.

IN WITNESS WHEREOF, the said Grantor, acting herein by its said Treasurer, duly authorized, has hereunto set its hand this ____ day of _____, 2011.

Signed in the presence of:

GRANTOR:

STATE OF CONNECTICUT

By: _____
Denise L. Nappier
Its Treasurer
Duly Authorized

STATE OF CONNECTICUT)
COUNTY OF HARTFORD)

ss. Hartford

On this ____ day of _____, 2011, before me, the undersigned officer, personally appeared, Denise L. Nappier, Treasurer, of the State of Connecticut, known to me to be the person described in the foregoing instrument, and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

Commissioner of the Superior Court/
Notary Public
My commission expires:

Approved:
State Properties Review Board

By: _____
Edwin S. Greenberg
Its Chairman

Date signed: _____

Approved:
Office of the Attorney General

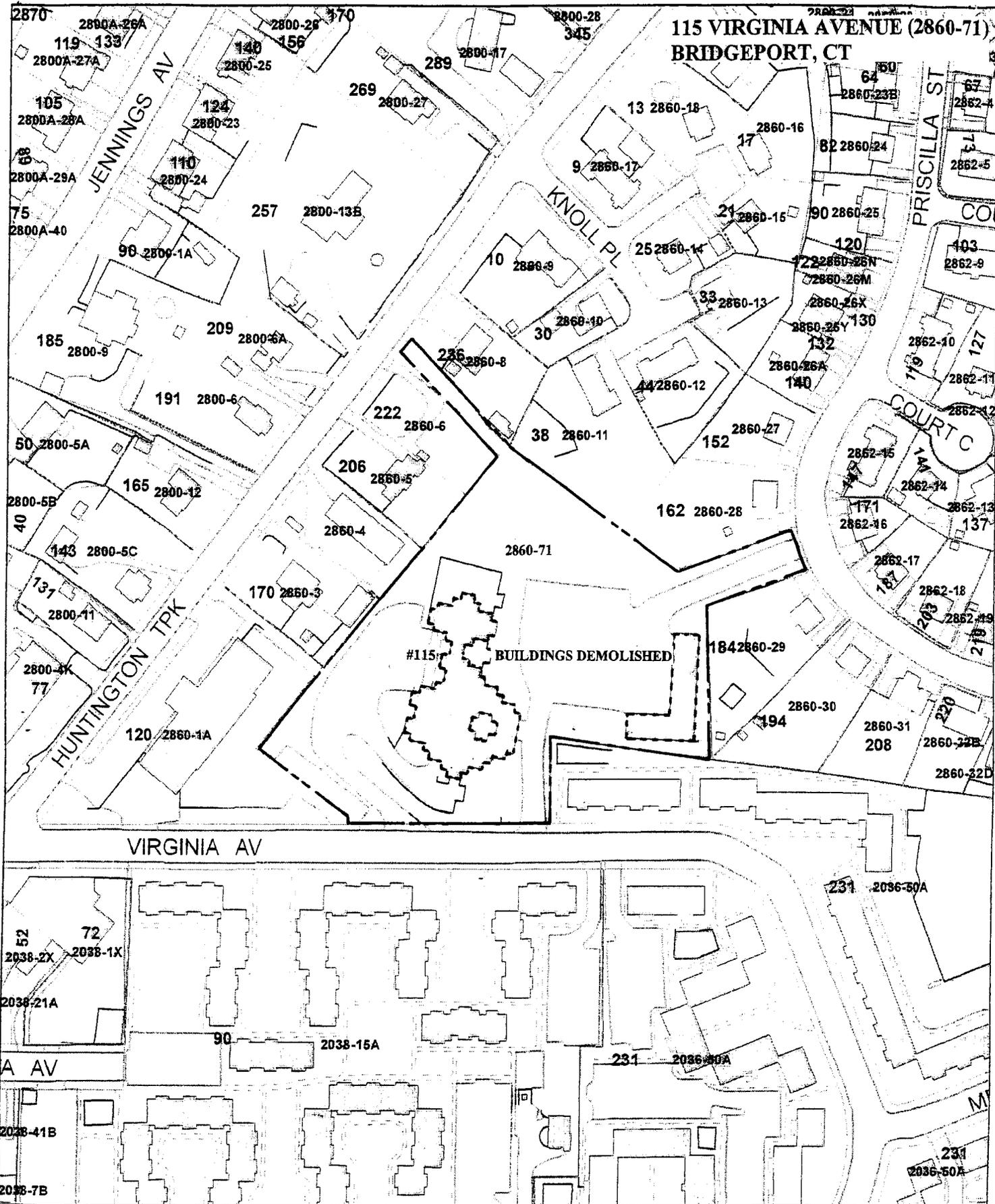
By: _____
Its Associate Attorney General

Date signed: _____

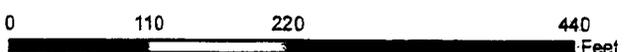
SCHEDULE A

BEGINNING at a point of intersection of the northern street line of Virginia Avenue and the property now or formerly owned by the Huntington Condominiums; thence northerly for a distance of 10.83 feet to a point; thence northwesterly along the property line of the Huntington Condominiums for a distance of 152.63 feet; thence northeasterly along the property line of the Huntington Condominiums for a distance of 90.00 feet; thence northeasterly along the property line now or formerly of Santiago Pineda for a distance of 101.00 feet; thence northeasterly along the property line now or formerly of 184 Huntington Turnpike, LLC for a distance of 75.00 feet; thence northeasterly along the property line now or formerly of Mary E. and Larene E. Lombardo for a distance of 75.00 feet (1st parcel); thence northeasterly along the property line now or formerly of Mary E. and Larene E. Lombardo for a distance of 75.00 feet (2nd parcel); thence northwesterly along the property line now or formerly of Mary E. and Larene E. Lombardo for a distance of 150.00 feet (2nd parcel); thence northeasterly along the eastern street line of Huntington Turnpike a distance of 20.00 feet; thence southeasterly along the southern property line of property now or formerly owned by Sirram M. Williams for a distance of 149.88 feet; thence southeasterly along the southern property line of property now or formerly owned by Migdalia Nieves for a distance of 167.73 feet; thence southeasterly along the southern property line of property now or formerly owned by Adam Motylewicz for a distance of 84.14 feet; thence northeasterly along the southern property line of property now or formerly owned by Adam Motylewicz for a distance of 129.90 feet; thence southeasterly along the western street line of Priscilla Street for a distance of 50.00 feet; thence southwestly along the northern property line of property now or formerly owned by Josepina and Bureta Ramesh for a distance of 122.00 feet; thence southerly along the western property line of property now or formerly owned by Josepina and Bureta Ramesh for a distance of 171.65 feet; thence westerly along the northern property line of property now or formerly owned by Nob Hill Condominium Association for a distance of 188.66 feet; thence southerly along the western property line of property now or formerly owned by Nob Hill Condominium Association for a distance of 122.49 feet; thence westerly along the northern street line of Virginia Avenue a distance of 189.01 feet back to the **BEGINNING**.

Said property constitutes #115 Virginia Avenue on City Block #2860, Lot #71 containing approx. 3.1 acres.



City of Bridgeport, Connecticut
Geographic Information System



The City of Bridgeport does not warrant the accuracy of the information contained herein nor is it responsible for any errors or omissions, accuracy, timeliness, or completeness of any of the information provided herein. The City of Bridgeport assumes no liability for its use, availability, or compatibility with users' software or computers. The City of Bridgeport explicitly disclaims any representations and warranties including, without limitation, the implied warranties of merchantability and fitness for a particular purpose. The City of Bridgeport also shall assume no liability for: 1. Any errors, omissions, or inaccuracies in the information provided regardless of how caused; or 2. Any decision made of action taken or not taken by the user in reliance upon any information of data furnished hereunder.

***18-11 Consent Calendar**

Amendment to the Municipal Code of Ordinances, Chapter 2.36 Officers' Salaries amend Section 2.36.010 - Officers' and Unaffiliated Employee Salaries.

**Report
of
Committee
on
Ordinances**

Submitted: January 3, 2012

Adopted: _____

Attest: _____

Fleeta C Hudson

City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport.

The Committee on **Ordinances** begs leave to report; and recommends for adoption the following resolution:

***18-11 CONSENT CALENDAR**

BE IT ORDAINED: By the City Council of the City of Bridgeport that the Bridgeport Municipal Code, Chapter 2.36 OFFICERS' SALARIES, Section 2.36.010 – Officers' and Unaffiliated Employee Salaries be and hereby is rescinded, and the following substituted in lieu thereof:

2.36.010 Officers' and unaffiliated employee salaries.

A. The following position salaries shall be established for all listed unaffiliated positions in this subsection. Position annual salaries and annual salaries for those acting in any of the positions set forth in this section shall be adjusted in accordance with the negotiated across-the-board increases granted to other city supervisors. The Labor Relations Office shall provide the City Clerk with updated ranges set forth in this section, effective as of each July 1st, to reflect such across-the-board increases. Salary ranges for any newly created positions shall be referred to the budget and appropriations committee for review. Salary ranges for acting or appointed positions shall fall within the ranges listed below. The full City Council shall have the power to approve or disapprove the salary ranges recommended by the Mayor and/or budget and appropriations committee. **The Mayor may authorize salary increases within the salary ranges established by ordinance.** ~~*The Mayor may authorize salary increases not more than fifteen percent (15%) outside of such salary ranges as the Mayor deems warranted based upon the particular duties, responsibilities, and requirements of the positions and/or the qualifications of the individuals serving in, or to serve in, the positions, provided appropriated funds are available, with prior City Council approval.~~ No individual, serving in a position listed below, may receive remuneration from any other city board, commission or authority of the City of Bridgeport, including the Board of Education, in the form of wages, fee or other emoluments, without express prior approval by the City Council. The exception to this section is for a legally awarded pension from the City of Bridgeport or any of the boards, commissions or authorities, including the Board of Education.

***Amended on the floor on January 3, 2012 by full City Council to remove the following:**

All language relative to the 15% has been stricken.
The Director of Auditing has been removed.
The Labor Relations Attorney has been removed.
The Dentist has been removed.



Report of Committee on Ordinances
***18-11 CONSENT CALENDAR**

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Grade	Job Title/Class	Salary Range	
<u>CHIEF ELECTED OFFICIAL</u>			
9	Mayor		\$129,862
<u>CHIEF APPOINTED OFFICIALS</u>			
9a	Police Chief	\$117,006	\$128,543
9a	Fire Chief	\$117,006	\$128,543
9a	Director of Mayoral Initiatives / Chief of Staff	\$117,006	\$128,543
9a	Chief Administrative Officer	\$117,006	\$128,543
9b	Assistant CAO	\$115,000	\$126,000
<u>EXECUTIVE APPOINTED OFFICIALS</u>			
8	Finance Director	\$111,894	\$123,082
8	OPM Director	\$111,894	\$123,082
8	OPED Director	\$111,894	\$123,082
8	Public Facilities Director	\$111,894	\$123,082
8	Health Director	\$111,894	\$123,082
8	Labor Relations Director	\$111,894	\$123,082
8	Director of Health & Social Service	\$111,894	\$123,082
8	I.T.S. Director	\$111,894	\$123,082
8	Parks and Recreation Director	\$111,894	\$123,082
8	City Attorney	\$111,894	\$123,082
8a	City Attorney(pt)	\$74,130	\$81,122
8b	Assistant Chief of Police	\$111,000	\$121,000
8b	Deputy Director of Public Facilities	\$111,000	\$121,000
<u>MANAGEMENT APPOINTED OFFICIALS</u>			
7a	City Librarian	\$99,127	\$112,593
7a	Director of Public Safety	\$99,127	\$112,593
7a	Director of Construction Services	\$99,127	\$112,593
7a	Tax Assessor	\$99,127	\$112,593
7a	Deputy Director Finance/Comptroller	\$99,127	\$112,593
7a	Director of Public Safety Communications	\$99,127	\$112,593
7a	Deputy Director OPED	\$99,127	\$112,593
7a	Tax Collector	\$99,127	\$112,593
7a	Deputy Director of Labor Relations	\$99,127	\$112,593
*7a	Director of Auditing	\$99,127	\$112,593



Report of Committee on Ordinances
***18-11 CONSENT CALENDAR**

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MAJOR DEPUTY CLASS

6	Director of Human Services	\$88,816	\$97,698
6	Deputy CAO	\$88,816	\$97,698
6	Deputy Director Finance / Management	\$88,816	\$97,698
6	Director of Social Services	\$88,816	\$97,698
6	Deputy City Attorney (PT)	\$88,816	\$97,698
6	Deputy Tax Assessor	\$88,816	\$97,698
6	Deputy Director Public Safety Communications	\$88,816	\$97,698
6	Communications Director	\$88,816	\$97,698
*6	Labor Relations Attorney	\$88,816	\$97,698
6	Director, Office of Education and Youth	\$88,816	\$97,698
6	Deputy Chief of Staff	\$88,816	\$97,698

DEPARTMENT CLASS

5	Sr. Labor Relations Officer	\$76,927	\$89,514
5	Mayor Executive Office Manager	\$76,927	\$89,514
5	Director Organizational Development	\$76,927	\$89,514
5	City Treasurer	\$76,927	\$89,514
5	Director L.U.C.R.	\$76,927	\$89,514
5	Utility Manager	\$76,927	\$89,514
5	Benefits Manager	\$76,927	\$89,514
5	Project Manager	\$76,927	\$89,514
5	Human Resource Manager	\$76,927	\$89,514
5	Director of Grants	\$76,927	\$89,514
5	Clinical Physician	\$76,927	\$89,514
5a	Chief Accountant	\$71,382	\$78,931

PROGRAM CLASS

4	Asst. Internal Audit	\$65,737	\$72,809
4	Affirmative Action Director	\$65,737	\$72,809
4	Harbormaster	\$65,737	\$72,809
4	Registrar of Voters	\$65,737	\$72,809
4a	OPM Analyst	\$59,144	\$71,307
4a	Mayor's Community Liaison	\$59,144	\$71,307
4a	Mayor's Aide	\$59,144	\$71,307
4a	Labor Management Coordinator	\$59,144	\$71,307
4a	Special Project Coordinator	\$59,144	\$71,307
4a	Labor Relations Officer	\$59,144	\$71,307
4a	Data Base Administrator	\$59,144	\$71,307
4a	Medical Health Director	\$59,144	\$71,307



Report of Committee on Ordinances
***18-11 CONSENT CALENDAR**

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TECHNICAL CLASS

3	Sealer Weights and Measurers	\$59,144	\$67,135
3	Executive Secretary	\$59,144	\$67,135
3a	Assistant City Attorney's (pt)	\$47,556	\$57,600
3a	Press Secretary	\$47,556	\$57,600
3a	Assistant Special Project Manager	\$47,556	\$57,600
*3a	Dentist	\$47,556	\$57,600
3a	Assistant to Police Chief	\$47,556	\$57,600

SUPPORT SERVICES CLASS

2	Administrative Assistant	\$41,960	\$51,751
2	Financial Coordinator	\$41,960	\$51,751
2	Deputy Registrar of Voters	\$41,960	\$51,751
2	Legislative Liaison	\$41,960	\$51,751
2	Secretary (Mayor)	\$41,960	\$51,751
2	Urban Affairs Officer	\$41,960	\$51,751
2a	Trainer	\$30,771	\$39,552
2a	Clerical Assistant	\$30,771	\$39,552
2a	Secretary	\$30,771	\$39,552
2a	Constituent Service Rep.	\$30,771	\$39,552
2a	Legislative Aide	\$30,771	\$39,552
2b	Data Coordinator	\$36,844	\$40,939

SPECIAL CLASS

1	City Clerk		\$32,960
1	Town Clerk		\$32,960
1	Public Facilities Inspector		\$39,602
1	Annex Courier (P/T)		\$19,776
1	Receptionist (P/T)		\$12,313



Report of Committee on Ordinances
***18-11 CONSENT CALENDAR**

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B. Take Home Vehicles. The City of Bridgeport avails to certain individuals in the class of officers and unaffiliated employees the use of a take home vehicle. The improper use of said vehicle can place extreme financial burdens on the City of Bridgeport. In order to protect itself from unnecessary hardship the City of Bridgeport requires the following for any individual partaking in this benefit:

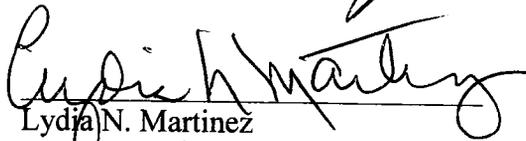
1. Mandatory **random** quarterly testing for drugs and alcohol.
2. Mandatory on scene reporting to the local law enforcement authorities of any vehicle accident.
3. Mandatory testing for drugs and alcohol within twenty-four (24) hours of any motor vehicle accident; mandatory testing within two hours of any motor vehicle accident that involves injuries to an individual.
4. Mandatory suspension of the use of a vehicle for failure to abide by the above.
5. The City reserves the right to establish a charge for excess mileage at a rate and a mileage limit to be determined.

