

AGENDA

CITY COUNCIL MEETING

TUESDAY, FEBRUARY 17, 2009

7:00 P.M.

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

Prayer

Pledge of Allegiance

Roll Call

Approval of City Council Minutes: January 5, 2009

COMMUNICATIONS TO BE REFERRED TO COMMITTEES:

- 63-08** Communication from City Clerk re Request for Emergency Deadline Change, Rule XIII (2), referred to Special Committee on City Council Rule XIII.
- 65-08** Communication from Central Grants and Community Development re Professional Services Agreement with AECOM, Inc., referred to Contracts Committee.
- 66-08** Communication from Central Grants and Community Development re Professional Services Agreement with Fuss & O'Neill, Inc., referred to Contracts Committee.
- 67-08** Communication from Central Grants and Community Development re Grant Submission: Lead Poisoning Prevention Control Program, referred to Economic and Community Development and Environment Committee.
- 68-08** Communication from City Attorney re (Ref. 73-04) Proposed First Amendment of a Certain License Agreement with The First Tee of Metropolitan New York., referred to Contracts Committee.

MATTERS TO BE ACTED UPON (CONSENT CALENDAR):

- *19-08** Contracts Committee report re Agreement with American Medical Response of Connecticut, Inc. for Emergency Medical Services.
- *39-08** Contracts Committee report re Amendment to Lease Agreement with N.E. Hangar Development, LLC – Dated September 2007
- *40-08** Contracts Committee report re Lease Agreement with the United States of America re: DTFANE-09-L-00022.
- *41-08** Contracts Committee report re Agreement with the Laborers International Union of North America (LIUNA).
- *55-08** Contracts Committee report re Agreement with AFSCME, Local 1522.
- *56-08** Contracts Committee report re Agreement with AFSCME, Local 1303, City Attorney's Union.

RESOLUTIONS TO BE REFERRED TO BOARDS, COMMISSIONS, ETC.:

- 64-08** Resolution presented by Council members Valle, Lyons, Silva, McCarthy, Colon, dePara re Resolution requesting discussion and update from the Police Chief or designee on quality of life matters being addressed by the Strategic Enforcement Team at each monthly committee meeting, referred to Public Safety and Transportation Committee

CITY COUNCIL MEETING
Tuesday, February 17, 2008
7:00 p.m.
City Council Chambers, City Hall - 45 Lyon Terrace
Bridgeport, Connecticut

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TEST
CITY CLERK

ATTENDANCE: Council members: Brannelly, Crowe, Colon, Taylor-Moye, Brantley, *Walsh, Austin, Vizzo-Paniccia, Bonney, Blunt, dePara, Silva, Valle, Martinez, Paoletto, Curwen

ABSENT: Council members: McCarthy, Lyons, Baker, Holloway
***denotes arrived after roll call**

Mayor Finch called the meeting to order at 7:00 p.m.

Prayer - the prayer was offered by Joanne Manzo

Pledge of Allegiance - the pledge was led by Council member Brannelly

Roll Call - the city clerk took the roll and announced there was a quorum.

Moment of silence: Mayor Finch asked for a moment of silence for; Jan Williams, advocate for Captains Cove Swim Across the Sound. And Estella Chance of the Catholic Charities advocated for the Adoption Agency.

Council member Silva announced that Council President McCarthy and Council member Lyons were unable to attend the meeting tonight because of illness/flu.

Approval of City Council Minutes: January 5, 2009

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

COMMUNICATIONS TO BE REFERRED TO COMMITTEES:

**** COUNCIL MEMBER CURWEN MOVED TO APPROVE**
**** COUNCIL MEMBER PAOLETTO SECONDED**
**** MOTION PASSED UNANIMOUSLY**

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**** COUNCIL MEMBER CURWEN MOVED TO REFER**
**** COUNCIL MEMBER dePARA SECONDED**
**** MOTION PASSED UNANIMOUSLY**

MATTERS TO BE ACTED UPON (CONSENT CALENDAR):

The city clerk asked if there were any items to be removed from the consent calendar. There were none heard.

The city clerk read the items into the record:

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***56-08** Contracts Committee report re Agreement with AFSCME, Local 1303, City Attorney's Union.

**** COUNCIL MEMBER PAOLETTO MOVED TO APPROVE
** COUNCIL MEMBER CURWEN SECONDED
** MOTION PASSED UNANIMOUSLY**

ITEM FOR IMMEDIATE CONSIDERATION:

RE: 49-08 CENTRAL GRANTS

Council member Curwen stated that the item was for a \$49k grant. He said it needed to be addressed by March 1 since it was a time sensitive issue.

**** COUNCIL MEMBER CURWEN MOVED TO SUSPEND THE RULES TO TAKE
UP ITEM 49-08 FOR IMMEDIATE CONSIDERATION
** COUNCIL MEMBER PAOLETTO SECONDED
** MOTION PASSED UNANIMOUSLY**

**** COUNCIL MEMBER CURWEN MOVED TO APPROVE
** COUNCIL MEMBER dePARA SECONDED**

Council member Vizzo-Paniccia questioned the packet date of February 14 for this item. She relayed that the item was just received on February 17 and she wasn't aware of any programs pending. She requested more detail about the item, such as the value of parking and upkeep, as well as the building going on while disturbing the open land.

Alanna Kabel addressed Council member Vizzo-Paniccia's questions. She stated the item was submitted to the city clerk on February 14 and it was scheduled to be heard by the ECDE Committee tomorrow and then heard by the full city council on March 2. The final decision will be made by the DEP this week, so that was the reason it required immediate consideration in order for Bridgeport to be considered for the grant. She clarified that the item was appropriately referred to the proper committee and the city clerk.

She went on to explain that the matter involved a continuation of land that was developed for athletic fields per the Public Facilities Department. But due to the lack of manpower and funding, the work ceased at the time. Subsequently, a special grant became available late last year, so they decided to apply for it. She said they planned on recruiting high school volunteers from Bridgeport in conjunction with the service corp. to remove species that will be replaced with a more controlled species. They will also address infestation of the wetlands. She noted that the park will be used for educational purposes.

Council member Vizzo-Paniccia asked if they had the certification to remove the plantings and replant and make other adjustments. Alexandra responded that she wasn't sure if they were licensed to do that, but they were looking to preserve the soils and remove the weeds. She said that a professional contractor would handle the more detailed work.

Mayor Finch added that this type of work was common and done throughout the state.

Council member Brannelly asked if this would be an ongoing 3-year grant. The response was that a study was done first and then the plan was to implement the work that will be initiated by the Parks Department.

Council member Blunt asked to define what threat the plants that were there now posed. The response was that they kill other vital plants and threaten wild life in the park. And they may pose a threat to humans as well through potential disease. Overall, it's better to preserve the native species, because there is a tendency for the plants to grow wild.

Mayor Finch explained that there were seeds of plants that died through frost conditions. And because of the climate changes, there are a lot of species choking on the natural inclusion of the eco-system, that results in crowding out desirable species, such as the oak trees. So the idea is to reverse what happened and grow healthy species back.

**** MOTION PASSED UNANIMOUSLY**

ADJOURNMENT

**** COUNCIL MEMBER PAOLETTO MOVED TO ADJOURN**
**** COUNCIL MEMBER WALSH SECONDED**
**** MOTION PASSED UNANIMOUSLY**

The meeting was adjourned at 7:40 p.m.

Respectfully Submitted,

Diane Graham

Telesco Secretarial Services



**CITY OF BRIDGEPORT
OFFICE OF THE CITY CLERK
LEGISLATIVE DEPARTMENT**

45 Lyon Terrace, Bridgeport, Connecticut 06604 • Telephone (203) 576-7081 • Fax (203) 332-5608

FLEETA C. HUDSON
City Clerk

ANN L. MURRAY
Assistant City Clerk

COMM. # 63-08 Referred to Special Committee on City Council Rule XIII (02/17/2009)

2008 February 06

City Council
City of Bridgeport, Connecticut

RE: REQUEST FOR EMERGENCY DEADLINE CHANGE, RULE XIII (12).

Council Members:

As you know, the City Clerk's office is currently critically understaffed. Had not the January 20th meeting been cancelled, the remaining trained staff would not have been able to process the 15 items dropped off in my office at close of business on the deadline date. Some of those items would not have appeared on the agenda for referral. It was simply humanly impossible.