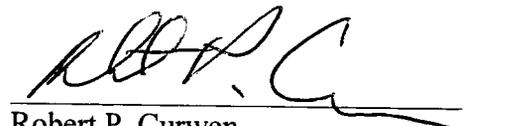
Respectfully submitted,

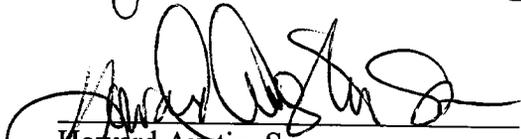
THE COMMITTEE ON ORDINANCES

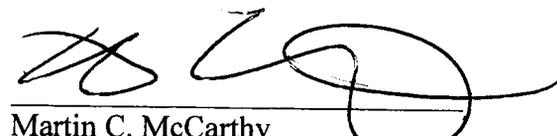

Richard M. Paoletto, Jr., Co-Chairman

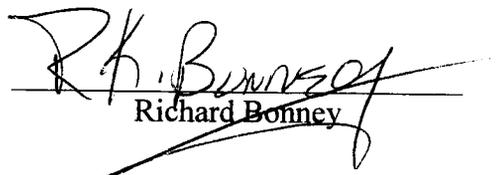

Warren Blunt, Co-Chairman


Lydia N. Martinez


Robert P. Curwen


Howard Austin, Sr.


Martin C. McCarthy


Richard Bonney

***19-11 CONSENT CALENDAR**

Amendment to the Municipal Code of Ordinances, Chapter 2.38, Code of Ethics.

**Report
of
Committee
on
Ordinances**

Submitted: January 3, 2012

Adopted: _____

Attest: _____

Fleeta G. Hudson
City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport.

The Committee on **Ordinances** begs leave to report; and recommends for adoption the following resolution:

*19-11 CONSENT CALENDAR

BE IT ORDAINED: By the City Council of the City of Bridgeport that the Bridgeport Municipal Code, Chapter 2.38 Code of Ethics, be and hereby is rescinded, and the following substituted in lieu thereof:

Chapter 2.38 CODE OF ETHICS

2.38.010 Purpose of chapter.

2.38.020 Definitions.

2.38.030 Standards of conduct.

2.38.040 Commission on ethics.

2.38.010 Purpose of chapter.

A. The code of ethics and commission on ethics ordinance codified in this chapter is adopted for the city and is established with the purpose of setting forth ethical standards of conduct and prohibited activities which will be consistent with the best interests of the city.

B. This ordinance is intended to prevent City officials and employees from using their public position or authority for personal, financial benefit.

C [B]. The proper operation of democratic government requires that public officials and employees [and other persons involved in the governmental process, and in the services rendered by government,] be independent, impartial, and responsible to the people **in accordance with their oath of office.** [They shall demonstrate by their example the highest standards of ethical conduct, to the end that the public may justifiably have trust and confidence in the integrity of government. As agents of public purpose, public interest must be the foremost concern.] They shall hold their offices [or positions] for the benefit of the public and shall faithfully discharge their duties, placing the good of the city above any personal or partisan consideration. Public office must not be used for personal gain.



Report of Committee on Ordinances
*19-11 CONSENT CALENDAR

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[C. Officials and employees have a responsibility by virtue of the trust vested in them by their employment or oath of office to discharge their duties conscientiously, impartially and to the best of their ability. Officials and employees will conduct themselves with propriety, discharge their duties fairly and make continuing efforts towards attaining and maintaining high standards of ethical conduct.]

[D. Officials and employees recognize that the responsibility for ethical conduct ultimately rests with each individual. In this regard, individuals must be guided by standards of honesty, decency and morality, all consistent with the best interests of the city, and should avoid any conduct having the appearance of violating these standards.]

D. It is advisable that all city officials and employees should avoid any conduct having the appearance of violating any of the standards set forth in 2.38.030 of this ordinance.

(Ord. dated 6/3/91 (part))

2.38.020 Definitions.

For the purposes of this chapter:

“Benefit”: advantage; profit; gain; interest; the receiving of this benefit as the exchange for a promise of some performance or forbearance, which the promisee was not, previously entitled to receive.

“City personnel” means Officials and employees of the City of Bridgeport.

“Commission” means the city's commission on ethics.

“Employee” means any employee of the city including any teacher, whether or not in the classified service, except: elected officials; board, agency and commission members; department heads; members of the city's unclassified service; and persons appointed pursuant to Section 24(b) or 27.1 of the City Charter.

[“Executive director” means the city’s executive director, commission on ethics, as further defined in Section 2.38.040, subsection C.]

“Financial interest” means any interest, other than an interest of a de minimis nature, that is not distinct from that of the general public, which shall yield a monetary or other material benefit to the official or employee or to any person employing or retaining the services of the official or employee.



Report of Committee on Ordinances
*19-11 CONSENT CALENDAR

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"Gift" means a payment, a subscription, advance, forbearance, rendering of services, deposit of money or anything of value unless consideration of equal or greater value is received. A gift shall not include a political contribution otherwise reported as required by law; services provided without compensation by persons volunteering their time; a commercially reasonable loan made on terms not more favorable than loans made in the ordinary course of business; a gift received from an individual's spouse or parent, brother or sister of such spouse, or such individual's child or spouse of such child; or food or beverage or both, consumed on a single occasion, the cost of which is less than fifty dollars (\$50.00) per person.

"Official" means any elected officer in the executive or legislative branch of city government; any member of any city agency, board or commission; any department head; and any person appointed to any office in the city government by the mayor, by any other elected official or officer or by any agency, board or commission with or without the consent of the common council, and who is not categorized an "employee" as that term is defined in this section.

"Person" means business, individual, corporation, union association, firm, partnership, committee, club or other organization or group of persons.

"Personal interest" means any interest arising from blood or marriage relationships or marriage-type relationships whether or not any financial interest is involved.

"Substantial conflict" means deriving a substantial benefit or avoiding a substantial detriment as a result of one's official or employment activity. **For purposes herein, substantial means having real worth or importance; actually existing; not speculative.**

(Ord. dated 8/4/03: Ord. dated 6/3/91 § 1: prior code § 2-348)

2.38.030 Standards of conduct.

A. General Prohibition. No official or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his/her duties or employment in the public interest and of his/her responsibilities as prescribed in the provisions of this chapter.

B. Specific Conflicts. No official or employee shall:

1. Solicit or accept any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence him/her in the performance of his/her duties or employment in the public interest. Nothing herein shall preclude the solicitation or acceptance of lawful contributions for election campaigns;



Report of Committee on Ordinances
*19-11 CONSENT CALENDAR

-4-

2. Knowingly have or acquire any financial interest or any personal interest, direct or indirect, in any contract or purchase order for any real estate, supplies, materials, equipment or contractual services furnished to, or used by, the city in connection with any project, matter or thing which comes within his/her jurisdiction or the jurisdiction of the board, commission or committee of which he/she is a member or the department or agency by which he/she is employed;

3. Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of his/her duties or employment in the public interest or which may impair his/her independence of judgment in the performance of such duties or employment;

4. Without proper legal authorization, disclose confidential information concerning the property, government or affairs of the city, nor shall he/she use such information to advance his/her financial or personal interest;

5. Vote upon or otherwise participate in any transaction, contract or sale with the city or in the sale of real estate, materials, supplies or services to the city or from the city, if he/she has a personal or financial interest therein;

6. Use or permit the use of city-owned vehicles, equipment, materials or property for personal convenience or profit, except as authorized by the proper authority.

7. Provide false information on an official form provided to the City;

8. Use their official position to retaliate against any person who files an ethics complaint.

C. Contracting. No official or employee or any business with which he/she is associated shall enter into any contract (other than a contract of employment not otherwise prohibited by, or in conflict with, the provisions of this chapter) or engage in any business transaction or activity with the city, or have a personal or financial interest, direct or indirect, in such transaction, unless the contract has been awarded or the transaction conducted through an open and public process, including prior public offer and public disclosure of all proposals considered and the contract awarded.

D. Fair and Equal Treatment. No official or employee shall use his/her position to secure or to grant special consideration, treatment, advantage, privilege or exemption to himself/herself or any person beyond that which is available to every other person; except that nothing herein is intended to, or shall void, affect, restrict or limit in any way the power or authority of any officer to exercise that discretionary authority granted him/her pursuant to his/her position.



Report of Committee on Ordinances
*19-11 CONSENT CALENDAR

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E. Penalties. The failure to comply with, or any violations of, the standards of conduct established by this chapter may upon determination by the proper authority, following proper proceedings and hearings, constitute a cause for disciplinary action or other appropriate penalties. Nothing in this chapter is intended to, or shall deprive any official or employee of all those rights and remedies granted him/her by any relevant and applicable contract, collective bargaining agreement, ordinance, Charter provision, statute, constitution or other legal authority. Any and all contracts, agreements, undertakings, commitments, purchases and obligations made, entered into, procured or agreed to in violation of this chapter shall be null and void.

(Ord. dated 6/3/91: § 2: prior code § 2-349)

2.38.040 Commission on ethics.

A. Establishment and Membership [- Alternates] There is established a commission on ethics, consisting of seven members, all of whom shall be resident electors of the city, to be nominated by the mayor and confirmed by the city council. Of the seven members, no more than four shall be of the same political party. No member of the commission shall: (1) hold or campaign for any public office or any office in any political party or political committee or be a member of any organization or association organized primarily for the purpose of influencing legislation or decisions of public agencies and (2) have held or have been a candidate for public office or office in any political party or political committee or have been a member of any organization or association organized primarily for the purpose of influencing legislation or decisions of public agencies for a two-year period prior to appointment.

[B. Terms. Of five members initially appointed, three shall be appointed for a term of two years and two for a term of one year. All subsequent appointments to the commission shall be for a term of two years. Any member having served for three years in succession shall be ineligible for reappointment to the commission. The initial terms of commission members shall begin December 1, 1987. Two alternates, both of whom shall be resident electors of the city, shall be nominated by the mayor and confirmed by the common council. Both may not be members of the same political party. Alternate members shall be subject to the restrictions on members as set out in subsection A of this section. Alternates shall serve for a term of one year. They shall be selected by the chairperson, or if the chairperson is not available, by the presiding officer, to replace absent members of the commission. The chairperson shall select by lot the alternate who shall first serve in lieu of an absent member, and thereafter shall select the alternate who has not last served. Notwithstanding the above, if any alternate is not available to serve, the chairperson shall select the other alternate. An alternate who serves on a probable cause hearing or on a full hearing on a particular matter that is continued shall serve on the matter until the hearing is concluded and a decision is reached.]



Report of Committee on Ordinances
*19-11 CONSENT CALENDAR

-6-

B. Terms. All appointments will be made for terms of two years to expire on December 31. Initial appointments will consist of four appointees whose terms will expire on December 31, 2014 and three whose terms will expire on December 31, 2015.

[C. Commission Staff. The commission shall be assisted and supported in the conduct of its duties and responsibilities by its executive director. The executive director shall be in the non-competitive division of the classified civil service and upon nomination by the mayor will be appointed to a five year term of office by the city council. The executive director may be reappointed to successor terms of office. The executive director shall investigate unethical or improper conduct and make referrals to proper authorities, provide administrative, investigative, and drafting assistance to the commission on ethics and perform such other duties, tasks, and assignments as are set forth in the civil service job description for the position or related work on behalf of the commission. The city attorney shall provide the commission and the executive director with whatever legal assistance is reasonable necessary for the proper carrying out of their functions. The executive director shall be provided with reasonable and necessary secretarial/administrative support services, subject to city council funding authorization.]

C. Commission Staff. The commission shall be assisted and supported in the conduct of its duties and responsibilities by the City Attorney's Office.

The city attorney shall provide the commission with whatever legal assistance is reasonably necessary for the proper carrying out of their functions. The City Attorney's office shall be provided with reasonable and necessary secretarial/administrative support services, subject to city council funding authorization.

D. Powers and Duties. Upon the complaint of any person on a form prescribed by the commission, signed under penalty of false statement, or upon the affirmative vote of three members of the commission **regarding an allegation known to a member of the commission,** the commission shall investigate any alleged violation of this chapter. [to determine whether or not there is probable cause to believe that a violation of this chapter has occurred.]

The filing of any complaint and any investigation to determine whether or not there is probable cause to believe a violation of this chapter has occurred shall be confidential and no person shall disclose his/her knowledge of such investigation to a third party.

The commission, not later than fifteen (15) days after receipt of such complaint, shall notify, by registered or certified mail or any manner by which service of process may be made, any respondent official against whom such complaint is filed. A copy of such complaint shall accompany such notice. The commission shall also notify the complainant of its receipt of such complaint not later than fifteen (15) days thereafter.



Report of Committee on Ordinances
*19-11 CONSENT CALENDAR

-7-

The commission shall determine if the allegations in the complaint fall within the jurisdiction of the Ethics Commission. If they do the commission shall hold a probable cause investigation and hearing as necessary.

[Any investigation to determine whether or not there is probable cause to believe a violation of this chapter has occurred shall be confidential and no person shall disclose his knowledge of such investigation to a third party unless the respondent requests that such investigation and disclosure be open. The respondent shall have the right to appear and be heard and to offer any information which may tend to clear him of probable cause to believe he has violated any provision of this chapter. The respondent shall also have the right to be represented by legal counsel and to examine and cross-examine witnesses.]

The commission shall make no finding that there is probable cause to believe the respondent is in violation of any provision of this chapter except upon concurring vote of four of its members.

The commission shall, not later than ten days after the determining whether probable cause exists, notify the complainant and the respondent that the investigation has been terminated and the results thereof, thereafter make a decision and forthwith transmit the same to the complainant and the respondent.

[The record of such investigation shall remain confidential except upon the request of the respondent and except that some or all of the record may be used in subsequent proceedings.] If a preliminary investigation indicates that probable cause exists to believe that a violation of this chapter has occurred, the commission shall initiate hearings within thirty (30) days to determine whether there has been a violation of this chapter.

No hearing shall be conducted with less than four members in attendance. At the hearing, the accused shall be afforded the protection of due process consistent with that established for state agencies under the Connecticut Uniform Administrative Procedure Act, including, but not limited to, the right to be represented by legal counsel, the right to call and examine witnesses, the right to introduce exhibits and the right to cross-examine opposing witnesses and the complainant.

The commission may administer oaths and issue subpoenas **executed and issued by the Office of the City Attorney** to compel the attendance of witnesses and the production of books, documents, records and papers and may utilize the services of the city police department who shall provide such services upon request.

The complainant's attendance at such hearing is at the discretion of the commission; provided, however, that such attendance shall be required when so requested by any person accused under the provision of this chapter.



Report of Committee on Ordinances
*19-11 CONSENT CALENDAR

-8-

The commission shall make and keep a record of all proceedings pursuant to this chapter. No complaint may be made under this section except within two years next after the violation alleged in the complaint has been committed.

The commission shall find no official or employee in violation of any provision of this chapter except upon the concurring vote of four of its members.

The commission shall not later than fifteen (15) days after the close of the hearing file its findings as to a violation of this chapter, together with a memorandum of its reasons therefore with the city clerk, and publish a notice thereof in a newspaper circulated in the city.

The commission shall have no authority to discipline any official or employee and nothing in this chapter is intended to, and should not be construed so as to deprive any official or employee of any right, privilege or remedy granted him/her by any relevant and applicable contract, collective bargaining agreement, ordinance, Charter provision, statute, constitution or other legal authority. The commission may recommend to the appropriate appointing authority disciplinary action or sanctions to be imposed as against officials, which recommendations may include, but are not limited to, reprimand, censure and removal from office.

E. Advisory Opinions. Any official or employee who questions the applicability of this chapter to a pending or potential act, vote, bid, discussion, receipt of anything of value or the like, may request an opinion from the commission. If he or she so requests, the person making the request shall be given a prompt opportunity to explain his or her position and the interpretation of the code of ethics before the commission. Opinions of the commission shall be advisory, and such requests shall be confidential unless the person making the request authorizes the commission in writing to disclose the same.

Any advisory opinion concerning the official or employee who requested the opinion, and who acted in reliance thereon in good faith, shall be binding on the commission.

F. Review Disclosure Forms for People Nominated for Appointment to Agencies, Boards, and Commissions: The Ethics Commission shall review nominee disclosure forms for Boards and Commissions in accordance with Ordinance Section 2.56.050 paragraph B.

G. Regulations. The commission shall develop written rules of procedure and forms necessary to carry out the intent of this chapter which shall be approved by the common council. The rules and any amendments thereto shall be filed in the office of the city clerk and available for public inspection. The commission shall report annually to the mayor, **in writing**, summarizing the activities of the commission. The commission may make recommendations to the common council with respect to amendments of this chapter.



Report of Committee on Ordinances
*19-11 CONSENT CALENDAR

-9-

H. Quorum and Chairperson. The commission shall elect a chairperson who shall preside at meetings of the commission and a vice-chairperson. Four members of the commission shall constitute a quorum. Except as provided in subsection D of this section, a majority vote of the quorum shall be required for action of the commission. The chairperson or any four members may call a meeting provided that [at least three days'] advance notice of the meeting is given in accordance with the Connecticut Freedom of Information Act. Members of the commission shall not be compensated, but shall receive reimbursement for their actual reasonable and necessary expenses.

I. Confidentiality. The powers and duties of the commission, the rules of procedure of the commission and the term "confidential" as set forth in this chapter are expressly subject to the provisions of the Connecticut Freedom of Information Act.

(Ord. dated 8/4/03; Ord. dated 6/3/91 § 3; Ord. dated 9/6/88; prior code § 2-350)

J. Precedence of Criminal Investigation. If a investigation is commenced and/or charges are brought by the Office of the State's attorney or by the Office of the United States Attorney against a person, or persons or entity under investigation by the Commission for violation of the ethics code, the commission's investigation shall cease until such time as the criminal investigation is concluded without criminal charges being filed or charges have been fully adjudicated by a Court of competent jurisdiction.

K. Training of Personnel. The Commission working with the Office of the City Attorney and the appropriate city department shall prepare training materials for the training of City personnel. City employees and officials shall be trained on an annual basis on the requirements of the code of ethics as set forth in this chapter. The training material may include a plain language summary (citizen's guide) of the code of ethics to assist the city in its training responsibilities. The training material shall be reviewed by the Office of the City Attorney before it is issued in final form and forwarded to the office of the Mayor, on an annual basis, a minimum of sixty (60) days before the annual training shall commence based on a schedule authorized by the Office of the Mayor. All new employees, persons appointed to Boards and Commissions, and elected to City positions shall receive a copy of the training material.

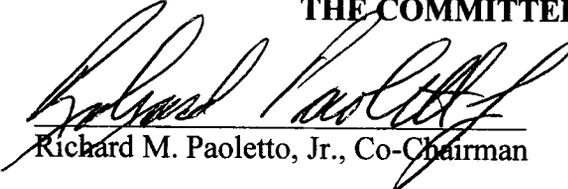
L. The Ethics Commission is responsible for those duties defined for it in Ordinance 2.39 Code of Ethics for Lobbyists. In cases of conflict the Ethics Ordinance 2.38 takes precedence over 2.39.

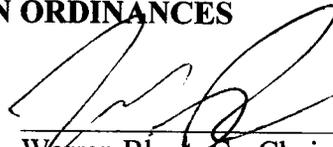


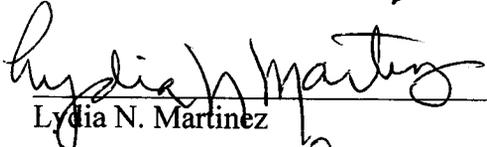
Report of Committee on Ordinances
*19-11 CONSENT CALENDAR

-10-

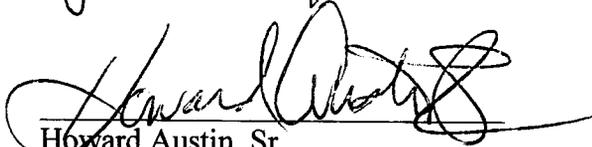
Respectfully submitted,
THE COMMITTEE ON ORDINANCES

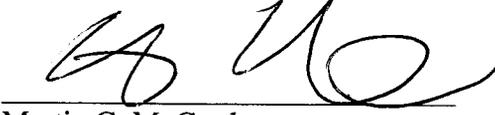

Richard M. Paoletto, Jr., Co-Chairman


Warren Blunt, Co-Chairman


Lydia N. Martinez


Robert P. Curwen, Sr.


Howard Austin, Sr.


Martin C. McCarthy


Richard Bonney

***30-11 CONSENT CALENDAR**

Resolution Concerning the Creation of a Charter Revision Commission for the City of Bridgeport.

**Report
of
Committee
on
Ordinances**

Submitted: January 3, 2012

Adopted: _____

Fleeta S. Hudson

Attest: _____

City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport.

The Committee on **Ordinances** begs leave to report; and recommends for adoption the following resolution:

***30-11 CONSENT CALENDAR**

RESOLUTION

Concerning the Creation of a Charter Revision Commission for the City of Bridgeport

Whereas, on December 19, 2011 Bridgeport Mayor Bill Finch announced he is requesting the City Council initiate the process of overhauling the Bridgeport City Charter; and

Whereas, the Bridgeport Charter received its last comprehensive update nearly two decades ago, effective January 1, 1993; and

Whereas, Mayor Finch is recommending the creation of a Charter Revision Commission to the City Council; and

Whereas, Mayor Finch noted that we need to modernize, simplify and make our Charter more constitutional in style in order to address the challenges confronting a 21st century municipality; and

Whereas, one of Mayor Finch's primary recommendation to the Commission will be to amend the Charter to create more public accountability for education reform in order to ensure that our students receive the best education possible; and

Whereas, pursuant to C.G.S. § 7-187 et. seq. (in particular Sec. 7-188(b)) the City Council of the City of Bridgeport is the appointing authority for a Charter Revision Commission, acting by a two-thirds vote of its entire membership; and Now, Therefore be it

RESOLVED, pursuant to C.G.S. § 7-187 et. seq. (in particular Sec. 7-188(b)) to initiate amendment of the Bridgeport City Charter; and be it further

RESOLVED, pursuant to C.G.S. § 7-187 et. seq. (in particular Sec. 7-188(b)) that a Charter Revision Commission be, and hereby is, formed, established, created, and/or appointed to initiate a comprehensive amendment of the Bridgeport City Charter; and be it further



Report of Committee on Ordinances
***30-11 CONSENT CALENDAR**

-2-

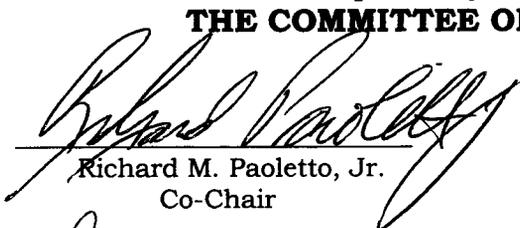
RESOLVED, pursuant to C.G.S. § 7-187 et. seq. (in particular Sec. 7-188(b)) that a Charter Revision Commission be, and hereby is, formed, established, created, and/or appointed to initiate a comprehensive amendment of the Bridgeport City Charter, and to modernize and simplify the Charter, and to make it more constitutional in style in order to address the challenges confronting a 21st century municipality; and be it further

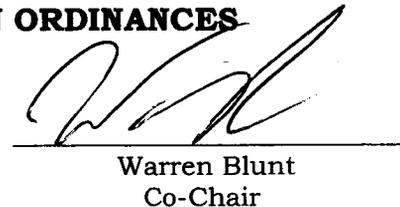
RESOLVED, pursuant to C.G.S. § 7-187 et. seq. (in particular Sec. 7-188(b)) that a Charter Revision Commission be, and hereby is, formed, established, created, and or appointed to amend the Charter to create more public accountability for education reform in order to ensure that our students receive the best education possible; and be it further

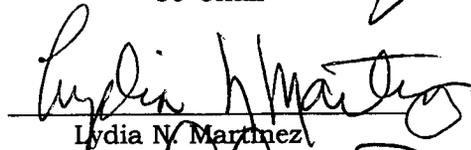
RESOLVED, pursuant to C.G.S. § 7-187 et. seq. (in particular Sec. 7-188(b)) that a Charter Revision Commission be, and hereby is, formed, established, created, and/or appointed to amend the Charter in such other manner and respects as deemed necessary and appropriate; and be it further

RESOLVED, that the members of the Commission shall be appointed within thirty (30) days of this action.

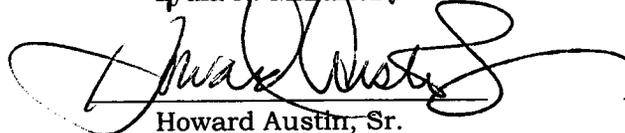
Respectfully submitted,
THE COMMITTEE ON ORDINANCES


Richard M. Paoletto, Jr.
Co-Chair

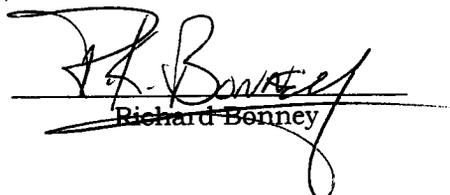

Warren Blunt
Co-Chair


Lydia N. Martinez


Robert P. Curwen, Sr.


Howard Austin, Sr.


Martin C. McCarthy


Richard Bonney

***10-11 Consent Calendar**

Grant Submission: re: State of Connecticut
Department of Public Health for 2011-2014 Public
Health Emergency Preparedness Grant.

**Report
of
Committee
on
CD & Environment**

Submitted: January 3, 2012

Adopted: _____

Fleeta C. Hudson

Attest: _____

City Clerk

Approved: _____

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport.

The Committee on **ECD and Environment** begs leave to report; and recommends for adoption the following resolution:

***10-11 Consent Calendar**

WHEREAS, the State of Connecticut Department of Public Health, through the Public Health Preparedness Grant Program is authorized to extend financial assistance to municipalities in the form of grants; and

WHEREAS, funds under this grant will be used to coordinate public health preparedness; and

WHEREAS, it is desirable and in the public interest that the City of Bridgeport, Health and Social Services Department, submit an application to the State of Connecticut Department of Public Health in an amount not to exceed \$60,677 per year for three years for the purpose of coordinating a public health preparedness plan; Now, therefore be it

RESOLVED BY THE City Council:

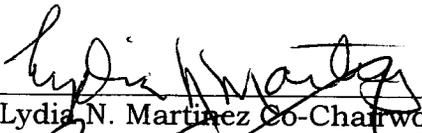
1. That it is cognizant of the City's grant application and contract to the State of Connecticut Department of Public Health for funds to coordinate a Public Health Preparedness Plan.
2. That it hereby authorizes, directs and empowers the mayor or his designee to execute and file such application with the State of Connecticut Department of Public Health, to provide such additional information and to execute such other contracts and documents as maybe necessary under this program.

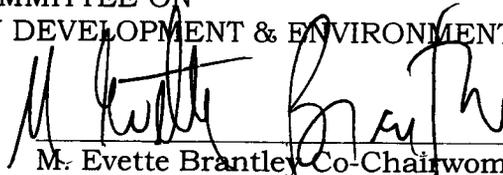


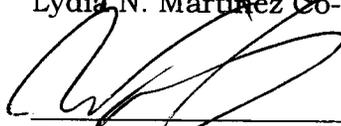
Report of Committee on ECD and Environment
***10-11 Consent Calendar**

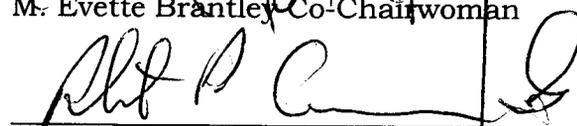
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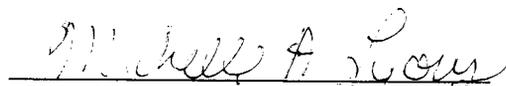
RESPECTFULLY SUBMITTED,
THE COMMITTEE ON
ECONOMIC AND COMMUNITY DEVELOPMENT & ENVIRONMENT


Lydia N. Martinez Co-Chairwoman


M. Evette Brantley Co-Chairwoman


Warren Blunt


Robert Curwen, Sr.


Michelle A. Lyons


Leticia Colon

Martin McCarthy

***11-11 Consent Calendar**

Grant Submission: re: State Department of Education
for a 2011-2012 Youth Service Bureau Grant.

**Report
of
Committee
on
ECB & Environment**

Submitted: January 3, 2012

Adopted: _____

Fleeta C Hudson

Attest: _____

City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport:

The Committee on **ECD and Environment** begs leave to report; and recommends for adoption the following resolution:

***11-11 Consent Calendar**

WHEREAS, the State Department of Education is authorized to extend financial assistance to municipalities in the form of grants; and

WHEREAS, this funding has been made possible through the Youth Service Bureau Grant; and

WHEREAS, funds under this grant will be used to fund administrative staff and direct service programs; and

WHEREAS, it is desirable and in the public interest that the City of Bridgeport, Department of Human Services, submit an application to the State Department of Education in an amount not to exceed \$143,579 for the purpose of funding administrative staff and direct service programs; Now, therefore be it

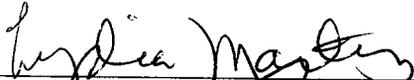
RESOLVED BY THE City Council:

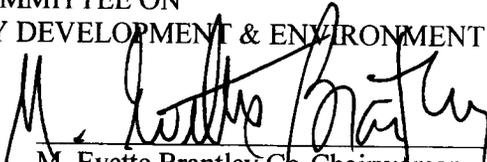
1. That it is cognizant of the City's grant application and contract to the State Department of Education for funds to fund administrative staff and direct service programs.
2. That it hereby authorizes, directs and empowers the mayor or his designee to execute and file such application with the State Department of Education for a Youth Service Bureau Grant to provide such additional information and to execute such other contracts, amendments, extensions and other documents as may be necessary under this program.

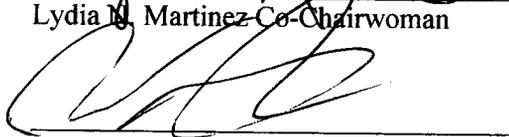


Report of Committee on ECD and Environment
***11-11 Consent Calendar**

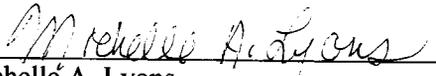
RESPECTFULLY SUBMITTED,
THE COMMITTEE ON
ECONOMIC AND COMMUNITY DEVELOPMENT & ENVIRONMENT

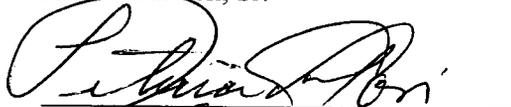

Lydia M. Martinez Co-Chairwoman


M. Evette Brantley Co-Chairwoman


Warren Blunt


Robert Curwen, Sr.