That being said, I urge you to make the following temporary city council rule change, so that the Clerk's Office can better continue to move business forward without delay.

XIII. 12. Any communication, petition, report or resolution for presentation at a meeting of the City Council shall be filed at the Office of the City Clerk no later than 4:30 p.m. on the **TUESDAY** [Wednesday] preceding the Council meeting. When a legal holiday occurs on the **TUESDAY** [Wednesday] prior to a City Council meeting, any communication, petition, report, or resolution for presentation at said meeting shall be filed at the Office of the City Clerk no later than 4:30 p.m. on the day announced by the City Clerk to conform with United States postal service availability.

Respectfully submitted,


Fleeta C. Hudson
City Clerk

FCH:AM

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City of Bridgeport, Connecticut
**DEPARTMENT OF CENTRAL GRANTS AND
COMMUNITY DEVELOPMENT**

999 Broad Street
Bridgeport, Connecticut 06604
Telephone (203) 332-5662
Fax (203) 332-5657

ANDREW J. NUNN
CAO

ALANNA C. KABEL
Deputy CAO of Central Grants
and Community Development

BILL FINCH
Mayor

COMM. # 65-08 Referred to Contracts Committee on (2/17/09)
February 10, 2009

Fleeta Hudson, City Clerk
45 Lyon Terrace
Bridgeport, Connecticut 06604

**RE: Professional Services Agreement Between the City of Bridgeport and
AECOM, Inc.**

Dear Fleeta:

At the request of the Deputy Chief Administrative Officer for Central Grants and Community Development Department, the attached agreement should be placed on the February 17th City Council agenda for referral to Contracts Committee for consideration.

Respectfully submitted,

By: 
Name: Alanna C. Kabel
Title: Deputy CAO, Central Grants & Community Development Department.

Enclosures (23)

ACK/dmt

pc: Mayor William Finch
Andy Nunn, CAO
Adam Wood, Chief of Staff
Art Harris, Construction Management Services
Don Eversley, Office of Planning & Economic Development
Ed Lavernoich, Office of Planning & Economic Development
Rich McHugh, Office of Planning & Economic Development
Mark T. Anastasi, City Attorney
Ron Pacacha, City Attorney
Dawn M. Twistol, Central Grants & Community Development

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PROFESSIONAL SERVICES AGREEMENT

BETWEEN

CITY OF BRIDGEPORT

AND

AECOM USA, INC.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT IS MADE AND ENTERED INTO as of the ____ day of _____, 2009, by and between the **CITY OF BRIDGEPORT**, a municipal corporation, located in Bridgeport, Connecticut, acting through its Office of Planning and Economic Development, 45 Lyon Terrace, Bridgeport, CT 06604 (hereinafter referred to as "**Owner**") and **AECOM USA, INC.**, a Delaware corporation authorized to do business in the State of Connecticut, having an address at 701 Edgewater Drive, Wakefield, Massachusetts 01880 (formerly Metcalf & Eddy, Inc.) (hereinafter referred to as "**Consultant**").

WHEREAS, the Owner advertised for one or more environmental consultants to assist and advise the Owner in the overall management of environmental work conducted by the Owner and others; to perform various environmental investigations and plan the remediation of sites; to monitor contractors; to interact with governmental agencies; to prepare and submit necessary environmental permits and related documents; and to perform Licensed Environmental Professional (LEP) oversight and certification as necessary ("**Project**");

WHEREAS, the Owner advertised a Request for Qualifications and the Consultant submitted its qualifications on March 19, 2008, as supplemented dated July 1, 2008 (see **Exhibit A** attached);

WHEREAS, the Owner selected the Consultant based upon its qualifications and price proposal and further based upon the Consultant's statements and representations made therein for purposes of entering into negotiation of a contract for professional consulting services for the Project;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

DEFINITIONS

The following definitions will be used throughout this Agreement, unless the context requires otherwise:

"**Approval**" or "**Approved**" means, with respect to the administration and performance of this Agreement, that the Owner has given its written approval to the Consultant when required, including but not limited to, the approval of budgets, Task Orders, directions, changes or deviations from or with respect to Task Orders, additional expenses, substitutions, time delays, schedule changes, etc.

PROFESSIONAL SERVICES AGREEMENT

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CITY OF BRIDGEPORT

AND

AECOM USA, INC.

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"Construction Manager" means the construction manager engaged by the Owner, if any, for the Project specified in a Task Order.

"Consultant" means Metcalf & Eddy, Inc., the Consultant's Representative, employees, agents and Approved subcontractors designated in writing from time to time during the term of this Agreement.

"Consultant's Representative" means a specific individual or individuals designated in writing by the Consultant to the Owner from time to time as its representative or representatives with respect to the Project. At the inception of this Agreement, the Consultant's Representative shall be John J. Cardoni, Vice President.

"Owner" means the City of Bridgeport, a municipal corporation, acting through the Owner's Representative who shall be designated in writing from time to time during the term of this Agreement.

"Owner's Representative" means a specific individual or individuals designated in writing by the Owner to the Consultant from time to time during the term of this Agreement as its representative or representatives with respect to the Project. At the inception of this Agreement, the Owner's Representative shall be Richard McHugh, or his designee set forth in writing to the Consultant.

"Project Manager" means the Consultant's project representative other than the Consultant's Representative, acting through a specific individual or individuals designated in writing from time to time during the term of this Agreement to the Owner and the Consultant as its representative or representatives with respect to the Project specified in a Task Order.

"Project" means those specific services that the Owner sets forth in one or more Task Orders assigned to the Consultant.

"Services" means the testing, inspections and other necessary and related professional services required by a Task Order for the completion of the work described therein.

"Task Schedule" means the schedule of milestones and other time requirements established in each Task Order.

"Task" or **"Task Order"** is a description of the Services requested from the Consultant, the format of which is described generally in Paragraph 1.1.D and Exhibit B of this Agreement, and the description of the particular Services requested from the Consultant in a Task Order issued to the Consultant from time to time during the term of this Agreement.

"Term" means the duration of this Agreement, commencing upon the date specified by the Owner in a Notice to Proceed on Task Order No. 1 and, unless sooner terminated, shall end either on (a) the completion of the final Task Order then outstanding or (b) December 31, 2010, whichever event shall last occur. The Owner reserves the right to extend the term of this Agreement, in writing, for one additional year, at its sole discretion, on terms and conditions mutually agreed to between the parties.

ARTICLE I BASIC AGREEMENT

1.1 Structure of the Agreement

A. Consultant's Qualifications. The Consultant represents that it is duly-licensed in the State of Connecticut, if licensing is required, and is qualified and experienced in the fields of environmental investigation and remediation in accordance with the requirements of the Owner as set forth in one or more Task Orders. The parties are entering into this Agreement with the understanding that the Consultant will provide consulting engineering services through its own forces and related services, such as for example, drilling, sampling, laboratory testing and the like, necessary for the completion of each Task Order. The licenses of the Consultant, where licensing is required, shall be submitted to the Owner prior to the execution of this Agreement or promptly in advance of engaging any subcontractor and consultant not identified to the Owner at the time of the execution of this Agreement. The Consultant will conduct, prepare and present to the Owner for review and acceptance to undertake and complete the work of a Task Order, which shall be prepared in cooperation with the Owner's Representative, the Project Manager and the Construction Manager, if applicable, as determined by the Owner, as necessary to accomplish the Tasks in the manner more specifically set forth in this Agreement and in accordance with the Task Orders issued by the Owner.

B. Use of Task Orders. The consulting Services required by this Agreement will be assigned by Task Order to allow for the sequential or partial completion of work related to the Project in response to the City's proposed Project requirements. The Owner shall request Services by one or more Task Orders. The content, schedule and Compensation for each Task Order shall be negotiated prior to commencing Services under such Task Order.

C. Assignment of Tasks. The Owner shall identify and inform the Consultant of Tasks that it wishes the Consultant to perform, each such Task to be set forth in a written Task Order upon mutual agreement of the terms and conditions thereof between the Owner and the Consultant. Each additional Task Order will be considered an amendment to this Agreement, shall be incorporated by reference into this Agreement and shall become a part hereof as if fully set forth herein. Each Task Order shall be commenced by the Consultant within five

(5) business days of receipt of a written notice to proceed or on such later date that may be specified therein (each, a "**Notice to Proceed**").