Michelle A. Lyons


Leticia Colon

Martin McCarthy

***12-11 Consent Calendar**

Grant Submission: re: State Department of Public Health for 2011-2012 Lead Poisoning Prevention and Control Grant.

**Report
of
Committee
on
CCD & Environment**

Submitted: January 3, 2012

Adopted: _____

Attest: *Fleeta C Hudson*

City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport.

The Committee on **ECD and Environment** begs leave to report; and recommends for adoption the following resolution:

***12-11 Consent Calendar**

WHEREAS, the State Department of Public Health and the Ct Association of Directors of Health are authorized to extend financial assistance to municipalities in the form of grants; and

WHEREAS, this funding has been made possible through the Lead Poisoning Prevention and Control Program; and

WHEREAS, funds under this grant will be used for childhood lead poisoning including education and outreach, surveillance and reporting, lead screening and case management; and

WHEREAS, it is desirable and in the public interest that the City of Bridgeport, Department of Health and Social Services, submit an application to the State Department of Public Health and the Ct Association of Directors of Health in an amount not to exceed \$172,993 for the purpose of childhood lead poisoning including education and outreach, surveillance and reporting, lead screening and case management; Now, therefore be it

RESOLVED BY THE City Council:

1. That it is cognizant of the City's grant application and contract to the State Department of Public Health and the Ct Association of Directors of Health for funds for the purpose of childhood lead poisoning including education and outreach, surveillance and reporting, lead screening and case management.
2. That it hereby authorizes, directs and empowers the mayor or his designee to execute and file such application with the State Department of Public Health and the Ct Association of Directors of Health for a Lead Poisoning Prevention and Control Program, to provide such additional information and to execute such other contracts, amendments, extensions and other documents as maybe necessary under this program.



Report of Committee on ECD and Environment
***12-11 Consent Calendar**

RESPECTFULLY SUBMITTED,
THE COMMITTEE ON
ECONOMIC AND COMMUNITY DEVELOPMENT & ENVIRONMENT

Lydia N. Martinez Co-Chairwoman

M. Evette Brantley Co-Chairwoman

Warren Blunt

Robert Curwen, Sr.

Michelle A. Lyons

Leticia Colon

Martin McCarthy

***14-11 Consent Calendar**

Grant Submission: re: US Conference of Mayors for
Childhood Obesity Prevention Grant.

**Report
of
Committee
on
CCB & Environment**

Submitted: January 3, 2012

Adopted: _____

Fleeta Hudson

Attest: _____

City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport:

The Committee on **ECD and Environment** begs leave to report; and recommends for adoption the following resolution:

***14-11 Consent Calendar**

WHEREAS, the US Conference of Mayors is authorized to extend financial assistance to municipalities in the form of grants; and

WHEREAS, this funding has been made possible through a partnerships between private corporations and US Conference of Mayors; and

WHEREAS, funds under this grant will be used to provide healthy foods and increase children's physical activity during school year; and

WHEREAS, it is desirable and in the public interest that the City of Bridgeport, Central Grants Department, submit an application to the US Conference of Mayors in an amount not to exceed \$120,000 for the purpose of preventing childhood obesity in Bridgeport; Now, therefore be it

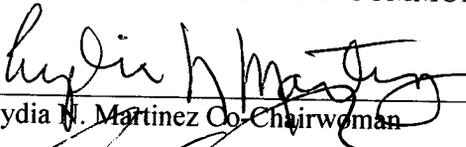
RESOLVED BY THE City Council:

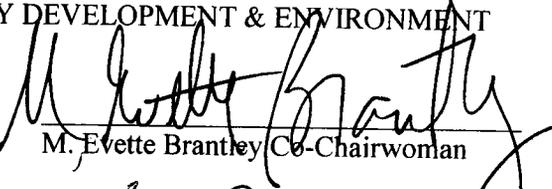
1. That it is cognizant of the City's grant application and contract to the US Conference of Mayors to provide healthy foods and increase children's physical activity during school year.
2. That it hereby authorizes, directs and empowers the mayor or his designee to execute and file such application with the US Conference of Mayors for a USCM Childhood Obesity Prevention Grant and to provide such additional information and to execute such other contracts and documents as maybe necessary under this program.

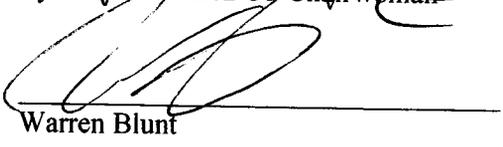


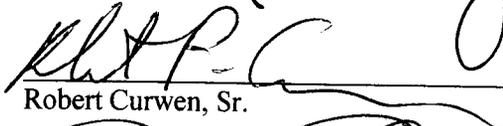
Report of Committee on ECD and Environment
***14-11 Consent Calendar**

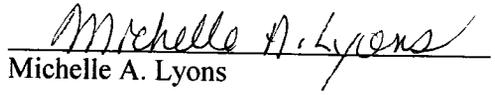
RESPECTFULLY SUBMITTED,
THE COMMITTEE ON
ECONOMIC AND COMMUNITY DEVELOPMENT & ENVIRONMENT

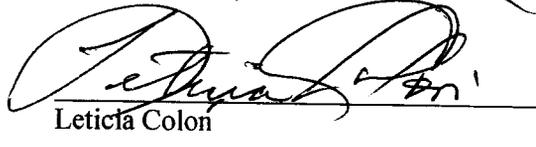

Lydia N. Martinez Co-Chairwoman


M. Evette Brantley Co-Chairwoman


Warren Blunt


Robert Curwen, Sr.


Michelle A. Lyons


Leticia Colon

Martin McCarthy

***03-11 Consent Calendar**

Request to Appoint twenty new members to the 2012-2014 Citizen Union Membership.

**Report
of
Committee
on
Miscellaneous Matters**

Submitted: January 3, 2012

Adopted: _____

Attest: _____

Fleeta C Hudson

City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport.

The Committee on **Miscellaneous Matters** begs leave to report; and recommends for adoption the following resolution:

***03-11 Consent Calendar**

CITIZEN UNION RESOLUTION

WHEREAS, the Bridgeport City Ordinance establishes a Bridgeport Citizen's Union; and

WHEREAS, the purpose of the Citizen's Union is to provide the citizens of Bridgeport with an organized structure to serve as a vehicle for allowing them the opportunity to participate in the planning and development of the Consolidated Plan for Housing & Community Development and Annual Action Plans which implement the goals and objectives articulated in the Consolidated Plan; and

WHEREAS, a total of twenty seven members will sit on the Citizen's Union; and

WHEREAS, one representative will be appointed by each of the twenty Bridgeport City Council members for a total of twenty members; and

WHEREAS, one representative will represent each of the seven CDBG targeted neighborhood/impacted areas and vacancies of these seven members will be filled by the Citizens' Union; and

WHEREAS, the proposed slate of new members is subject to City Council approval; Now, therefore be it

RESOLVED, that the Bridgeport City Council hereby approves the attached 2012-2014 Bridgeport Citizens' Union Committee slate as nominated by members of the City Council.

Amendment from floor on January 3, 2012: That the 2012-2014 Citizen's Union membership list is amended to appoint Charles (Chuck) J. Hebert, Jr. of 254 Thorne Street, Bpt., CT 06606, (203) 750-2111 (Work), (203) 371-6764 (Home), Email: chuckhebert10@gmail.com to represent the 134th District.



Report of Committee on Miscellaneous Matters
***03-11 Consent Calendar**

-2-

RESPECTFULLY SUBMITTED,
THE COMMITTEE ON MISCELLANEOUS MATTERS

AmyMarie Vizzo-Paniccia, Co-Chair

Andre Baker, Co-Chair

Denese Taylor-Moye

Susan T. Brannelly

Mantel Ayala

M. Evette Brantley

Leticia Colon

Thomas McCarthy, President
(Added to Make Quorum)

2012 – 2014 Citizen's Union

PROPOSED SLATE

03-11

District/Council Member	Nomination
130 th – Susan T. Brannelly	Tim O'Connor 511 Lake Avenue Bridgeport, CT Tele: need E-mail: need
130 th – Martin C. McCarthy	Patricia Erin Lichtenstein 27 Hubbell Street Bridgeport, CT Tele: 203-615-8992 E-mail: need
131 st – Leticia Colon	Jack Banta 20 Cole Street Bridgeport, CT 06604 Tele: 203-829-7721 E-mail: jbanta@yahoo.com
131 st – Denese Taylor-Moye	Tamara Morales Park Avenue – need full address Bridgeport, CT Tele: 203-684-9593 (not valid) E-mail: need
132 nd – John W. Olson	Rowena Littlejohn 91 Laurel Place Bridgeport, CT 06604 Tel: 203-331-9653 E-mail:
132 nd – M. Evette Brantley	Bernice Smith 1084 Iranistan Avenue Bridgeport Ct 06604 H: 203-334-6794 C: 203-526-6841 E-mail: Circle@optonline.net
133 rd – Howard Austin, Sr.	Gotrell McLellan 425 Savoy Street Bridgeport, CT 06606 H: 203-371-7202 C: 203-260-0209 E-mail:

ATTEST
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133 rd – Thomas C. McCarthy	Jeanette Herron Board of Education 2649 Main Street Bridgeport, CT 06606 H: 203-345-4307 C:203-209-2788 E-mail: Jinone@aol.com
134 th – Michelle A Lyons	Gladys Walker-Jones Board of Education 44 Oxford Street Bridgeport, CT 06606 Tel: 576-7303 E-mail: gjones@bridgeportedu.net
134 th AmyMarie Vizzo-Paniccia ** **Amendement from floor on January 3, 2012	Charles J. Hebert, Jr. 254 Thorme Street Bridgeport, CT 06606 H: 203-371-6764 W: 203-750-2111 E-mail: chuckhebert@gmail.com
135 th – Richard Bonney	
135 th – Warren Blunt	Rick Cruz 117 Chamberlain Place Bridgeport, CT 06606 H: 203-371-6493 C: 203-526-2807 rick_cruz@sbcglobal.net
136 th – Carlos Silva	Jack McGinnis 123 Palm Street Bridgeport, CT 06610 203-335-4345 H 203-365-8522 W E-mail: Need
136 th – Angel M. DePara, Jr.	Joyce Purnell 132 Oakview Circle, APT 201 Bridgeport, CT 06604 203-395-9869 Jpurnell9@earthlink.net
137 th – Lydia N. Martinez	Dimas Couto 117 Maple Street Bridgeport, CT 06608 Tel: 203-727-2738 E-mail: Need

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 CITY CLERK

137 th – Manuel Ayala	Paul T. Barnum 179 Maple Street Bridgeport, CT 06608 203-366-1226 Paul.Barnum@yahoo.com
138 th – Robert P. Curwen, Sr.	Anna Gonzalez 525 Palisades Avenue Apt 910 Bridgeport, CT 06610 203-345-9755
138 th – Richard M. Paoletto, Jr.	Amy Powell 146 Court D, Building 65 Success Village Bridgeport CT 06610 203-612-6079 203-384-3420 amypowell34@yahoo.com
139 th – James Holloway	
139 th – Andre F. Baker, Jr.	Enieda Martinez (Eneida?) 33 Edwin Street Bridgeport, CT 06607

139th - James Holloway
 139th - Andre F. Baker, Jr.

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***04-11 Consent Calendar**

Settlement of Pending Litigation with John Gale.

**Report
of
Committee
on
Miscellaneous Matters**

Submitted: January 3, 2012

Adopted:

Fleeta C Hudson

Attest:

City Clerk

Approved

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport.

The Committee on Miscellaneous Matters begs leave to report; and recommends for adoption the following resolution:

***04-11 Consent Calendar**

WHEREAS, a lawsuit in the following name was filed against the City of Bridgeport and/or its employees and investigation disclosed the likelihood on the part of the City for which, in the event of suit and trial, the City might be held liable, and

WHEREAS, negotiations with the Plaintiff's attorney has made it possible to settle this suit for the figure set forth below, and the City Attorney, therefore, recommends the following settlement be accepted, Now, Therefore be it

RESOLVED, That the Comptroller be, and hereby is authorized, empowered and directed to draw his order on the City Treasurer payable as follows:

<u>NAME</u>	<u>ATTORNEY</u>	<u>NATURE of CLAIM</u>	<u>SETTLEMENT</u>
John Gale	Thomas W. Bucci, Esquire	Due Process Violation	\$50,000.00

BE IT FURTHER RESOLVED, that the amount set forth as above are paid to the Plaintiff's attorney in full payment, settlement, release and discharge of all rights and cause of action described in the suit instituted by the above mentioned Plaintiff against the City and known as docket numbers in the courts set forth; provided, however, that the City's draft shall not be delivered to the Plaintiff's attorneys until the City Attorney has been furnished with a full release and discharge in writing in each case, approved by the City Attorney or Deputy City Attorney.



Report of Committee on Miscellaneous Matters
***04-11 Consent Calendar**

-2-

RESPECTFULLY SUBMITTED,
THE COMMITTEE ON MISCELLANEOUS MATTERS

AmyMarie Vizzo-Paniccia, Co-Chair

Andre Baker, Co-Chair

Denese Taylor-Moye

Susan T. Brannelly

Manuel Ayala

M. Evette Brantley

Leticia Colon

Thomas McCarthy, President
(Added to Make Quorum)

***17-11 Consent Calendar**

Resolution regarding the Building of Solar Photo-Voltaic Electric Generation Facilities at Central and Blackham School's by Main Street Power ("Project") and to provide a property tax offset for those renewable energy installations.

**Report
of
Committee
on**

Miscellaneous Matters

Submitted: January 3, 2012

Adopted: _____

Attest: _____

Fleeta C. Hudson

City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport.

The Committee on Miscellaneous Matters begs leave to report; and recommends for adoption the following resolution:

*17-11 Consent Calendar

**A Resolution by the Bridgeport City Council
Regarding the Building of Solar Photo-Voltaic Electric Generation
Facilities in the City of Bridgeport, CT at Central and Blackham School's
by Main Street Power ("Project") and to provide a property tax offset for
those renewable energy installations.**

WHEREAS, the City of Bridgeport ("City") seeks to become the national leader in renewable energy development in order to inspire future economic development within the City, through energy security by locking-in future energy savings to reduce energy cost fluctuation over the long term in a sustainable way; and

WHEREAS, Main Street Power will provide funding arrangements and design considerations to develop the Project at Central High School and Blackham School. The goal is to provide solar generated energy for these two schools as a model and encouragement for other future installations in the public and private sectors; and

WHEREAS, the Mayor through his BGreen 2020 Sustainability Program, Mayors Executive Order of 2008, Green House Gas Reduction Goals of 2009, and Energy Strategy of 2010, Main Street Power a developer of renewable energy in Bridgeport, intends to provide for the development of photo voltaic based clean energy on the Central High School, 1 Lincoln Boulevard, Bridgeport, CT and Blackham School, 425 Thorne Street, Bridgeport, CT; and

WHEREAS, Main Street Power has obtained from the Connecticut Clean Energy Fund ("CCEF") \$412, 759.00 in grant funding to support this project and Main Street Power has obtained \$30,000.00 in grant funding from PSE&G Public Services Energy and Gas Company and UI United Illuminating Company intends to provide Renewable Energy Credits in support of this project and the International Brotherhood of Electrical Workers IBEW XX will provide job training programs for local Bridgeport residents and The Work Place will assist in providing a training pipeline for those City residents through a \$1M Department of Labor Grant; and



Report of Committee on Miscellaneous Matters
***17-11 Consent Calendar**

-2-

WHEREAS, Main Street Power will be seeking additional sources of grants and funding for similar projects on City Hall and the Public Facilities Garage; and

WHEREAS, over a twenty year time horizon (to meet statutory IRS guidelines) the modest savings in energy cost for Central High School and Blackham School will become significantly more substantial as there would no longer exist a fee for the electric or a property tax component to the City for any existing lifetime for the equipment comprising the Project; and

WHEREAS, a Purchase Power Agreement ("PPA") is a simple long-term agreement (20 years) permitting Main Street Power to design, install, own, and operate a solar system on the roof or land of a host client, which in this case is the City and BOE. In turn, the host client agrees to purchase all of the energy produced from that system over the life of the contract. Additional benefits of a PPA include:

- NO upfront capital or bonding costs required
- Electricity price certainty with stated and defined PPA rates
- No annual operating and main
- Free real time monitoring of the system's production and 24 hour response time to any emergency
- No predevelopment, construction or permitting risks
- The benefit of \$400k CCEF Grant and \$30k PSE&G Grant spearheaded by MSP team
- Solar curriculum and display kiosk donated to BOE for educational and informational purposes.