D. **Task Order Format.** A format for a Task Order is attached as **Exhibit B**. Its inclusion as part of this Agreement illustrates the general framework to be used in authorizing each and every Task Order requiring the Consultant's Services for the duration of this Agreement. The Consultant will be required to prepare an estimate of man-hours for each Hourly Billing Rate (defined below) to be utilized through the Consultant's forces or through each subcontractor employed or to be employed to perform each Task Order for the duration of the Task Order. Items of work and other reimbursable expenses shall also be listed as individual line items. After negotiations with the Owner, the manpower estimate shall be attached to the Task Order.

E. **Authority to Request Additional Tasks or Services.** It is understood and agreed by the parties that, upon the Approval of this Agreement, only the Owner's Representative, designated by the Owner in writing from time to time to the Consultant, shall have the authority to add Tasks or Services to this Agreement.

F. **Non-Exclusivity.** The City reserves the right to enter into similar agreements with other environmental consultants during the Term of this Agreement and will endeavor to assign Task Order work to the Consultant and such other consultants in a manner believed to be in the City's best interests.

1.2 **Compensation.** The Owner shall compensate the Consultant for the authorized Services to be performed pursuant to this Agreement as follows:

A. **Basis.** The Consultant shall be compensated for each Task Order for a not-to-exceed price based upon (1) itemized man-hours by job category agreed to by the parties multiplied by the Hourly Billing Rates set forth in **Exhibit B**, (2) Reimbursable Expenses set forth in **Exhibit D**, (3) laboratory, field equipment rental and stock material as set forth in **Exhibit E**, and (4) the costs of Approved subcontractors and consultants (hereinafter "**Compensation**"). If required by the Owner, the Consultant shall submit projections for each month during the projected duration of such Task Order of the amounts of Compensation to be requested including its best estimate of Reimbursable Expenses (defined below) in order for the Owner to appropriately allocate funds for such Compensation.

B. **Established Hourly Rates Per Job Category.** Compensation to the Consultant, whether for its own forces or those of its subcontractors and consultants, shall be computed on the basis of hourly rates ("**Hourly Billing Rates**"). A job category hourly rate schedule for Services to be performed by the Consultant, its subcontractors and consultants is attached hereto as **Exhibit C** and incorporated herein by reference, which rate schedule will apply for the

duration of this Agreement. All employees shall perform work only in the job categories for which they are qualified using objective standards acceptable in the industry and at the rates set forth in such exhibit. Requisitions for payment shall be charged against each hourly rate or individual line item identified on each Task Order.

1.3 **Payment.** Payment of the Compensation set forth herein shall be made to the Consultant as follows:

A. **Submission of Invoices.** Payment of the Compensation set forth in this Agreement shall be made monthly in proportion to for actual hours expended in providing the Services completed during the prior month. The accumulated total Compensation at the completion of each Task Order, excluding Compensation for additional services requested in writing by the Owner in connection with each such Task Order, if any, shall not exceed the agreed-to Compensation payable for Services to be performed under each Task Order.

B. **Timing of Submission; Payment; Interest.** Invoices shall be submitted by the twentieth (20th) day of the month for Services rendered during the previous month. The Owner shall have thirty (30) days to review each complete invoice, and payment of all undisputed amounts for Compensation, shall be made within forty-five (45) days after receipt thereof. Notwithstanding anything herein to the contrary, Compensation shall not be paid on disputed invoices or portions thereof and no interest shall be payable to the Consultant on amounts withheld by the Owner based upon a good faith dispute with the Consultant.

C. **Responsibility for Certain Payments.** The Consultant shall remain responsible, and shall indemnify and hold harmless the Owner, from and against all liability for the withholding and payment of all Federal, state and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements (under ERISA, state law or otherwise) now existing or hereafter enacted and attributable to the Consultant, its subcontractors and consultants and their respective employees.

D. **Unauthorized Charges.** The Consultant expressly understands and agrees that the Owner shall not be liable for the payment of any Services or other work performed by the Consultant, its subcontractors and consultants based upon unauthorized representations of or directions from officers, agents or employees of the Owner other than the Owner's Representative which exceed the Budget for this Project ("**Unauthorized Charges**") unless the Consultant submits in writing to the Owner within thirty (30) days of rendering Services or other work that is not authorized or that may exceed the Budget a request for approval of such Unauthorized Charges. Unauthorized Charges that are not

brought to the Owner's attention within such 30-day period will not be honored and payment therefore will be deemed waived by the Consultant, its subcontractors and consultants.

1.4 Use of Consultants and Subcontractors. The Consultant has retained or will retain as subcontractors or consultants, at its sole cost and expense, full-service, licensed (where required) professionals to render the categories of service to complete each Task Order. The names and qualifications of such consultants will be disclosed to the Owner in writing for review and Approval prior to entering into any Task Order. The Consultant shall inform the Owner in writing in advance of engaging any other consultants not identified at the time of execution of a Task Order. The Owner shall have the right, in the exercise of its reasonable business judgment, to reject any such additional or substitute consultant or subcontractor and to request the Consultant to submit alternative proposals. The retention of such consultants and subcontractors shall not diminish or reduce the overall responsibility of the Consultant under this Agreement for the successful completion of the Task Order work.

1.5 Project Responsibility and Staffing.

A. Consultant's Staffing. An authorized principal of the Consultant will represent the Consultant in all matters relating to the contractual relationship between the Owner and the Consultant, which person may be removed or replaced as set forth herein in writing from time to time (the "**Consultant's Representative**") in the manner set forth below. It is agreed that the Consultant shall not remove the Consultant's Representative without the prior written approval of the Owner unless such individual has ceased his or her employment with the Consultant. However, the Consultant's Representative shall be removed and replaced, without cost or expense to the Owner, at the written request of Owner. If the Owner requests that the Consultant's Representative be replaced, the Owner shall be permitted to terminate this Agreement in the event a replacement, satisfactory to the Owner in the Owner's sole discretion, is not provided promptly.

A. Consultant's Project Manager. The Consultant shall designate a project manager in writing for each Task Order (the "**Consultant's Project Manager**"). The Consultant's Project Manager shall have responsibility for day-to-day activities on the Project, communications with the Owner's Representative and coordination of the work including, but not limited to, progress reports, meetings, schedule, deliverables and other typical contract administration functions.

B. Consultants and Subcontractors. The Project staff for each Task Order will consist of, at a minimum, the staff identified by the Consultant in the professional categories approved by the Owner at the time of execution of a

Task Order. The Consultant represents that all consultants and subcontractors employed by it in connection with this Agreement possess the requisite licensing (where required), education, training and experience to perform their job descriptions and functions in a competent and professional manner with respect to this Project. No consultant or subcontractor shall be replaced without the prior written approval of Owner. The Owner may, without incurring cost or expense, require the replacement of any consultant or subcontractor identified in a Task Order in the sole discretion of the Owner upon written notice to the Consultant.

1.6 **Time.** The Consultant shall complete each Task Order required by this Agreement in a timely fashion in accordance with a schedule for each Task Order (each, a "**Schedule**"). Once the parties hereto have agreed to the Schedule for a Task Order, all dates set forth in the Schedule, as the same may be amended from time to time in accordance with this Agreement, shall be **TIME OF THE ESSENCE**.

A. **Timely Performance an Essential Condition.** It is hereby understood and agreed by the Consultant that the date of commencement, the dates of required intermediate milestones, and the time for completion, as specified in this Agreement and in the accepted Schedule for the Services to be completed by the Consultant with respect to each Task Order issued by the Owner, are **ESSENTIAL CONDITIONS** of this Agreement.

B. **Commencement of Services.** It is mutually understood and agreed that the Services of the Consultant hereunder for each Task Order shall be commenced within five (5) days after the issuance of a Notice to Proceed by the Owner or on such later date specified therein.

1.7 **Representations and Warranties.** The Consultant represents and warrants, as of the date hereof and throughout the Term of this Agreement, as follows:

A. **Use of Qualified Personnel, Consultants and Subcontractors.** The Consultant represents that it is a corporation comprised or duly-licensed consultants, where licensing is required, has the requisite experience to undertake and complete the Services pursuant to the requirements of this Agreement, has in its employ, or will engage at its sole cost and expense, licensed (where required), experienced, qualified and trained personnel, subcontractors and consultants, and will use, or require those in its employ to use, quality equipment accurately calibrated, where accurate measurement is necessary, to competently perform the Services required by each Task Order.

B. **Consultant Possesses Adequate Resources and Personnel.** The Consultant represents that it is financially stable and has adequate resources and personnel to complete the Services in a timely fashion.

C. **No Conflicts.** The Consultant has disclosed, or shall disclose, in writing prior to the execution of any Task Order, all conflicts or potential conflicts of interest that may or are likely to have an adverse affect on its ability to independently protect the Owner's interests in connection with the Project, including but not limited to, the nature and specifics of its relationship with any other participants in the Project, for example the Construction Manager, other consultants and subcontractors, and the like. The Consultant represents that its performance of the Services described herein, and its representation of the Owner, will not result in a conflict of interest, will not violate any laws or contractual obligations with third parties, and is an enforceable obligation of the Consultant.

D. **Prior Approval of All Consultants.** The Consultant will not engage any consultant or subcontractor for any of the Services for any Task Order without prior written notice to and written Approval by the Owner and receipt of the Owner's written consent, except for those consultants and contractors specifically identified in this Agreement.

E. **No Violation of Law.** The Consultant represents that neither it, nor any of its officers, directors, owners, employees or, to the best of its knowledge any of its approved subcontractors and consultants, have committed a criminal violation of federal or state laws arising directly or indirectly from its business operations that resulted in the imposition of a monetary fine, injunction, criminal conviction or other sanction, and further represents that the Consultant shall take all reasonable steps to ensure that its officers, directors, owners, employees, agents, subcontractors and consultants shall comply with the requirements of all laws, rules and regulations applicable to this Agreement or to the conduct of its or their businesses in the performance of the Services under this Agreement.

F. **Quality and Performance of Services.** The Consultant represents that it will perform, or ensure the performance by others of, the Services in a good and workmanlike manner consistent with the level of skill and care ordinarily exercised by members of the profession currently practicing in the State of Connecticut under similar conditions and will diligently pursue the completion of such Services in accordance with the terms of this Agreement.

G. **Licenses and Permits.** The Consultant represents that it possesses, and will ensure that its subcontractors and consultants possess, all professional licenses and other licenses and permits in the State of Connecticut that may be required to perform the Services required by this Agreement.

H. **Observance of Proprietary Rights.** The Consultant represents and warrants that it will take reasonable steps to ensure that the performance of the Services will not infringe upon or misappropriate any United States copyright, trademark, patent, or the trade secret or other proprietary material of any third

persons. Upon being notified of such a claim, the Consultant shall, at the request of the Owner and in the Owner's sole discretion, (i) defend through litigation or obtain through negotiation the right of the Owner to continue using the Services of the Consultant while such claim of infringement is contested; (ii) modify the Services to be rendered at no cost, expense or damage to the Owner so as to make such Services non-infringing while preserving the original functionality, and/or (iii) replace the Services or the infringing or potentially infringing portion thereof with the functional equivalent. If the Owner determines that none of the foregoing alternatives provide an adequate remedy or resolution of the claim of infringement, the Owner may terminate all or any part of the Services and, in addition to other relief, shall be entitled to recover the amounts previously paid to the Consultant hereunder related to such claim of infringement.

I. **Y2K Compliance.** The Consultant represents that it will ensure that any computer program included as a deliverable Service or used in connection with the performance of any Service or Task Order hereunder operates substantially in accordance with the specifications for such Service or Task Order and is otherwise in compliance with Year 2000 Standards. For these purposes, "**Year 2000 Standards**" means that the deliverable Services, Task Orders and work, material or reports prepared in connection therewith records, stores, recognizes, interprets, processes and presents both 20th and 21st century dates using four (4) digit years and operates at a programming interface level with other programs for which it could reasonably be expected to operate without causing the other programs to violate such Year 2000 Standards.

J. **Communications and Coordination.** The Project Manager shall receive, control and coordinate all documents and arrange all meetings with the Consultant and third parties on behalf of the Owner. The Owner's Representative shall be informed of the nature and content of all direct communications with the State of Connecticut representatives in connection with the Project.

K. **Owner Shall Not Be Billed for Certain Taxes.** The Owner is not obligated to pay certain sales, use, gross receipts taxes, ad valorem or other taxes with respect to the Services rendered by the Consultant, its consultants and subcontractors, and the Consultant agrees not to invoice the Owner therefor. The Owner reserves the right to withhold pursuant to Section 12-430(7) of the Connecticut General Statutes, a percentage of the monies owed to any party that is a non-resident of the State of Connecticut but has not received an appropriate certificate from the Commissioner of Revenue pursuant to the aforesaid statute on account of sales taxes that may be owed by such non-resident to the State of Connecticut. Upon request of the Consultant, its consultants or contractors, the Owner's Purchasing Department will issue tax-exempt certificates to any party purchasing materials or rendering services to the Project for which a tax exemption is available.

L. **Recordkeeping and Audits.** The Consultant shall keep daily, weekly and monthly logs and other records detailing the Services rendered which shall contain sufficient detail as to type of activity performed by each employee, consultant and subcontractor working on the Project under the supervision of the Consultant, the job category of each such employee, the number of hours worked, etc. Such records shall be kept at the Consultant's principal place of business in the State of Connecticut. The Owner, its agent(s), or the representatives of any funding source shall have the right to inspect such records from time to time, with or without prior notice, during normal business hours of the Consultant.

ARTICLE II CONSULTANT'S RESPONSIBILITIES

2.1 General Description of Services

A. **Customary Consulting Services.** The Consultant's Services shall consist of the Services described in a Task Order, other services described in Article I hereof, and any other services normally performed by a consultant to complete a Project of this nature.

B. **Scope of Consultant's Services.** The scope of the Consultant's Services are described generally in this Agreement, and more specifically in each Task Order, and also include those services that are reasonable, consistent with and necessary to complete each Task Order, including but not limited to preparing and submitting written reports, keeping and distributing daily, weekly and monthly work logs demonstrating the Consultant's progress with respect to the Services and to each Task Order, and the like. All Consultant's Services and documents shall fully comply with the restrictions and requirements of all laws, rules and regulations of federal, state and local governmental and quasi-governmental agencies, authorities and funding sources having jurisdiction over or otherwise related to the Project, and other parties disclosed by the Owner and otherwise known to the Consultant as of the date of this Agreement, the date of any Task Order, or the date on which, for example, any governmental agency approves any permit for the Project, if any, or which, in the exercise of the best professional judgment of an independent consultant retained by the Owner, should have been known to Consultant.

C. **Notice of Meetings.** The Consultant shall give timely notice to Owner of any meetings that the Consultant feels necessary in connection with a Task Order with utility companies or city, state or other regulatory agencies. Scheduling of such meetings is to be done by the Consultant, after consultation with the Owner as to time and date of such meetings. Notwithstanding anything herein to the contrary, the Owner shall pay the Consultant for all pre-approved

and properly documented expenses incurred for trips on the Owner's behalf that exceed fifty miles from Bridgeport, Connecticut.

D. Cooperation with Other Professionals. The Consultant shall cooperate fully with any consultant employed by the Owner in connection with the Project and professionals employed by the Owner for work related to the Project.

2.2. Distribution of Project Information. The Consultant shall promptly furnish to the Owner's Representative and other designated parties copies of all, reports, test results, correspondence, studies, meeting minutes and other verbal record, on any media, created by the Consultant or which comes into the possession of the Consultant and required, desired or necessary to keep the Owner informed of the progress of the Consultant's Services, the progress of the Project, or as otherwise may be requested by the Owner pursuant to this Agreement and to a Task Order

ARTICLE III INFORMATION AND COMMUNICATION

3.1 Information to be Supplied. The Owner shall provide information regarding its requirements in the form of Task Orders. The Owner shall furnish to the Consultant such information with reasonable promptness to avoid delay in the performance and delivery of the Services. The Consultant shall be entitled to rely upon the completeness and accuracy of any Owner-supplied information unless, in the exercise of its best professional judgment, it knows or should know that such reliance would be unreasonable, in which case the Consultant shall inform the Owner's Representative in writing through the Project Manager of the unreliability or unreasonableness of the information supplied.