NOW, THEREFORE BE IT RESOLVED, the Mayor is authorized, upon the approval as to form by the Office of the City Attorney, to execute a PPA with Main Street Power substantially in the form attached hereto and made a part hereof that will commit to the purchase of the electricity as recited therein and provide a full property tax offset to further support this renewable energy Project;



Report of Committee on Miscellaneous Matters
***17-11 Consent Calendar**

-3-

BE IT FURTHER RESOLVED, the City will commit to paying for the electric produced by the photovoltaic equipment on each school, estimated at approximately 10% of the school's annual electric usage in the first year for Central High School and 13% for Blackham starting at \$.0146 per kilowatt hour in accordance with the PPA and with the annual escalator of approximately 3.5-4% , and a monthly pro-rata return of the full amount of personal property taxes to be declared and submitted by Main Street Power on an annual basis; and

BE IT FURTHER RESOLVED, the Mayor is authorized, upon approval as to form from the Office of the City Attorney, to execute a future PPA with Main Street Power on terms substantially the same, including a full personal property tax offset, or more favorable to the City for a similar project on City Hall, 45 Lyon Terrace, and the Public Facilities Garage, 990 Housatonic Avenue should similar CCEF funding and investment incentives become available.

RESPECTFULLY SUBMITTED,
THE COMMITTEE ON MISCELLANEOUS MATTERS

AmyMarie Vizzo-Paniccia, Co-Chair

Andre Baker, Co-Chair

Denese Taylor-Moye

Susan T. Brannelly

Manuel Ayala

M. Evette Brantley

Leticia Colon

Thomas McCarthy, President
(Added to Make Quorum)

SOLAR POWER AND SERVICES AGREEMENT

Solar Power & Services Agreement

Cover Sheet

This Solar Power and Services Agreement is made as of the following date: (the "Effective Date"), and together with the Cover Sheet, General Terms and Conditions, exhibits, schedules and any written supplements hereto, shall be referred to as the "Agreement." The Parties to this Agreement are as follows:

Provider: Main Street Power Company, Inc.

Purchaser:

All Notices:

Street: 1245 Pearl St., Suite 201
City: Boulder Zip: 80302
Attn: Amory Host
Phone: 303-444-3020 Fax: 303-449-3058

All Notices:

Street:
City: Zip:
Attn:
Phone: Fax:

With a copy to:

Name: Charles Knight, Venture Law Advisors, LLC
Street: 2701 Larimer Street, Suite 200
City: Denver Zip: 80205
Attn: Charles Knight
Phone: 720-210-9675 Fax: 303-416-4326

With a copy to:

Name:
Street:
City: Zip:
Attn:
Phone: Fax:

Emergency Contact Information:

Name: Lex Coen
Street: 1245 Pearl St., Suite 201
City: Boulder Zip: 80302
Attn: Lex Coen
Phone: 1-888-305-4177 Fax: 303-449-3058
E-mail: lcoen@mainstreetpower.com

Emergency Contact Information:

Name:
Street:
City: Zip:
Attn:
Phone: Fax:
E-mail:

Wire Transfer:

Bank:
ABA:
ACCT:

Wire Transfer:

Bank:
ABA:
ACCT:

The Parties hereby agree that the General Terms and Conditions attached hereto are incorporated herein.

General Contractor:

Project Documents:

Local Electric Utility: United Illuminating

Interconnection Agreement:

Required Rebate: \$611,348 from Connecticut Clean Energy Fund

Installation Date: Termination Date: Twentieth Anniversary of Commercial Operation Date

Governing Law: Venue:

IN WITNESS WHEREOF, the Parties have caused this Solar Power Services Agreement to be duly executed as of the first date written above.

Main Street Power Company, Inc.

Name:
Date:
Title:

Name:
Date:
Title:

Solar Power & Services Agreement

General Terms & Conditions

Article I. Provider Obligations.

Section 1.01 Installation.

(a) Construction Plans. Provider has previously provided to Purchaser construction plans and engineering evaluations regarding the Installation Work.

(b) Installation Work. After the execution of this Agreement, but no later than the Installation Date, Provider shall commence the Installation Work. Subject to the terms of Purchaser's leases with its tenants, if any, Provider shall perform the Installation Work at the Premises in a manner that minimizes inconvenience to and interference with Purchaser's and Purchaser's invitees' and customers' use of the Premises to the extent commercially practical.

(c) Installation Standards. The System shall be installed with due care by qualified employees, representatives, agents, contractors, subcontractors or advisors of Provider and shall conform to Prudent Electric Practices and Applicable Law. If Provider fails to meet any of the foregoing standards, Provider shall perform at its own cost, and without additional charge to Purchaser, the professional services necessary to correct errors and omissions, including any necessary replacement of any component of the System, that are caused by Provider's failure to comply with the above standards.

(d) Prohibitions on Public Contracts for Services (Including Construction Contracts) regarding Employment of Illegal Aliens:

(i) Provider and its subcontractors shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Agreement. By execution of this Agreement, Provider certifies that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and Provider will and will require its General Contractor to participate in the Federal E-Verify Program in order to confirm the eligibility of all employees who are newly hired for employment to perform work under this Agreement.

(ii) Provider shall not (A) knowingly employ or contract with an illegal alien to perform work under this Agreement; or (b) enter into a contract with a subcontractor that fails to certify to Provider that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement

(iii) Provider has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or other program approved by Purchaser.

(iv) Provider shall not use either the E-Verify Program or other program to undertake pre-employment screening of job applicants while this Agreement is in effect.

(v) If Provider obtains actual knowledge that its General Contractor or a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Provider shall:

- (1) Notify the General Contractor and Purchaser within three (3) days that Provider has actual knowledge that the General Contractor or its subcontractors are employing or contracting with an illegal alien; and
- (2) terminate the contract with the General Contractor if, within three (3) days of receiving notice that said Contractor has such actual knowledge, the General Contractor (or its subcontractor) does not stop employing or contracting with the illegal alien, unless the

Provider is provided with information within said three-day period establishing that the General Contractor or its subcontractors have not knowingly employed or contracted with an illegal alien.

(vi) Provider shall comply with any reasonable request made in the course of an investigation pursuant to law

Section 1.02 Utility and Government Approvals. Provider shall obtain and maintain all Approvals that are required for the performance of Installation Work, System Acceptance Testing, System Operations and any other work required under this Agreement.

Section 1.03 Testing. Provider may, upon not less than three (3) Business Days' prior written notice to Purchaser, conduct testing of the System ("System Acceptance Testing"). System Acceptance Testing shall be deemed successful upon the achievement of the tests set forth in Schedule 5 of Exhibit B. Purchaser shall have the right, but not the obligation, to be present at and observe the System Acceptance Testing, at Purchaser's sole cost.

Section 1.04 Operation and Maintenance.

(a) System Operations. Provider shall perform System Operations (either itself or through Maintenance Providers) for the System at its sole cost and expense.

(b) Metering.

(i) Installation and Maintenance. Provider shall install and maintain, at the Delivery Point, a utility grade kilowatt-hour (kWh) meter for the measurement of Solar Services delivered to the Delivery Point (the "Metering System").

(ii) Testing. No more than one (1) time in any twelve (12) month period, Purchaser may request, in writing, that Provider test the Metering System for accuracy. Notwithstanding the foregoing, if Purchaser reasonably believes the Metering System is inaccurate, it may request, in writing, that Provider test the Metering System for accuracy. Provider shall test the Metering System within twenty (20) days after delivery of Purchaser's written request, and shall provide to Purchaser a copy of all testing and accuracy calibrations for the Metering System to Purchaser.

(iii) Adjustments. If testing of the Metering System indicates that it is in error by more than two percent (2%), then Provider shall promptly repair or replace the Metering System. Provider shall make a corresponding adjustment to the records of the amount of Solar Services delivered to the Delivery Point based on such test results for (A) the actual period of time when such error caused inaccurate meter recordings, if that period can be determined to the mutual satisfaction of the Parties, or (B) if such period cannot be so determined, then a period determined by a third party mutually agreed upon by the Parties, such period not to exceed the *shorter* of: (X) one-half (1/2) of the period from the later of the date of the last previous test confirming accurate metering or the date the Metering System was placed into service; and (Y) two (2) years.

(iv) Costs. If (A) testing of the Metering System is pursuant to Purchaser's written request under Section 1.04(b)(ii), and (B) such testing indicates the Metering System is in error by two percent (2%) or less, then Purchaser shall be responsible for the costs of such testing. Otherwise, Provider will be responsible for the costs of such testing and all costs of any repair or replacement.

(c) Malfunctions and Emergencies. Provider shall notify Purchaser (i) immediately upon the discovery of an emergency condition in the System, and (ii) within twenty-four (24) hours following its discovery of any material malfunction in the operation of the System or of the discovery of an interruption in the supply of Solar Services. If an emergency condition exists, Provider shall dispatch the appropriate personnel to perform the necessary repairs or take corrective action in an expeditious and safe manner. If there exists an imminent risk of damage or injury to any Person or any Person's property, then in any such case, Provider may (but shall not be obligated to) take such action as Provider deems appropriate to prevent such damage or injury. Such action may include disconnecting and removing all or a portion of the System, in compliance with the provisions of Section 1.05, or suspending the supply of Solar Services to Purchaser. If such emergency condition exists due to: (a) an

event of Force Majeure, then the Parties shall equally bear the costs of such action, including any necessary repairs or replacements to the System; (b) the acts or omissions of Purchaser or a third party under the invitation, direction or control of Purchaser (and specifically excluding the General Contractor or any Maintenance Provider), then Purchaser shall bear the costs of such action, including any necessary repairs or replacements to the System; or (c) for any other reason, then Provider shall bear the costs of such action, including any necessary repairs or replacements to the System.

Section 1.05 Removal of the System. Upon the expiration of the Term or the occurrence of an Early Termination Date, Provider shall, at its expense, remove the System from the Premises on a mutually agreeable date but in no event later than ninety (90) calendar days after the Term or Early Termination Date (as applicable); provided, however, that Provider shall not remove the System from the Premises if Purchaser purchases the System by exercising its Purchase Option or Provider transfers title to Purchaser pursuant to Section 9.03(a)(iii)(Z).. Purchaser's covenants in Section 6.02 shall remain in effect until the date that the System is removed pursuant to this Section 1.05. If Provider is under an obligation to remove the System pursuant to this Section 1.05, and fails to remove or commence substantial efforts to remove the System by the date agreed upon pursuant to this Section 1.05, Purchaser may remove the System to a public warehouse at Provider's cost.

Article II. Purchaser Obligations.

Section 2.01 Installation.

(a) Construction Plans Approved. Upon the Construction Plans Submission Date, Purchaser shall have the right to review and approve all construction plans and engineering evaluations. Upon approving the construction plans and satisfaction of Purchaser's conditions precedent set forth in Section 4.01, Purchaser shall deliver to Provider a written notice directing Provider to commence Installation Work by the date that is thirty (30) calendar days following the Construction Plans Submission Date (the "Notice to Proceed"). Purchaser agrees to expend commercially reasonable efforts to approve the construction plans and satisfy the conditions precedent.

(b) Solar Easement. Purchaser shall use commercially reasonable efforts to obtain a solar access easement for the Premises and the System to prevent overshadowing of the Premises and the System by other buildings, structures or flora.

Section 2.02 Government Approvals. Purchaser shall generally assist Provider in obtaining and maintaining Approvals required for Provider to perform its obligations under this Agreement, at no additional cost to Purchaser. Such assistance by Purchaser shall include providing to Provider in a timely manner: (i) any authorizations needed for any Approvals; (ii) signed applications for permits, Local Electric Utility grid interconnection applications and rebate applications; and (iii) drawings of the existing electrical and structural components of the Premises. To the extent that only Purchaser is authorized to obtain or issue any necessary consents, approvals, permits, rebates or other financial incentives for the Installation Work, System Acceptance Testing, System Operations, System removal or any other work required under this Agreement, Purchaser shall deliver to Provider promptly, and shall assist Provider in maintaining and utilizing, copies of such consents, approvals, permits, rebates, financial incentives and authorizations.

Section 2.03 Purchase Requirement. Purchaser agrees to purchase all of the Solar Services delivered to the Delivery Point during the Term.

Section 2.04 Rights of Access.

(a) Access to Premises. Purchaser hereby grants to Provider, its employees, agents, contractors, subcontractors, invitees, advisors, the General Contractor and any Maintenance Providers a license, which shall include the rights (a) to use and access the Premises to perform the Installation Work and System Operations during the Term and for such period thereafter required to remove the System, (b) of ingress and egress to the Premises and (c) to access electrical panels and conduits to interconnect the System with, or disconnect the System from, the Premises' electrical wiring. Purchaser and its authorized representatives shall at all times have access to and the right to observe the Installation Work, System Operations or removal of the System, but shall not interfere or handle any Provider equipment or any component of the System without written authorization from

Provider; provided, however, in the event of a material malfunction or emergency as specified in Section 1.04(c), Purchaser shall be permitted to take those actions necessary to prevent injury as specified in Section 2.06.

(b) Internet Connection. Purchaser hereby grants to Provider, from the commencement of the Installation Work until the end of the Term, the right to connect the System monitoring equipment to the necessary intranet and/or internet networks so that it is possible for Provider to remotely monitor energy production by the System. Purchaser will provide Provider with a working continuous Ethernet connection to intranet and/or internet network, in the area of electrical equipment.

(c) Temporary Storage Space During Installation or Removal. Purchaser shall use commercially reasonable efforts to provide Provider and its contractors with sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, System Operations and System removal, and access for rigging and material handling. Purchaser shall provide Provider a reasonable area for construction lay-down.

Section 2.05 Purchaser Repairs & Maintenance.

(a) Electrical Structure. Provider has determined that as of the date of this Agreement, the Premises are eligible for state subsidy, rebate funding, renewable energy credits, sale of electricity and otherwise to fulfill the intent of this Agreement. Should modifications to the Premises be required in the future as a result of changes in use or other actions of Purchaser, Purchaser, at its sole cost and expense, shall make necessary repairs or changes to the existing electrical structure of the Premises, at Provider's direction and with its approval, so that the Premises will continue to remain eligible for such subsidies so as to fulfill the intent of this Agreement. Notwithstanding the foregoing, Purchaser shall not make any material changes to: (i) its electrical equipment at the Premises after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection; or (ii) the Premises at any time during the Term that would adversely affect Systems Operation or the delivery of Solar Services to Purchaser.

(b) Maintenance. Purchaser shall maintain the Premises so that: (i) there exist no other site conditions or conditions at the Premises that would materially impede or increase the cost of Provider's obligations under Article I or the cost to produce Solar Services; (ii) the structural integrity of the Premises is sufficient to accommodate the System as designed by Provider; and (iii) overshadowing of the System is reduced to the extent reasonably practicable.