3.2 Owner's Representative. The Owner's Representative at the inception of this Agreement is Richard McHugh or his designee set forth in writing ("**Owner's Representative**"). Each such person or entity functioning in the capacity as the designated Owner's Representative shall act on behalf of the Owner with respect to this Agreement and all Task Orders and shall have authority to make decisions on which the Consultant can rely. The Owner's Representative shall not perform any other services performed by a consultant. The Owner's Representative shall examine documents, at each phase of the Services performed or to be performed by the Consultant, which are submitted by the Consultant from time to time, and shall render evaluations and decisions pertaining thereto promptly in order to avoid unreasonable delay in the performance and delivery of the Consultant's services. Any Approval or Approvals given by the Owner shall not relieve the Consultant of any of its obligations hereunder.

3.3 Project Manager; Authority to Direct Consultant. The Project Manager shall act in the interests of the Owner with respect to this Agreement and its Task Orders and shall have the authority to examine and review any and all of the Consultant's work products and/or the Services it provides, make recommendations to the Owner regarding such work and its quality, completeness and timeliness, and carry out and execute the decisions of the Owner's Representative with respect to the Consultant, its Services and work. With respect to the hierarchy of authority to act on behalf of the Owner, the Owner's Representative has primary authority to make decisions for the Owner and to direct the Consultant in connection with this Agreement. If authorized in writing by the Owner's Representative, the Project Manager may make decisions on behalf of the Owner and give limited direction the Consultant concerning the Services and any Task Order. Any Approval or Approvals given by the Project Manager on behalf of the Owner, shall not relieve the Consultant of any of its obligations hereunder.

3.4 Independent Legal and Accounting Services. The Owner shall furnish its own legal, accounting, auditing and insurance counseling services, however, the fact that the Owner possesses such support services will not relieve the Consultant of its responsibilities pursuant to this Agreement. The Consultant shall furnish, at its own overhead expense, its own legal, accounting, auditing and insurance counseling services.

3.5 Confidential Information. Each party hereby acknowledges that it may be exposed to confidential information which may not be available to the public or discoverable under the Freedom of Information Act ("**FOIA**") and other proprietary information belonging to the other party or relating to its business and affairs, including, without limitation, source code and design materials for work product and other materials expressly designated or marked as confidential ("**Confidential Information**"). Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the party; (iii) information received by a party from a third party who was free to disclose it; (iv) information properly disclosable under FOIA or (v) information required to be disclosed by a court of law or government or quasi-governmental authority.

(b) **Covenant Not to Disclose.** Each party hereby agrees that during the term of this Agreement and at all times thereafter it shall not use, commercialize or disclose the other party's Confidential Information to any person or entity, except to its own employees who have a "need to know," to such other recipients as the party claiming confidentiality may approve in writing in advance of disclosure, or as otherwise required by court order, statute or regulation. Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall a party use less than due diligence and care. Neither party shall alter or remove from any software,

documentation or other Confidential Information of the other party (or any third party) any proprietary, copyright, trademark or trade secret legend.

ARTICLE IV REMEDIES

4.1 **Default by Consultant.** It shall be a material default under this Agreement in the event that any of the following occur (each an "**Consultant's Default**"): (i) The Consultant fails to expeditiously perform the Services required to be performed under each Task Order through no fault of the Owner thereby delaying the commencement, progress, or delivery of the Project, or (ii) the Consultant is slow to pay or fails to pay any subcontractor, consultant or agent of the Consultant, or (iii) the Consultant is declared to be bankrupt or insolvent, an assignment for the benefit of creditors is made by the Consultant, the Consultant shall file a voluntary petition in bankruptcy or insolvency, or a receiver shall be appointed for the Consultant and such appointment or bankruptcy or insolvency proceeding, petition, declaration or assignment is not set aside within thirty (30) days of filing, or (iv) any representation or certification made by the Consultant to the Owner shall prove to be false or misleading on the date said representation or certification is made, or (v) default shall be made in the observance or performance of any material covenant, agreement or condition contained in this Agreement required to be kept, performed or observed by Consultant, or (vi) there has been a material adverse change in the financial condition of the Consultant, or (vii) the Consultant, or any principal or officer of the Consultant shall be convicted of the commission of a crime punishable as a felony, or (viii) the Consultant violates a material provision of any laws, ordinances, rules, regulations or orders of any public authority in the performance of its duties hereunder. If such an Consultant's Default has occurred and has not been cured within thirty (30) days, with or without written notice from the Owner to the Consultant, the Owner may declare the Consultant to be in default hereunder and exercise any remedies available to it, including the termination of this Agreement and any Task Order(s) then outstanding. In the event that the Owner terminates the Consultant for an Event of Default that is not cured after notice and such termination becomes the subject of arbitration, if the Owner's termination of the Consultant is deemed to have been wrongful or inappropriate, such termination will be deemed converted to a termination for convenience by the Owner and the Consultant's remedies shall be limited to those set forth herein with regard to termination for convenience.

4.2 **Default by Owner.** In the event the Owner shall fail to perform any of its material obligations pursuant to this Agreement ("**Owner's Default**"), the Consultant shall give written notice within fourteen (14) days to the Owner. In the event that the Owner fails to cure a payment default within fourteen (14) days after receipt of such notice or fails to cure a non-payment default within sixty (60) days after receipt of such notice, the Consultant may declare the Owner to be in default hereunder and exercise any remedies available to it.

4.3 Termination by Owner Due to Consultant's Default. If the Consultant fails to supply enough properly-skilled and licensed (where required) professionals and employees, or proper materials, or if the Consultant commits a material violation of any laws, ordinances, rules, regulations or orders of any public agency or authority having jurisdiction, or otherwise commits an Consultant's Default under this Agreement, the Owner shall give written notice within fourteen (14) days to the Consultant. In the event that the Consultant fails to cure such default within seven (7) days after receipt of such notice, the Owner may declare the Consultant to be in default hereunder and exercise any remedies available to it. The Owner may, without prejudice to any right or remedy, terminate the employment of the Consultant and take possession of all plans, specifications, drawings, analyses, test results, samples and other data prepared, obtained by or in the possession of the Consultant, whether complete or not, with respect to the Task Order or Task Orders by whatever method the Owner may deem expedient. Additionally, the Owner may pursue any legal action available to it to obtain relief for actual damages suffered by reason of the Consultant's Default hereunder. In such event, the Consultant shall be liable to compensate and reimburse the Owner for all of its loss, cost and expense, including but not limited to attorney's fees and consultant's fees, which are caused by the Consultant's Default.

4.4 Termination by Consultant. Should the Owner commit an Owner's Default that continues beyond notice and passage of the cure period provided herein, the Consultant may, as its sole and exclusive remedy, terminate this Agreement. Upon such a termination, the Consultant shall be entitled to recover from the Owner all Compensation due for Services performed in accordance with the requirements of this Agreement to the date of such termination, and Reimbursable Expenses. The Consultant may not recover any other damages, costs or expenses from the Owner other than payment for Services performed up to the date of termination and Reimbursable Expenses.

4.5 Termination by Owner Without Fault of the Consultant. Upon fifteen (15) days' prior written notice, the Owner shall have the right to cancel and terminate this Agreement at any time whether or not an Consultant's Default exists hereunder, and the Owner shall incur no liability to Consultant or any other person by reason of such cancellation, except that, if the cancellation is for no fault of Consultant, the Owner shall pay to the Consultant all sums then due to the Consultant hereunder for Services rendered in accordance with this Agreement performed up to the date of termination.

4.6 Transfers on Termination. In the event of any termination of this Agreement by the Owner, the Consultant shall, upon written request of the Owner, return to the Owner within seven (7) days all papers, materials, test results, samples, analyses and other items on any form of media prepared by, in the possession of, or available to the Consultant relating to the Project whether

created by or at the request of the Consultant or created by others. In addition, each party will assist the other party in an orderly termination of this Agreement and the transfer of all aspects hereof, tangible and intangible. If requested by the Owner's Representative, the Consultant shall debrief the Owner with respect to the work performed and not performed to date of termination with good faith and due diligence. Such debriefing shall provide explanation, annotation, data and other information concerning drawings, schedules, deliverables and the like for which the Consultant is responsible under this Agreement. Furthermore, the Consultant shall relinquish, assign and transfer in a writing acceptable to the Owner all rights and claims to its Work Product, drawings, specifications, test results, analyses, samples and other deliverables that are part of this Agreement and take such other reasonable steps at the request of the Owner's Representative to facilitate the continuation of the work of the Consultant by another professional, provided, however, that the Consultant's name and seal may not be used on such items subsequently by one or more other professionals engaged by the Owner.

4.7 **Resolution of Disputes and Choice of Law.** The parties agree that all disputes between them arising under this agreement or involving its interpretation, if they cannot be first resolved by mutual agreement, shall be submitted to a court of competent jurisdiction over the parties located in Fairfield County, Connecticut.

4.8 **Claims For Additional Compensation and Time.** In an event occurs or other circumstances arise during the performance of the work that establish or may tend to establish a claim by the Consultant for additional Compensation and/or additional time to perform, the Consultant shall promptly make such claim to the Owner in writing within fourteen (14) days of the occurrence of such event or circumstances setting forth the facts giving rise to such claim under this Agreement and the additional Compensation or contract time requested by the Consultant. The Consultant shall not undertake to perform additional work without the prior written approval of the Owner. All claims for additional Compensation or additional contract time that are not asserted with such 14-day period are deemed waived by the Consultant.

ARTICLE V INDEMNIFICATION AND INSURANCE

5.1 **Indemnification.** The Consultant represents and warrants that it will employ its best professional judgment in the performance of the Services hereunder to ensure that design products are free from material defects that were known or should have been known to the Consultant in the exercise of reasonable care. To the fullest extent permitted by law, the Consultant, on behalf of itself and its subcontractors, consultants and agents (the "**Indemnitor**"), agrees to indemnify, save and hold Owner, its elected officials, department heads, employees, subcontractors and consultants (the "**Indemnitee**") harmless from and against any and all liability, damage, loss,

claim, demand, action and expenses of any nature whatsoever, including, but not limited to costs, expenses, consulting fees and reasonable attorneys' fees which arise out of or are connected with: (i) any negligent act, error or omission by the Indemnitor in the performance of this Agreement; (ii) the negligent failure of the Indemnitor to comply with the laws, statutes, ordinances or regulations of any governmental or quasi-governmental agency or authority having jurisdiction over the Project; or (iii) the breach of any material term or condition of this Agreement by the Indemnitor. The provisions of this indemnification article shall not be construed as an indemnification of the Indemnitee for any loss or damage attributable to the sole act or omission of the Indemnitee. The indemnity set forth above shall survive the expiration or any earlier termination of this Agreement.

5.2 Insurance. The following insurance coverage is required of the Consultant and it is understood that the Consultant will require other coverage from every consultant and subcontractor in any tier according to the work being performed and shall ensure that all insurance coverage is issued and in force in accordance with the terms hereof. **The Consultant, its subcontractors and consultants may not enter the Project site or commence work unless and until all such insurance coverages are provided to, reviewed and approved by the Owner.**

A. Coverage Required. The Consultant shall procure, present to the Owner in advance of any Services performed, and maintain in effect for the term of this Agreement without interruption the insurance coverages identified below with insurers licensed to conduct business in the State of Connecticut and having a minimum Best's A + 15 financial rating or other rating acceptable to the City.

Errors and Omissions Insurance (claims made form) will be provided by all consultants and other professionals involved in the Project with minimum limits of \$3,000,000, or as otherwise required by the Owner.

Commercial General Liability (occurrence form) insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of operations conducted under this Agreement. Coverage shall be broad enough to include premises and operations, contingent liability, contractual liability, completed operations (24 months), broad form property damage, care, custody and control, with limitations of a minimum \$1,000,000 per occurrence and \$2,000,000 combined primary and excess coverage for each occurrence/aggregate and \$300,000 property damage.

Business Automobile insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of the use of owned, hired or non-owned vehicles in connection with business. Coverage will be broad enough to

include contractual liability, with limitations of \$1,000,000 combined primary and excess coverage for each occurrence/aggregate with a combined single limit for bodily injury, personal injury and property damage.

Workers' Compensation insuring in accordance with statutory requirements in order to meet obligations towards employees in the event of injury or death sustained in the course of employment. Liability for employee suits shall not be less than \$500,000 per claim.

B. General Requirements. All policies shall include the following provisions:

Cancellation notice—The Owner shall be entitled to receive from all insurance carriers an unequivocal agreement to provide not less than 30 days' prior written notice of cancellation, non-renewal or reduction in coverage, such notices to be given to the Owner at the following address: Purchasing Agent, City of Bridgeport, City Hall, 45 Lyon Terrace, Bridgeport, Connecticut 06604.

Certificates of Insurance—All policies will be evidenced by an original certificate of insurance on a ACORD-25S form delivered to the Owner and authorized with original signature or stamp of the insurer or a properly-authorized agent or representative reflecting all coverage required, such certificate to be delivered to the Owner prior to any work or other activity commencing under this Agreement.

Additional insured—The Consultant, its consultants and subcontractors will arrange with their respective insurance agents or brokers to name the Owner, its elected officials, officers, department heads, employees and agents, at no additional cost to the Owner, on all policies of primary and excess insurance coverages as additional insured parties except errors and omissions coverage and workers' compensation coverage, and as loss payee with respect to any damage to property of the Owner, as its interest may appear. The undersigned shall submit to the Owner upon commencement of this Agreement and periodically thereafter, but in no event less than once during each year of this Agreement, evidence of the existence of such insurance coverages in accordance with the terms of this Agreement. The City shall be designated as follows:

"The City of Bridgeport, its appointed and elected officials, department heads, employees and agents, ATIMA
Attention: Purchasing Agent
45 Lyon Terrace
Bridgeport, Connecticut 06604"

ARTICLE VI MISCELLANEOUS

6.1 **Singular, Plural, Gender, etc.** Wherever in this Agreement the context so requires, the singular number shall include the plural number and vice versa, and any gender herein used shall be deemed to include the feminine, masculine or neuter gender.

6.2 **Professional Services Contract.** This Agreement is entered into solely to provide for the work of various Task Orders for work related to the Project and to define the rights and obligations, risks and liabilities of the parties hereto. This Agreement, and any document or agreement entered into in connection herewith, shall not be deemed to create any other or different relationship between the Consultant and the Owner other than as expressly provided herein. The Consultant acknowledges that the Owner is not a partner or joint venturer with the Consultant and that the Consultant is not an employee or agent of the Owner.

6.3 **Prohibition Against Assignment.** The Consultant may not transfer, hypothecate or in any way alienate or assign its interest in this Agreement or delegate any duties to be performed by it hereunder without the prior written consent of Owner. The Owner may assign its interest in this Agreement at any time to any person or entity that assumes the Owner's obligations from the date of the assignment hereunder; provided, however, that absent express consent in writing by the Consultant, such assignment shall not release the Owner from its obligations to the Consultant hereunder for payment of all amounts due the Consultant pursuant to this Agreement.

6.4 **Time of the Essence.** All dates set forth in this Agreement, and/or in any accepted Task Order Schedule, as may be amended from time to time, is agreed to be critical to the completion of the Project and shall be considered of the essence to this Agreement.

6.5 **Notices.** All notices, requests, demands or changes of address required or desired by either party shall be in writing and shall be either personally delivered, delivered by messenger or overnight delivery service, or be delivered by registered or certified mail, return receipt requested, postage prepaid, and addressed to the other party at the address heretofore set forth (each a "**Notice**"). All Notices shall be deemed received, in the case of personal or overnight delivery service, upon receipt, or in the case of mailing, on the date of receipt thereof by the party to whom it is addressed or, if receipt is refused, upon the expiration of forty-eight (48) hours from the time of deposit of such mailed notice in an office of the United States Postal Service. A change of address of a party shall be set forth in the same manner as other required notices.

6.6 **No Waiver.** No waiver of any party's default hereunder by the other party hereto at any one time shall be construed as a waiver by such party of any subsequent breach of the same or another term of this Agreement by the other party.