Section 2.06 Emergencies. If there exists an imminent risk of damage or injury to any Person or any Person's property, then Purchaser may (but shall not be obligated to) take such action as Purchaser deems appropriate to prevent such damage or injury. Such action may include disconnecting and removing all or a portion of the System, with notice thereof to Provider as soon as reasonably practicable. The costs and losses from such emergency condition shall be allocated in accordance with the last sentence of Section 1.04(c).

Article III. Title.

Section 3.01 Title to Environmental Attributes. Throughout the duration of this Agreement, Provider shall retain legal and beneficial ownership of all Environmental Attributes produced by the System. Purchaser's purchase of Solar Services does not include Environmental Attributes or any other attributes of ownership of the System, all of which shall be retained and may be otherwise sold or transferred by Provider in its sole discretion.

Section 3.02 Title to the System. Provider, or an Affiliate of Provider, shall retain legal and beneficial ownership of the System at all times.

Section 3.03 Personal Property; Not A Fixture. The System shall, at all times, retain the legal status of Provider's or Provider's Affiliate's personal property as defined under Governing Law. Purchaser covenants that it will use reasonable commercial efforts to place all Persons having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could be construed as

prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide to Provider a disclaimer, release or other similar instrument reasonably acceptable to Provider from any such mortgagee or Person making a fixture filing on the Premises. If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Purchaser is not the fee owner, Purchaser will obtain such disclaimer from such owner.

Article IV. Conditions Precedent.

Section 4.01 Provider's Conditions. The obligation of Provider to commence the Installation Work is subject to the satisfaction of each of the following conditions (any of which may be waived in writing by the Provider in whole or in part):

- (a) Purchaser's representations and warranties in Sections 5.01 and 5.02 remain true, complete and correct, in all material respects;
- (b) A rebate or subsidy in an amount of the Required Rebate is available to Provider (directly or indirectly by assignment under the Rebate Assignment Agreement) from the state, Local Electric Utility, or other source for the acquisition, installation, operation and maintenance of the System and is reserved for the System as designed;
- (c) There is no material adverse change in the subsidy program or federal tax code since the Effective Date that would adversely affect the economics of the acquisition, installation, operation and maintenance of the System for Provider and its investors (if any);
- (d) Each of the Project Documents (i) has been entered into by each of the parties thereto, (ii) is in full force and effect, with all conditions precedent thereunder satisfied or waived (except for any conditions precedent that specify that the conditions precedent to this Agreement have been satisfied), (iii) is enforceable, in accordance with its terms, against the parties thereto (except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar laws affecting the enforcement of creditors' rights generally or by general principles of equity relating to enforceability (regardless of whether considered in a proceeding at law or in equity));
- (e) Purchaser has executed and returned to Provider the Acknowledgement and Confirmation Form, pursuant to Section 14.03(c);
- (f) All necessary Approvals that are required to be obtained by Purchaser have been obtained (except for such Approvals that are reasonably expected to be obtained in the ordinary course or are otherwise to be obtained by Provider); and
- (g) Provider has obtained financing to complete its obligations under this Agreement on terms satisfactory to Provider in its sole discretion

Article V. Representations & Warranties.

Section 5.01 Representations and Warranties of the Parties. Each Party represents and warrants to the other as of the Effective Date and any other date that such representations and warranties are required to be repeated that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization or incorporation, as appropriate;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement;

(d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would affect its ability to carry out the transactions contemplated herein; and

(f) its execution and performance of this Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it is a party or by which it or its property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

Section 5.02 Purchaser Additional Representations and Warranties. In addition to its representations and warranties in Section 5.01, Purchaser represents and warrants to Provider as of the Effective Date and any other date that such representations and warranties are required to be repeated that:

(a) if the Premises are located on a roof, the roof of the Premises (i) has been weather-proofed against the weather conditions reasonably expected to exist at the location of the Premises, and (ii) can reasonably be expected to exist in the same condition (except for ordinary wear and tear) for a period of seven (7) years from the date of such representation;

(b) there is a suitable electrical interconnection point of sufficient capacity to accommodate the System as designed by Provider located within 500 feet of the planned location of the System as described in Schedules 1 and 2 of Exhibit B;

(c) for any underground placement of electrical cable or conduit, to the best knowledge and belief of Purchaser, there are no rocks or other obstructions that would prevent ordinary trenching equipment to be used for the installation of underground electrical cable from providing a trench of sufficient depth to comply with the National Electrical Code;

(d) to the best knowledge and belief of Purchaser, there exist no site conditions or conditions at the Premises or construction requirements for the System as designed by Provider that would materially impede or increase the cost of Provider's obligations under Article I or the cost to produce Solar Services;

(e) that there are no threatened condemnation or eminent domain proceedings, or contemplated sales in lieu therein, involving a partial or total taking of the Premises;

(f) to the best of its knowledge after due inquiry, no Hazardous Substances exist on the Premises that could reasonably be expected to interfere with, or create a violation of law as a result of, any of Provider's activities and/or the provision of electrical power pursuant to this Agreement; and

(g) during the period which it has occupied the Premises, the Premises have not been used for the unlawful storage or disposal of Hazardous Substances.

Section 5.03 EXCLUSION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 1.01(c) AND THIS ARTICLE 5, THE INSTALLATION WORK, SYSTEM OPERATIONS, THE SOLAR SERVICES PROVIDED BY PROVIDER TO PURCHASER, AND THE REMOVAL OF THE SYSTEM SHALL BE "AS-IS, WHERE-IS." NO OTHER WARRANTY TO PURCHASER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM, THE SOLAR SERVICES OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER.

Section 5.04 Panel Warranties. All components of the System shall carry manufacturer warranties as required by the Local Electric Utility, including panel warranties of at least twenty-five (25) years and warranties on all other components (with the exception of batteries) of at least five (5) years.

Section 5.05 Labor and Installation Warranties. Provider shall require the General Contractor to provide a warranty on labor and installation of at least five (5) years.

Article VI. General Covenants.

Section 6.01 Provider's Covenants. As a material inducement to Purchaser's execution and delivery of this Agreement, Provider covenants and agrees to the following:

(a) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of delivering Solar Services to the Delivery Point.

(b) Health and Safety. In performing its obligations under this Agreement, Provider shall take all necessary and reasonable safety precautions and comply with Applicable Laws pertaining to the health and safety of persons and real and personal property. Provider shall promptly report to Purchaser any death, lost time injury, or property damage to the Premises that occurs on the Premises.

(c) Liens. Provider shall not, as a result of its actions or inactions under this Agreement, directly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, and (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, as Provider will pay for the discharge.

(d) Approvals. Subject to Purchaser's performance of its obligations under Section 2.02, Provider shall obtain and maintain all Approvals required to be obtained and maintained in order to perform its obligations under this Agreement. Upon Purchaser's request, Provider shall deliver copies of all Approvals obtained and maintained pursuant to this Section 6.01(d) to Purchaser.

(e) Roof Conditions. Provider has inspected the Premises and has determined that the roof of the Premises has the structural integrity sufficient to accommodate the System as designed by Provider.

Section 6.02 Purchaser's Covenants. As a material inducement to Provider's execution and delivery of the Agreement, Purchaser covenants and agrees as follows:

(a) Security. Purchaser shall provide for physical security of the System, including commercially reasonable installation, maintenance and monitoring of security alarms on the Premises. Provider has confirmed that continued provision of existing security is adequate.

(b) Notice of Damage. Purchaser shall promptly notify Provider of any damage to, or loss of the use of, the System or any matter or circumstance that could reasonably be expected to adversely affect the System or its operation.

(c) Health and Safety. Purchaser shall at all times maintain the Premises consistent with all Applicable Laws pertaining to the health and safety of persons and real and personal property. Purchaser shall at all times comply with Provider's instructions and safety guidelines when in the vicinity of the System.

(d) Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Purchaser breaches its obligations under this Section, it shall (i) immediately notify Provider in writing, and (ii) promptly cause such Lien to be discharged and released of record without cost to Provider, as Purchaser will pay for the discharge.

(e) Approvals. Purchaser shall obtain and maintain Approvals required to be obtained and maintained by it to perform its obligations under this Agreement, including such Approvals required to site, install and maintain the System on the Premises.

(f) Assignment of Rebate. To the extent that all or a portion of the Required Rebate is collectable only by Purchaser under Applicable Law, the Parties shall enter into a Rebate Assignment Agreement, in a form approved by Purchaser, Provider and the Local Electric Utility, which will assign the right to receive such Required Rebate from Purchaser to Provider.

(g) No Action to Invalidate Required Rebate or RECs. Notwithstanding anything else to the contrary in this Agreement, including the rights and options of Purchaser contained herein, Purchaser shall take no action that may invalidate, terminate or cause the recapture of the Required Rebate or that may prevent the System from producing RECs; provided, however, that the foregoing covenant shall not prevent Purchaser from terminating this Agreement under Article IX.

Article VII. Payments.

Section 7.01 Solar Services Payment. Provider shall invoice Purchaser on the fifth (5th) Business Day of each month, commencing on the first calendar month to occur after the Commercial Operation Date, for the Solar Services Payment in respect of the previous month. Provider shall pay the amounts specified in such invoice within ten (10) Business Days after receipt of the invoice.

Section 7.02 Method of Payment & Netting. Purchaser shall make all payments under this Agreement by electronic funds transfer in immediately available funds to the account designated by Provider. All payments that are not paid when due may, at the discretion of Provider, bear interest accruing from the date becoming past due until paid in full at a rate equal to the Default Rate. Except as provided Article XIV, all payments made hereunder shall be made free and clear of any tax, levy, assessment, duties or other charges. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

Section 7.03 Deemed Production. In the event that (a) Purchaser requests that Provider shut down or curtail energy production from the System, (b) Purchaser's errors, acts or omissions result in the shut down of the System or the curtailment of the production or delivery of Solar Services, or (c) Purchaser requests that the System be relocated pursuant to Section 11.01 and the System is shut down to effectuate such relocation, for a cumulative duration of more than five (5) calendar days in a calendar year, then Provider shall pay the Deemed Production Payment for each calendar day any such event occurs after the occurrence of such first five (5) calendar days. The Deemed Production Payment shall be paid in accordance with Section 7.01 as if it were a Solar Services Payment.

Section 7.04 Disputes and Adjustment of Invoices. If either Party disputes in good faith the accuracy of any invoice under this Agreement, it shall nevertheless pay the full amount when due. Upon giving written notice of the basis for a Party's dispute, the Parties will promptly work to resolve the dispute. If it is later determined that an excess amount was paid by a Party, the other Party shall refund the excess amount plus interest within two (2) Business Days of resolution at the Non-default Rate from the original due date to but not including the date paid. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.04 within six (6) months after the invoice is rendered or any specific adjustment to the invoice is made.

Article VIII. Term.

Section 8.01 Term. This Agreement shall commence on the later of the Effective Date or the satisfaction of all conditions precedent and shall continue for a period of twenty (20) years from the Commercial Operation Date ("Initial Term"), unless terminated earlier pursuant to Article IX or extended pursuant to Section 8.02.

Section 8.02 Extension Option. In the event this Agreement remains in effect during the 20th year of the Initial Term, Purchaser shall have an option to extend the Term of this Agreement by five (5) years ("Extension Option") upon notice to Provider at least 120 days prior to the expiration of the Initial Term.

Article IX. Termination and Remedies.

Section 9.01 Termination Due to Default.

(a) Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(ii) such party becomes Bankrupt;

(iii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed to be made or repeated;

(iv) such party fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) within thirty (30) calendar days after written notice;

(v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party; and

(vi) subject to Article XI, Purchaser (A) ceases to conduct business operations at, (B) vacates, or (C) transfers title to the Premises.

(b) Remedies Upon Default. Upon the occurrence of an Event of Default, the Non-Defaulting Party may: (i) suspend its obligations under the Agreement for not more than ten (10) Business Days; and/or (ii) terminate this Agreement by providing written notice to the Defaulting Party that designates a day, no earlier than the day such notice is effective, as the Early Termination Date.

Section 9.02 Termination Without Default.

(a) Termination Events.

(i) Provider may terminate this Agreement at its sole option: (a) if at any time during the Term Provider is unable to reserve and receive a rebate or subsidy from the state, Local Electric Utility or other source (directly or indirectly by assignment under the Rebate Assignment Agreement) for the installation of the System as designed in an amount not less than the Required Rebate; (b) at any time prior to the Commercial Operations Date; or (c) if Purchaser fails to fulfill the conditions precedent that are applicable to it under Section 4.01 by the Installation Date.

(ii) Purchaser may terminate this Agreement at its sole option if Provider fails to commence the Installation Work by the Installation Date or the Commercial Operations Date does not occur within one hundred and twenty (120) days of the Installation Date (in each case, other than due to an event of Force Majeure).

(iii) The non-Claiming Party may terminate this Agreement at its sole option if a Force Majeure shall have occurred and be continuing for a period of one hundred twenty (120) consecutive days or two hundred forty (240) days in the aggregate.

(b) Remedies Upon Termination Event. Upon the occurrence of an event under Section 9.02(a) that gives a Party the right to terminate this Agreement, such Party may terminate this Agreement by providing written notice to the other Party that designates a day, no earlier than the day such notice is effective, as the Early Termination Date; provided, however, that neither party shall be owed a Net Settlement Amount, Early Termination Fee or any other damages in connection with the termination of this Agreement.

Section 9.03 Early Termination Date Remedies.

(a) Upon the occurrence of an Early Termination Date:

(i) this Agreement and the Parties' respective rights and obligations hereunder will terminate (except as set forth in Section 14.12);

(ii) either Party may exercise any remedy it may have at law or in equity; and

(iii) if: (A) Purchaser has not exercised its Purchase Option; and (B) Purchaser is the Defaulting Party for an Event of Default, then (X) Provider shall provide notice to Purchaser of the Net Settlement Amount, (Y) within two (2) Business Days of receipt of such notice, Purchaser shall pay the Net Settlement Amount, and (Z) within thirty (30) calendar days of the Early Termination Date, Provider, at its sole option, may require that Purchaser accept a title transfer of the System from Provider, in which case Provider shall no longer be obligated to remove the System pursuant to Section 1.05.

(b) For the avoidance of doubt, in no event will Provider owe an Early Termination Fee, Net Settlement Amount or any other damages in connection with the termination of this Agreement to Purchaser, regardless of whether it is a Defaulting Party or otherwise.

(c) To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

Section 9.04 Purchaser's Triennial Purchase Option.

(a) So long as no Event of Default with respect to Purchaser shall have occurred and be continuing, Provider grants to Purchaser an option to purchase the System (the "Purchase Option"), exercisable during the thirty (30) calendar day period following the fifth (5th) anniversary of the Commercial Operation Date and each third (3rd) anniversary of the Commercial Operation Date thereafter. Purchaser shall give at least sixty (60) calendar days' prior written notice to Provider of its intent to exercise its Purchase Option, which notice shall set forth the Early Termination Date and the Option Price.

(b) On the Early Termination Date designated by Purchaser's notice given pursuant to Section 9.04(a): (i) the Parties shall execute and deliver to each other all documents necessary to (A) cause title to the System to pass to Purchaser, free and clear of any Liens, and (B) assign all warranties for the System, if any, to Purchaser, to the extent assignable; and (ii) Purchaser will pay the Option Price to Provider.

(c) In the event that: (i) Purchaser retracts its exercise of the Purchase Option after providing notice to Provider pursuant to Section 9.04(a); or (ii) fails to pay the Option Price when due, then the Purchaser's exercise of the Purchase Option will be void, and the provisions of this Agreement shall be applicable throughout the Term, unless ended earlier due to the declaration of an Early Termination Date.

Article X. Relocation of System.

Section 10.01 Provided that this Section does not violate Purchaser's obligations in Section 6.02(g), on and after the fifth (5th) anniversary of the Commercial Operation Date, Purchaser may request that Provider relocate the system to a new location, which Provider may accept in its reasonable discretion. Any of the following reasons shall be a reasonable basis for Provider to reject Purchaser's request to relocate the System: (a) the new location is not located within the same Local Electric Utility district as the Premises, (b) the new location is not in a location with similar insolation and Local Electric Utility rates; (c) at the new location, Provider will not be entitled to receive the Required Rebate or the Value of RECs produced by the relocated System will be less than the Value of RECs produced by the System if it remained at the original Premises; and (d) Provider expects the duration of such relocation to exceed ninety (90) calendar days. All costs and expenses associated with relocating the System shall be paid by Purchaser.

Article XI. Change of Law.

Section 11.01 Environmental Attributes. Purchaser acknowledges and agrees that (a) several Governmental Authorities are in the process of promulgating regulations or enacting legislation requiring the monitoring and reporting of greenhouse gas emissions and the allocation of Environmental Attributes, and that such

regulations or legislation may be enacted during the Term, (b) any such enacted regulations or legislation may allocate Environmental Attributes in a manner inconsistent with this Agreement, and (c) in the event that Environmental Attributes are allocated in a manner inconsistent with this Agreement pursuant to such enacted regulations or legislation, Purchaser shall take such actions as are required to provide Provider with the legal and/or beneficial interests in and to the Environmental Attributes, including execution, delivery and registration of any document required therefor.

Section 11.02 Adjustments to Solar Services Payments.

(a) Change in Law. In the event there is any change in Applicable Law (including with respect to the Parties' tax obligations) subsequent to the Effective Date that results in a material change in Provider's costs to provide the Solar Services (a "Change in Law"), Provider will promptly submit to Purchaser a written notice setting forth (i) the citation of the Change in Law, (ii) the manner in which such Change in Law shall materially change Provider's costs to provide the Solar Services, including computations in connection therewith, and (iii) Provider's proposed adjustment to the then applicable and future kWh Rates to reflect such expected material changes in Provider's costs.

(b) Notice. Within thirty (30) days after delivery of Provider's notice, Purchaser may, by written notice to Provider, (i) accept Provider's notice, or (ii) reject Provider's notice, and demand that the Fair Market Value of the Solar Services be computed to determine any increase in Provider's costs due to a Change in Law. A failure of Purchaser to accept or reject Provider's notice pursuant to this Section 11.02(b) shall be deemed acceptance of Provider's notice.

(c) Adjustment to kWh Rate. From and after the date of (i) Purchaser's acceptance of Provider's notice, the kWh Rate shall be adjusted to include Provider's total increased cost due to the Change in Law, or (ii) the determination of the Fair Market Value of the Solar Services, the kWh Rate shall be adjusted according to such determination of the Fair Market Value of the Solar Services; as applicable.

Article XII. Force Majeure.

Section 12.01 To the extent either Party is prevented by Force Majeure from carrying out, in whole or in part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations prevented by the Force Majeure (other than the obligation to make payments). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. Until the Force Majeure is remedied, the non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

Article XIII. Taxes and Governmental Fees.

Section 13.01 Purchaser's Obligations. Except as provided in Section 13.02, Purchaser shall reimburse (or rebate as applicable) and pay for any documented taxes, fees or charges imposed or authorized by any Governmental Authority and paid by Provider due to Provider's sale of the Solar Services to Purchaser (other than income taxes imposed upon Provider), including taxes levied with respect to the Premises or the System that are or could be characterized as "use taxes", "ad valorem taxes" or "personal property taxes", whether assessed on a one-time or annual basis.

Section 13.02 Provider's Obligations. Subject to Section 13.01, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System.

Article XIV. Miscellaneous.

Section 14.01 Limitation of Liability. NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY DAMAGES, WHETHER DIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER

FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, EXCEPT AS EXPRESSLY SET FORTH HEREIN.

Section 14.02 Assignment. Except as provided in Section 14.03, neither Party may assign the Agreement without the written consent of the other Party, such consent not to be unreasonably withheld or delayed; provided, however, that either Party may transfer the Agreement without consent: (a) to an Affiliate of equal or higher creditworthiness; (b) to any person or entity succeeding to all or substantial all of the assets of the transferor and whose creditworthiness is equal or higher than that of the transferor; or (c) as a collateral assignment in connection with any financing or other financial arrangements; provided, further, that Provider may assign all or a portion of its rights, benefits, duties or obligations to an Affiliate of equal or higher creditworthiness for the purpose of enabling the Affiliate to receive the benefit of federal state or other tax credits, incentives or benefits, including, but not limited to, the Required Rebate.

Section 14.03 Lender Accommodations. Purchaser acknowledges that Provider may finance the development, installation, acquisition, operation and/or maintenance of the System with financing or other accommodations from MS Solar Solutions Corp. or one or more other financial institutions and that Provider's obligations to MS Solar Solutions Corp. or any such other financial institutions may be secured by, *inter alia*, a pledge or collateral assignment of this Agreement and a first security interest in the System (collectively, the "Lender's Security Interest"). In order to facilitate such financing or other accommodations (or agent or trustee on behalf of such financial institutions), and with respect to MS Solar Solutions Corp. or any other financial institution of which Provider has notified Purchaser in writing (each, a "Lender"), Purchaser agrees as follows:

- (a) Consent to Lender's Security Interest. Purchaser consents to Provider providing to Lender, the Lender's Security Interest. Purchaser acknowledges and agrees that: (i) Purchaser and all of Purchaser's rights hereunder are and shall be in all respects subject and subordinate to the Lender's Security Interest and all renewals, modifications, supplement, amendments, consolidations, replacements, substitutions, additions and extensions thereof; and (ii) no amendments or modifications of this Agreement, are permitted without Lender's prior written consent.
- (b) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement, upon the occurrence of an event of default under Lender's financing documents:
 - (i) Lender, as holder of the Lender's Security Interest, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. Lender shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.
 - (ii) Lender shall have the right, but not the obligation, to pay all sums due from Provider under this Agreement and to perform any other act, duty or obligation required of Provider hereunder or cause to be cured any default of Provider hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires Lender to cure any Provider Default (unless Lender has succeeded to Provider's interests under this Agreement) or to perform any act, duty or obligation of Provider under this Agreement, but Purchaser hereby gives it the option to do so.
 - (iii) Upon the exercise of remedies under the Lender's Security Interest in the System, including any sale thereof by Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to Lender (or any Qualified Assignee of Lender) in lieu thereof, Lender shall give notice to Purchaser of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement, nor require Purchaser's consent.

- (iv) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Lender made within ninety (90) days of such termination or rejection, Purchaser shall enter into a new agreement with Lender or its Qualified Assignee having substantially the same terms and conditions as this Agreement.
- (c) Acknowledgement and Confirmation. Purchaser shall deliver, or shall cause the owner or lesser of the Premises, if different from Purchaser, to deliver, to Lender and Provider a fully executed Acknowledgement and Confirmation in the form of Exhibit C that the ownership of the System remains in Provider and further acknowledging that the System is the personal property of Provider.
- (d) Right to Cure. Notwithstanding any contrary term of this Agreement:
 - (i) Purchaser will not exercise any right to terminate or suspend this Agreement as a result of a Provider Default unless (to the extent Purchaser has been given prior written notice of the manner in which to give Lender notice hereunder), it shall have given Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the Provider Default giving rise to such right, and Lender shall not have caused to be cured the Provider Default giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Provider Default cannot be cured by the Lender within such period and the Lender commences and continuously pursues cure of such Provider Default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional one hundred twenty (120) days. The Parties' respective obligations will otherwise remain in effect during any cure period.
 - (ii) If Lender or its Qualified Assignee (including any purchaser or transferee), pursuant to an exercise of remedies by Lender, shall acquire title to or control of Provider's assets and shall, within the time periods described in Section 14.04(d)(i), cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such Person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.
- (e) Further Assurances. At the request of Lender and/or its Qualified Assignee, Purchaser agrees to execute and deliver any document, instrument or statement required by law or otherwise as reasonably requested by Lender or its Qualified Assignee in order to create, perfect, continue or terminate the security interest in favor of Lender in all assets of the Provider, and to secure the obligations evidenced by Lender's Security Interest.

Section 14.04 Notices. Unless otherwise provided herein, any notice provided for in this Agreement shall be sent to the address specified on the Cover Sheet by hand delivery, registered or certified U.S. mail, postage prepaid, commercial overnight delivery service, or transmitted by facsimile or e-mail. Notices shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile or e-mail (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

Section 14.05 Indemnification.

(a) Indemnification. Each Party shall indemnify, defend and hold harmless the other Party and its directors, officers, members, shareholders, agents and employees (collectively the "Indemnified Parties") from and against all Losses arising out of or resulting from this Agreement to the extent that such Losses (i) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, and (ii) arise out of such Party's (or any subcontractor of such Party's) breach of the Agreement, gross negligence or willful misconduct.

(b) Purchaser's Indemnification of the Required Rebate. Purchaser shall indemnify Provider for the Required Rebate it receives in accordance with Section 4.01(b) to the extent that Provider must repay the Required Rebate to the Local Electric Utility or to any other party under Applicable Law or otherwise, unless such repayment is due to the negligence or willful misconduct of Provider.

(c) Hazardous Substance Clean-up Obligation. To the extent permitted by Applicable Law, in the event that Hazardous Substances are discovered on the Premises or the groundwater thereunder, Purchaser shall indemnify Provider and the Indemnified Parties for any and all Losses to the extent arising from or out of any claim for or arising out the discovery or release of Hazardous Substances on the Premises by Purchaser (or to the extent Purchaser may be otherwise responsible under other Applicable Law) and Provider shall indemnify Purchaser and the Indemnified Parties for any and all Losses to the extent arising from or out of any claim for or arising out the discovery or release of Hazardous Substances on the Premises by Provider (or to the extent Provider may be otherwise responsible under other Applicable Law)

Section 14.06 Insurance.

(a) Each Party shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (i) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, and (ii) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence. Additionally, Provider shall carry adequate property loss insurance on the System which may, at Provider's election, be covered by a rider to Purchaser's property coverage with Provider being named as an additional insured party under such policy, the added cost of which shall be paid for by Provider (either directly or by way of netting under Section 7.02). The amount and terms of insurance coverage will be determined at Provider's sole discretion.

(b) Each Party shall furnish current certificates evidencing that the insurance required under Section 14.06(a) is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party thirty (30) days' written notice before the insurance is cancelled or materially altered. Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear.

Section 14.07 Governing Law & Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH GOVERNING LAW (AS SPECIFIED ON THE COVER SHEET), WITHOUT REFERENCE TO ANY CONFLICTS OF LAW PRINCIPLES. EACH PARTY WAIVES ITS RESPECTIVE RIGHTS TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

Section 14.08 Venue. The Parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the state and federal courts located in the Venue specified on the Cover Sheet for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement.

Section 14.09 Entire Agreement. This Agreement, together with the Exhibits and Schedules attached hereto, constitutes the entire agreement and understanding between Provider and Purchaser with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached hereto are integral parts hereof and are made a part of

this Agreement by reference. In the event of a conflict between the provisions of this Agreement and those of any Exhibit, the provisions of this Agreement shall prevail, and such Exhibit or Schedule shall be corrected accordingly.

Section 14.10 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

Section 14.11 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

Section 14.12 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

Section 14.13 Survival. The obligations under Sections 1.05 (Removal of the System), 5.03 (EXCLUSION OF WARRANTIES), 6.01(d) (Provider's Covenants; Liens), 6.02(d) (Purchaser's Covenants; Liens), 7.04 (Disputes and Adjustment of Invoices), 14.01(a) (Limitation of Liability), 14.04 (Notices), 14.05(b) (Hazardous Substance Indemnity Clean-up Obligation), 15.07 (Governing Law & Jury Trial Waiver) and 45.08 (Venue) and Article XIII (Taxes and Governmental Fees), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for a period of two (2) years.

Section 14.14 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

Section 14.15 Relationship of the Parties. The relationship between Provider and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

Section 14.16 Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective permitted successors and assigns.

Section 14.17 Counterparts. This Agreement may be executed in one or more counterparts, including through facsimile signatures, each of which shall constitute an original and all of which constitute one and the same instrument.

Section 14.18 Early Termination Fee Not Penalty. Provider acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Provider's rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages, and not a penalty, to be borne by Purchaser in lieu of Provider's actual damages.

EXHIBIT A: DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the respective meanings specified in this Exhibit A.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the ownership of a majority of the voting power of the Person; provided, however, that Morgan Stanley Derivative Products Inc. shall not be considered to be an Affiliate of Provider.

“Agreement” has the meaning set forth on the Cover Sheet.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, holding, Governmental Approval, or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Approvals” means, collectively, any approval, consent, franchise, permit, resolution, concession, license, or authorization issued by or on behalf of the Local Electric Utility and any Governmental Authority.

“Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or general arrangement for the benefit of creditors; (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in New York City, New York are required or authorized by Applicable Law to be closed for business.

“Change in Law” has the meaning set forth in Section 11.02(a).

“Claiming Party” has the meaning set forth in Section 12.01.

“Commercial Operation” means the condition existing when the System is: (i) mechanically complete and operating as specified in Schedule 5 of Exhibit B hereto, and (ii) energy is delivered through the System’s meter and to the Delivery Point and to the Premises’ electrical system under and approved and executed Interconnection Agreement; provided, however, that Provider’s initial testing of the System shall not be deemed “Commercial Operation.”

“Commercial Operation Date” is the date upon which Commercial Operation has been achieved.

“Deemed Production Payment” means a payment by Purchaser to Provider in lieu of the Solar Services payment and the value of the RECs that Provider would have received but for a curtailment of Solar Services for the reasons specified in Sections 7.03(a) through (c). The Deemed Production Payment will equal the *sum* of: (a) the *product* of (i) Forecasted Production for the applicable period, and (ii) the applicable kWh Rate; and (b) the REC Value of RECs that are equivalent in amount and type to those that would have been produced by the System.

“Default Rate” means the rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

“Defaulting Party” has the meaning set forth in Section 9.01(a).

“Delivery Point” means the location of the delivery of the Solar Services, shown more specifically in Schedule 2 of Exhibit B.

“Discounted Cash Flow” means, for any period of determination: (i) the *product* of (A) the Forecasted Production for each remaining year of the Term (or pro rata portion thereof) *multiplied by* (B) kWh Rate for Solar Services for the year in which such Forecasted Production would be delivered to the Point of Delivery; *plus* (ii) the REC Value

of RECs that are equivalent in amount and type to those that would have been produced by the System, less (ii) reasonably anticipated annual expenses of Provider for such period of determination, discounted by (iii) three percent (3%) per annum.

“Early Termination Date” a date that is designated by a Party in accordance with Article IX on which this Agreement, and all of the Parties rights and obligations thereunder (except as set forth in Section 15.13), will be terminated.

“Early Termination Fee” means an amount equal to the *difference* between (a) (i) if the Early Termination Date occurs after the Commercial Operation Date, the Early Termination Fee for the year in which termination occurs as set forth on Schedule 4 of Exhibit B, and (ii) if the Early Termination Date occurs before the Commercial Operation Date, all expenses incurred by Provider subsequent to the execution of this Agreement, including expenses for time and materials and any fees and expenses to outside consultants, advisors and attorneys; and (b) all amounts paid by Purchaser for Solar Services pursuant to any invoice issued by Provider during the year in which such termination occurs.

“Effective Date” has the meaning set forth in the Cover Sheet.

“Environmental Attributes” means any non-energy attributes howsoever entitled, whether now existing or hereafter created or arising, attributable to the installation, ownership or operation of the System, including carbon trading credits, SO-RECs or other renewable energy credits or certificates, emissions reduction credits, investment or investment tax credits, production tax credits, emissions allowances, green tags, tradable renewable credits, and Green-e® products that are (a) created by order of any Governmental Authority, or (b) allocated as a result of Provider’s or Purchaser’s participation in any voluntary registry, association or market-based exchange.

“Extension Option” means a five-year option to extend the Term of this Agreement as set forth in Section 8.02.