6.7 **Ownership of Documents.** All drawings, specifications, surveys, test results, models, plans, computer programs, databases and other work product prepared by the Consultant or anyone employed by the Consultant in any form or media upon creation are and shall be the sole and exclusive property of the Owner, including without limitation all copyrights, rights of reproduction and reuse, and other interests relating thereto. The Owner and any entity affiliated with the Owner may reuse all such documents and data for future work in connection with the construction of the bulkhead Project or for future Projects, provided that the Owner shall not alter any drawings or specifications signed and sealed by the Consultant without its prior written consent. Except for termination of the Consultant's services as a result of a default, the Consultant shall have an irrevocable, non-exclusive license to copy and use such documents and data and may retain copies of such documents and data for re-use in the conduct of its professional practice.

6.8 **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of the Owner and the Consultant and their respective successors, assigns and legal representatives.

6.9 **Captions.** The captions and headings contained herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

6.10 **Governing Law; Venue.** This Agreement shall be construed in accordance with the laws of the State of Connecticut. Any mediation or arbitration shall be commenced and resolved in Bridgeport, Connecticut. In the event that any party affirmatively waives its right to arbitrate disputes that arise under this Agreement, any legal action brought to enforce any provision of obtain any interpretation of this Agreement or for other relief shall be brought in a State or Federal court of competent jurisdiction over the parties in Bridgeport, Connecticut.

6.11 **Entire Agreement.** Each party acknowledges that there are no prior or contemporaneous oral promises, undertakings or agreements in connection with this Agreement that are not contained herein. This Agreement may be modified only by a written agreement signed by all parties hereto. All previous negotiations and agreements between the parties hereto, with respect to the transactions set forth herein, are merged into this instrument, the documents or other materials referenced herein, the Task Orders, and

amendments hereto mutually agreed to in writing by the parties, which together fully and completely express the parties' rights and obligations.

6.12 Partial Invalidity. If any term or provision of this Agreement is believed to be illegal, unenforceable or in violation of the laws, statutes, ordinances or regulations or any public agency or authority having jurisdiction over the parties or the Project, then, such matter shall be submitted to arbitration in accordance with this Agreement to determine whether such term or provision is severable or if this Agreement is deemed to be a whole by a fair construction of its terms and provisions under Connecticut law. If such term or provision is found to be severable, this Agreement shall remain in full force and effect, such term shall be deemed stricken therefrom and this Agreement shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision. If such term is not found to be severable, this Agreement may be terminated by either party upon the giving of prompt written notice within ten (10) days after such determination, whereupon the rights and obligations of the parties shall be determined in accordance with the provisions of this Agreement as if a mutual, voluntary termination had occurred.

6.13 Survival. The terms, provisions, representations, warranties and certifications contained in this Agreement, or inferable therefrom, shall survive the completion of the Project, or the earlier termination of this Agreement as to the Services completed to the date of such termination, subject to all applicable statutes of limitation and repose.

6.14 Waiver of Liens. The Consultant hereby waives any right it may have to file or assert a mechanic's or materialmen's lien against the Project site or against the Project, including but not limited to, any rights granted to the Consultant by the laws of the State of Connecticut.

6.15 Excusable Delay. The parties hereto, respectively, shall not be in default of this Agreement if either is unable to fulfill, or is delayed in fulfilling, any of its obligations hereunder, or is prevented or delayed from fulfilling its obligations, in spite of its employment of best efforts and due diligence, as a result of extreme and unseasonable weather conditions, natural disasters, catastrophic events, mass casualties to persons or significant destruction of property, war, governmental preemption in a national emergency, enactment of law, rule or regulation or change in existing laws, rules or regulations which prevent any party's ability to perform its respective obligations under this Agreement, or actions by other persons beyond the exclusive control of the party claiming hindrance or delay. If a party believes that a hindrance or delay has occurred, it shall give prompt written notice to the other party of the nature of such hindrance or delay, its effect upon such party's performance under this Agreement, the action needed to avoid the continuation of such hindrance or delay, and the adverse effects that such hindrance or delay then has or may

have in the future on such party's performance. Notwithstanding notification of a claim of hindrance or delay by one party, such request shall not affect, impair or excuse the other party hereto from the performance of its obligations hereunder unless its performance is impossible, impractical or unduly burdensome or expensive, or cannot effectively be accomplished without the cooperation of the party claiming delay or hindrance, The occurrence of such a hindrance or delay may constitute a change in the scope of Services, and may result in the need to adjust the Compensation in accordance with the terms of this Agreement.

6.16 Non-Discrimination. The requirements for minority hiring and participation by disadvantaged businesses are set forth in Chapter 3.12 of the Municipal Code of Ordinances of the City of Bridgeport, which Chapter is attached here to as **Exhibit E**.

6.17 Precedence of Documents. The documents constituting this Agreement set forth in Paragraph 6.11 are intended to be complementary and shall be read together to include everything necessary for the proper execution and completion of the work set forth in every Task Order whether specified therein or not. However, to the extent that any conflicts, inconsistencies or ambiguity exist in the contract documents, the Consultant shall perform the more stringent requirement or adhere to the higher standard of work or performance involved. In the event of an irreconcilable conflict, then a determination shall be made by review of the various contract documents in the following descending order of precedence: This Agreement; any Task Order; any properly-executed change or amendment to a Task Order. As between figures given in drawings and the scale of measurements, the figures shall take precedence. Detail drawings shall have precedence over general drawings.

6.18 Council Approval of Agreement May Be Required. This Agreement may become effective upon the execution thereof by all parties and delivery of a fully-executed original to the Consultant. The Office of the City Attorney shall determine if the City Council must approve this Agreement, in which case it shall not become effective until the City Council of the City of Bridgeport approves the same, the Mayor executes the Agreement or it becomes

effective pursuant to the terms of the City Charter, and the Consultant receives an executed original thereof complete with all Schedules and Exhibits.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF BRIDGEPORT

By: _____
Name:
Title:
duly-authorized

CONSULTANT

By: _____
Name:
Title:
duly-authorized

Exhibit A

Advertisement and Consultant's Proposal

Exhibit B

Task Order Format

This Task Order No. ____ is made as of this ____ day of _____, [year] under the terms and conditions established in the Professional Services Agreement between the Owner and the Consultant dated _____, and shall constitute an amendment to such Agreement. This Task Order is issued for the following purpose, consistent with the Project defined in the Agreement:

[Brief description of the Project elements to which this Task Order applies.]

Section A—Scope of Services

A.1. The Consultant shall perform the following Services:

A.2. The following Services are not included in this Task Order, but shall be provided as additional Services if Approved in writing by the Owner.

A.3. In conjunction with the performance of the foregoing Services, the Consultant shall provide the following submittals/deliverables ("**Deliverables**") to the Owner:

Section B—Task Schedule

The Consultant shall perform the Services and deliver the related documents, if any, according to the following Task Schedule:

Section C—Compensation

C.1. In return for the performance of the Services under this Task Order, the Owner shall pay the Consultant Compensation in the amount of [dollars], payable according to the following terms:

C.2. Compensation for any additional Services requested under this Task Order, if any, shall be paid by the Owner to the Consultant according to the following terms:

Section D—Owner's Responsibilities

The Owner shall perform and/or provide the following in a timely manner so as not to delay the performance or completion of the Services by the Consultant. Unless otherwise provided in this Task Order, the Owner shall bear all costs incident to compliance with the following:

Section E—Other Provisions

The parties agree to the following additional provisions with respect to this Task Order:

Except to the extent modified herein, all terms and conditions of the Agreement shall continue in full force and effect.

Owner

By: _____
Name:
Title:

Consultant

By: _____
Name:
Title:

Exhibit C

Hourly Billing Rates of Consultant and Each Consultant and Subcontractor

Reimbursable Expenses

Reimbursable Expenses shall include the following:

1. Shipping and handling of documents during design and construction documents phases.
2. Reproduction of documents for submittals to the Owner and regulatory agencies
3. In-house printing
4. Computer plots
5. Long-distance telephone
6. Local courier services
7. Out-of-city courier services
8. Mileage more than 50 miles from the Project site.