“General Contractor” shall have the meaning specified on the Cover Sheet.

“Fair Market Value” means the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System or of Solar Services shall be determined by the mutual agreement of Purchaser and Provider; provided, however, if Purchaser and Provider cannot mutually agree to a Fair Market Value within ten (10) calendar days before the need to determine Fair Market Value pursuant to the applicable provision of this Agreement, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Purchaser; provided, however, the Fair Market Value of the System, whether determined by the mutual agreement of the Parties or by an independent appraiser, shall not be less than the *sum* of: (a) the Discounted Cash Flow for the remainder of the Term; (b) the salvage value of the System at the end of the Term; and (c) Provider’s closing costs.

“Forecasted Production” means: (a) if the System physically provided Solar Services during each calendar day of the applicable period of the previous year, the cumulative amount of such amount of such Solar Services; or (b) if the System did not physically provide Solar Services during each calendar day of the applicable period of the previous year, the amount of kWhs that the System would have produced during such period, as reasonably calculated by Provider based on the historical capacity of the system and insolation of the Premises, as adjusted for seasonal factors.

“Force Majeure” means an event or circumstance that prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on the impossibility for one of the Parties to obtain any Approval necessary to enable the affected Party to fulfill its obligations in accordance with this Agreement.

"Governing Law" has the meaning specified on the Cover Sheet.

"Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

"Hazardous Substances" shall mean any flammable explosive or radioactive material, petroleum or petroleum product, or any "toxic substance," "pollutant," "contaminant," "hazardous material," "hazardous substance," "hazardous waste," or words of similar import, as defined under any Applicable Law.

"Indemnified Parties" has the meaning set forth in Section 14.05(a).

"Initial Term" has the meaning set forth in Section 8.01.

"Installation Date" shall mean the date by which Installation Work must commence, as specified on the Cover Sheet.

"Installation Work" means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof.

"Interconnection Agreement" means that certain agreement specified on the Cover Sheet between Purchaser and Local Electric Utility, as amended, restated or revised.

"kWh Rate" has the meaning specified in the definition of "Solar Services Payment".

"Lender" has the meaning set forth in Section 14.03.

"Lender Security Interest" has the meaning set forth in Section 14.03.

"Liens" has the meaning set forth in Section 6.01(d).

"Local Electric Utility" has the meaning set forth on the Cover Sheet, or such other local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises as of the Effective Date, or any Person succeeding to such role after the Effective Date.

"Losses" means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all reasonable attorneys' fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

"Maintenance Provider" means any third party, including, but not limited to, Provider's representatives, agents, contractors, subcontractors and advisors, selected by Provider in its sole discretion, that performs System Operations on the System or removes the System from the Premises at the direction of Provider.

"Metering System" has the meaning set forth in Section 1.04(b)(i).

"Net Settlement Amount" means the net, aggregate or setoff, as appropriate, of any and all amounts owing between the Parties, as calculated by Provider, including, without limitation, the Early Termination Fee, any unpaid amounts under Article VII, and any amounts owed to Purchaser under any other agreement or arrangement between the Parties.

"Non-default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund the relevant amount.

"Non-Defaulting Party" means the Party that is not the Defaulting Party.

"Notice to Proceed" has the meaning in Section 2.01(a).

“Option Price” means an amount equal to the *greater* of: (a) the Fair Market Value of the System, or (b) the *difference* between the Early Termination Fee for the year in which the Purchase Option is exercised as specified in Schedule 4 of Exhibit B and all amounts paid by Purchaser for Solar Services pursuant to any invoice issued by Provider during the year in which the Purchase Option is exercised.

“Party” or “Parties” has the meaning set forth in the Cover Sheet.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Purchaser” has the meaning set forth in the Cover Sheet.

“Premises” means the premises described in Schedule 1 of Exhibit B.

“Production” means, for any period of determination, the total kWh of Solar Services delivered to the Delivery Point during such period of determination, as recorded by the Metering System, including Production deemed to have occurred pursuant to Section 7.03.

“Project Documents” means: (a) those documents specified on the Cover Sheet as Project Documents; and (b) all other documents necessary or incidental thereto; all as permitted to be amended, modified or supplemented from time to time.

“Provider” has the meaning set forth in the Cover Sheet.

“Prudent Electric Practices” means those practices, methods, standards, and equipment commonly used, from time to time, in electrical engineering and operations to operate electrical equipment with safety, dependability and efficiency and in accordance with the National Electrical Safety Code, the National Electrical Code and the standards of the Institute of Electrical and Electronic Engineers, the National Electrical Manufacturers Association, the North American Electric Reliability Council, and the American National Standards Institute and any other applicable statutes, codes, regulations and/or standards.

“Purchase Option” has the meaning set forth in Section 9.04(a).

“Qualified Assignee” means a proposed assignee of Provider, for which Provider has, by way of example and not limitation, provided to the Purchaser reasonable proof that the proposed assignee: (x) has comparable successful experience in operating and maintaining photovoltaic solar systems comparable to the System and successfully providing services comparable to the Solar Services; (y) has the financial capability to maintain the System and provide the Solar Services in the manner required by this Agreement; and (z) shall agree to assume in writing the due performance of all of Provider’s obligations under this Agreement, including any accrued obligations at the time of the assignment.

“Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by Applicable Law indicating generation of a particular quantity of energy, or product associated with the generation of a specified quantity of energy from the System. A REC may include some or all additional Environmental Attributes associated with the generation of Solar Services, and those Environmental Attributes may, but need not be, verified or certified, or disaggregated, retained or sold separately. A REC is separate from the Solar Services produced, and are retained by the Provider pursuant to Section 3.01.

“Requesting Party” has the meaning specified in Section 10.01.

“Required Rebate” has the meaning set forth in the Cover Sheet.

“S&P” has the meaning specified in Section 10.02.

“Solar Services” means the supply of on-site electrical energy output Produced by System.

“Solar Services Payment” means the *sum* of: (a) the *product* of (i) the Production delivered to the Delivery Point in the preceding month, and (ii) the price per kWh for Solar Services for the year in which such Production was

delivered to the Delivery Point as specified in Schedule 3 of Exhibit B (the "kWh Rate"); "System" means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 2 of Exhibit B and interconnected with the Local Electric Utility, owned by Provider and installed at the Premises.

"System Acceptance Testing" has the meaning set forth in Section 1.03.

"System Operations" means the operation, maintenance and repair of the System.

"Term" means the period of time from the Effective Date until the Termination Date.

"Termination Date" means the date on which this Agreement will terminate, unless terminated earlier in accordance with its terms, as specified on the Cover Sheet.

"REC Value" means: (a) where there is a liquid market for such RECs, the cost to Provider to purchase RECs (for the avoidance of doubt, Provider may use quotes from unaffiliated third-parties to prove the cost of such RECs and need not actually purchase equivalent RECs); (b) where the rate for such REC is fixed by Applicable Law, the Forecasted Production relating to such RECs *multiplied by* such rate; or (c) if neither of the above clauses (a) or (b) apply, then the value of the applicable RECs, as reasonably determined by Provider.

"Venue" has the meaning specified on the Cover Sheet.

EXHIBIT B

This Exhibit consists of five (5) schedules. Capitalized terms used and not otherwise defined herein have the meanings ascribed thereto in the Agreement.

1. Schedule 1: Description of the Premises. The Premises for the installation of the System provided pursuant to this Agreement are described in Schedule 1 to this Exhibit B.
2. Schedule 2: Description of System. The System to be installed on the Premises subject to this Agreement shall be as described in Schedule 2 to this Exhibit B.
3. Schedule 3: kWh Rate. The kWh Rates with respect to the System to be installed pursuant to this Agreement shall be as specified in Schedule 3 to this Exhibit B.
4. Schedule 4: Early Termination Fee. The Early Termination Fee payable pursuant to this Agreement shall be as specified in Schedule 4 to this Exhibit B.
5. Schedule 5: System Acceptance Testing. The requirements for successful System Acceptance Testing shall be as specified in Schedule 5 to this Exhibit B.

DESCRIPTION OF PREMISES

A new installation of a solar photovoltaic energy generation system with a total nameplate capacity of 418.6kW will be installed at each of the locations listed above with final details to follow

Site	Address	City	State	System Size kW (DC)
Central High	1 Lincoln Blvd,	Bridgeport	CT	218.27
Blackham Middle	425 Thorne St	Bridgeport	CT	89.70
Public Facilities	990 Houstanic Ave	Bridgeport	CT	62.79
City Hall	45 Lyon Terrace	Bridgeport	CT	47.84
				418.60

DESCRIPTION OF SYSTEM

Solar System Size and Location: See Schedule 1

Anticipated Rebate for Systems in the amount of _\$611,348_____

Scope: Design and supply grid-interconnected, roof-top solar electric (PV) system. Provider responsible for turnkey installation and removal.

Module: Astronergy CHSM 6610 230 W

Inverter: PV Powered

Structure: Panel Claw

Warranty:

System Includes: Solar panels, support system, inverter system, wire kits, and data monitoring system.
Design including: 1 site visit, system drawings, engineering review and stamps (not including building structural review, if required). Installation by registered and experienced contractors. System commissioning.
Interconnection application and permitting.

Exclusions:

Point of Delivery: At the meter.

kWh RATE

The kWh Rate under the Agreement shall be as set forth below:

Years After Commercial Operation Date	\$/kWh Rate
0 to 1	\$0.1460
1 to 2	\$0.1515
2 to 3	\$0.1572
3 to 4	\$0.1630
4 to 5	\$0.1692
5 to 6	\$0.1755
6 to 7	\$0.1821
7 to 8	\$0.1889
8 to 9	\$0.1960
9 to 10	\$0.2034
10 to 11	\$0.2110
11 to 12	\$0.2189
12 to 13	\$0.2271
13 to 14	\$0.2356
14 to 15	\$0.2444
15 to 16	\$0.2536
16 to 17	\$0.2631
17 to 18	\$0.2730
19 to 20	\$0.2832
20 to 21	\$0.2939
21 to 22	\$0.3049
22 to 23	\$0.3163
23 to 24	\$0.3282
24 to 25	\$0.3405

EARLY TERMINATION

The Early Termination Fee under the Agreement shall be as set forth below:

Years After Commercial Operation Date	\$/Watt Rate
6	\$2.45
9	\$2.30
12	\$2.05
15	\$1.65
18	\$0.75
21	\$.10
24	\$.05

Requirements for System Acceptance Testing

Substantial Completion Commissioning and Testing Plan for System

System

Overall Site Condition	Inspect general condition of Site and roof; cleanliness of Site and structure, tiles; note roof issues; confirm 'Danger' signage; check security, fencing and safety features
Installed Equipment	Verify that all Equipment and each Component on construction drawings is installed per design documents and manufacturer's specifications
Support Structure	Inspect structure welds; drainage, grounding; rack placement and alignment; bearing condition and placement;
PV Mounting	Module placement, spacing and alignment; Check for cracks and other defects in modules; installation and condition frames and clamps; degree of soiling; assess shading; assess module clearance and obstacles
Array Wiring	Check grounding integrity; check connections and wire condition;

Electrical

Combine Box and Terminal Boxes	Check for loose wires and conduit, door seals, check fuses and connections; verify correct signage and labeling;
Inverter	Follow manufacturers start up and commissioning procedures
AC/DC Disconnect	Inspect disconnects; verify torques; ensure proper position; check signage

Monitoring

Data Acquisition System	Install DAS logger, check ethernet connection. Verify operation and data collection
Power Meter	Install DAS meter against utility grade monitor

Testing

The Commissioning Test shall be performed based on the form of Commissioning Test Certificate prepared by the Electrical Engineer, as approved by MW Solar and Main Street.

EXHIBIT C

Acknowledgment and Confirmation

This Acknowledgement and Confirmation, dated as of _____, 200__ (this "Acknowledgement"), is made by [] (" ") under that certain Solar Power & Services Agreement dated _____, 2010 (as amended from time to time, the "SPSA") with Main Street Power Company, Inc., a Delaware corporation ("Provider"). This Acknowledgement is provided pursuant to Section 14.03 of the SPSA to _____ ("Lender"), which is providing financial accommodations to Provider.

The solar photovoltaic system (the "System") to be installed, operated and maintained by Provider pursuant to the SPSA is located at Purchaser's facility at _____ (the "Premises").

1. Acknowledgement of Collateral Assignment.

- (a) Purchaser acknowledges the collateral assignment by Provider to Lender, of Provider's right, title and interest in, to and under the SPSA, as consented to under Section 14.03 of the SPSA.
- (b) Lender as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Provider's interests in the SPSA, including those rights provided to Lender in Section 14.03 of the SPSA.
- (c) Purchaser acknowledges that it has been advised that Provider has granted a first priority security interest in the System to Lender and that Lender has relied upon the characterization of the System as personal property, as agreed in the SPSA in accepting such security interest as collateral for its financial accommodations to Provider.
- (d) Until further written notice, Purchaser agrees to make all payments due Provider under the SPSA to Lender [at the following address:

[]
[]
[]
Attention: []
Reference: []]

- (a) [to the following account:]
- (e) [Provide Lender Address for Notices under the SPSA.]

2. Confirmation. Purchaser confirms the following matters for the benefit of Lender:

- (a) To Purchaser's knowledge, there exists no event or condition that constitutes a default, or that would, with the giving of notice or lapse of time, constitute an event of default, under the SPSA.
- (b) Purchaser has approved the System as installed at the Premises.
- (c) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises which could attach to the System as an interest adverse to Lender's security interest therein.

Purchaser

PROVIDER

By: _____
Name: _____

By: _____
Name: _____

ADDENDUM

This Addendum supersedes and supplants any contradictory terms in the body of the Solar Power and Services Agreement between Main Street Power Company, Inc. and the City of Bridgeport ("City") dated February 24, 2011:

The "Required Rebate" from the Connecticut Clean Energy fund shall be \$ 412,759.00.

The "Premises" shall be limited to Central High, 1 Lincoln Blvd., Bridgeport, CT and Blackham Middle School, 425 Thorne St., Bridgeport, CT.

Article VII. Section 702 is hereby replaced in its entirety with the following paragraph:

Method of Payment & Netting. Purchaser shall make all payments under this Agreement by electronic funds transfer in immediately available funds to the account designated by provider. All payments that are not made within thirty (30) days of the date due may, at the discretion of the Provider, bear interest accruing from the date becoming past due until paid in full at a rate equal to the Default Rate. Except as provided in Article XIV, all payments made hereunder shall be made free and clear of any tax, levy, assessment, duties or other charges, but shall include a monthly pro-rata payment to reimburse Provider any and all personal property taxes assessed against the Project and paid to Purchaser by Provider. Upon Provider's submittal to the Purchaser of all due personal property taxes and filing of its annual Declaration, Provider shall add to each month's subsequent invoice one twelfth (1/12) of that year's annual property tax lawfully paid.

***28-11 Consent Calendar**

Legal Status Report Concerning Bridgeport Harbour
Place I, LLC Pending Litigation.

**Report
of
Committee
on**

Miscellaneous Matters

Submitted: January 3, 2012

Adopted: _____

Fleeta C Hudson

Attest: _____

City Clerk

Approved _____

D. J. Ford

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport:

The Committee on **Miscellaneous Matters** begs leave to report; and recommends for adoption the following resolution:

***28-11 Consent Calendar**

RESOLVED, That the Legal Status Report regarding Bridgeport Harbour Place I, LLC Litigation as discussed in executive session be and it hereby is, in all respects, approved, ratified and confirmed.

RESPECTFULLY SUBMITTED,
THE COMMITTEE ON MISCELLANEOUS MATTERS

AmyMarie Vizzo-Paniccia, Co-Chair

Andre Baker, Co-Chair

Denese Taylor-Moye

Susan T. Brannelly

Manuel Ayala

M. Evette Brantley

Leticia Colon

Thomas McCarthy, President
(Added to Make Quorum)