Exhibit E

Nondiscrimination

Chapter 3.12 of the Bridgeport Code of Ordinances reads in pertinent part as follows:

- A. The Contractor agrees and warrants that during the performance of this contract he will not Discriminate or permit discrimination against any person or group of persons because of race, color, religion, sex, age or national origin in any manner prohibited by the laws of the United States or of the state of Connecticut, and further agrees to take affirmative action that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Office of Contract Compliance of the City of Bridgeport setting forth the provisions of this section.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, age or national origin.
- C. The Contractor will send to each labor union or other representative with which he has a collective bargaining agreement or other contract or understanding, and to each vendor with which he has a contract or understanding, a notice to be provided advising the labor union or worker's representative of the Contractor's commitments under this division, and shall post copies of such notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of this Section and with all the rules and regulations or orders issued by the Office of Contract Compliance pursuant thereto.
- E. The Contractor will provide the Office of Contract Compliance with such information requested by said office concerning the employment pattern, practices and procedures of the Contractor as relate to the provisions of subsections A through C of this Section and rules and regulations and/or orders issued pursuant thereto.

- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any rule, regulation or order issued under this Section, the Contract may be canceled, terminated or suspended, in whole or in part and such other sanctions may be imposed and remedies invoked as are provided under the provisions of Section 3.12.100(D) of the City of Bridgeport Ordinances and rules, regulations or orders issued pursuant thereto, or as provided by federal and state laws.

- G. The Contractor will include the provisions of subsection A of this Section, in every subcontract or purchase order unless exempted by rules, regulations or orders of the Office of Contract Compliance issued pursuant to Section 3.12.060 of the City of Bridgeport Ordinances, so that such provision will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Office of Contract Compliance may direct as a means of enforcing this Section, including sanctions for non-compliance in accordance with the provisions of Section 3.12.100 of the City of Bridgeport Ordinances.

Exhibit C

Hourly Billing Rates of Consultant and Each Consultant and Subcontractor

City of Bridgeport
Environmental Engineering Services Contract

Firm Name: AECOM USA, Inc.

<u>Category</u>	<u>Billing Rate</u> <u>(\$)</u>
Principal	195
Sr Proj Mgr/Sr Tech Spec II/Sr. Project Director	180
Project Manager II / Project Director	160
Proj Mgr/Sr Proj Sci II or Eng II/LEP/Sr. Tech Spec I	145
Sr Proj Sci I or Sr Proj Eng I / Tech Spec I	135
Proj Sci II or Proj Eng II	115
Proj Sci I or Proj Eng I	106
Sr. Sci II / Sr Eng II	95
Sr Sci I or Sr Eng I/Des Eng II	85
Sci II or Eng II/Des Eng I/Spec II	82
Sci I or Eng I/Proj Asst/Spec I	75
Sr Tech III/Drafter III/Sr Designer II	95
Sr Tech II/Drafter II/Sr Designer I	65
Tech II/Drafter	62
Sr Secretary or Admin Asst	62
Risk Assessor (P-18)	175
Risk Assessor (P-17)	160
Risk Assessor (P-15)	125
Risk Assessor (P-14)	110
Risk Assessor (P-12)	85
Risk Assessor (P-11)	75
Sr GIS Specialist I	105
GIS Specialist	95

Notes:

- Rates are subject to an increase annually.
- Subcontractors and subconsultants shall be billed at cost plus 10% markup.

Reimbursable Expenses

Reimbursable Expenses shall include the following:

1. Shipping and handling of documents during evaluation, design and construction phases
2. Reproduction of documents for submittals to the Owner and regulatory agencies
3. In-house printing
4. Computer plots
5. Long-distance telephone
6. Local courier services
7. Out-of-city courier services
8. Mileage more than 50 miles from the Project site.

All reimbursable expenses shall be billed at cost plus a markup of 10%.

Exhibit E

Laboratory, Field Equipment Rental, and Stock Material Rates

Laboratory Rates

Analytical laboratory analyses shall be billed at cost plus 10% markup.

Field Equipment Rental

Field equipment rental shall be billed at cost plus 10% markup.

Stock Material

Materials and consumable items (personal protective equipment, sampling supplies, monitoring well supplies, drums, plastic sheeting, rental vehicles, fuel for vehicles/equipment, etc.) shall be billed at cost plus 10% markup.



BILL FINCH
Mayor

City of Bridgeport, Connecticut
**DEPARTMENT OF CENTRAL GRANTS AND
COMMUNITY DEVELOPMENT**

999 Broad Street
Bridgeport, Connecticut 06604
Telephone (203) 332-5662
Fax (203) 332-5657

ANDREW J. NUNN
CAO

ALANNA C. KABEL
Deputy CAO of Central Grants
and Community Development

COMM. # 66-08 Referred to Contracts Committee on (2/17/09)

February 10, 2009

Fleeta Hudson, City Clerk
45 Lyon Terrace
Bridgeport, Connecticut 06604

RE: Professional Services Agreement Between the City of Bridgeport and Fuss & O'Neill, Inc.

Dear Fleeta:

At the request of the Deputy Chief Administrative Officer for Central Grants and Community Development Department, the attached agreement should be placed on the February 17th City Council agenda for referral to Contracts Committee for consideration.

Respectfully submitted,

By: 

Name: Alanna C. Kabel

Title: Deputy CAO, Central Grants & Community Development Department.

Enclosures (23)

ACK/dmt

pc: Mayor William Finch
Andy Nunn, CAO
Adam Wood, Chief of Staff
Art Harris, Construction Management Services
Don Eversley, Office of Planning & Economic Development
Ed Lavernoch, Office of Planning & Economic Development
Rich McHugh, Office of Planning & Economic Development
Mark T. Anastasi, City Attorney
Ron Pacacha, City Attorney
Dawn M. Twistol, Central Grants & Community Development

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PROFESSIONAL SERVICES AGREEMENT

BETWEEN

CITY OF BRIDGEPORT

AND

FUSS & O'NEILL, INC.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT IS MADE AND ENTERED INTO as of the day of January, 2009, by and between the **CITY OF BRIDGEPORT**, a municipal corporation, located in Bridgeport, Connecticut, acting through its Office of Planning and Economic Development, 45 Lyon Terrace, Bridgeport, CT 06604 (hereinafter referred to as "**Owner**") and **FUSS & O'NEILL, INC.**, a Connecticut corporation, having an address at 146 Hartford Road, Manchester, Connecticut 06040 (hereinafter referred to as "**Consultant**").

WHEREAS, the Owner advertised for one or more environmental consultants to test and evaluate, assist and advise the Owner in the overall management of environmental work conducted by the Owner and others; to perform various environmental investigations and plan the remediation of sites; to monitor contractors; to interact with governmental agencies; to prepare and submit necessary environmental permits and related documents; and to perform Licensed Environmental Professional (LEP) oversight and certification as necessary ("**Project**");

WHEREAS, the Owner advertised a Request for Qualifications and the Consultant submitted its qualifications on March 19, 2008 (see **Exhibit A** attached);

WHEREAS, the Owner selected the Consultant based upon its qualifications and price proposal and further based upon the Consultant's statements and representations made therein for purposes of entering into negotiation of a contract for professional consulting services for the Project;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

DEFINITIONS

The following definitions will be used throughout this Agreement, unless the context requires otherwise:

"Approval" or **"Approved"** means, with respect to the administration and performance of this Agreement, that the Owner has given its written approval to the Consultant when required, including but not limited to, the approval of budgets, Task Orders, directions, changes or deviations from or with respect to Task Orders, additional expenses, substitutions, time delays, schedule changes, etc.

"Construction Manager" means the construction manager engaged by the Owner, if any, for the Project specified in a Task Order.

"Consultant" means Fuss & O'Neill, Inc., the Consultant's Representative, employees, agents and Approved subcontractors designated in writing from time to time during the term of this Agreement.

"Consultant's Representative" means a specific individual or individuals designated in writing by the Consultant to the Owner from time to time as its representative or representatives with respect to the Project. At the inception of this Agreement, the Consultant's Representative shall be Andrew R. Zlotnick, Vice President.

"Owner" means the City of Bridgeport, a municipal corporation, acting through the Owner's Representative who shall be designated in writing from time to time during the term of this Agreement.

"Owner's Representative" means a specific individual or individuals designated in writing by the Owner to the Consultant from time to time during the term of this Agreement as its representative or representatives with respect to the Project. At the inception of this Agreement, the Owner's Representative shall be Richard McHugh, or his designee set forth in writing to the Consultant.

"Project Manager" means the Consultant's project representative other than the Consultant's Representative, acting through a specific individual or individuals designated in writing from time to time during the term of this Agreement to the Owner and the Consultant as its representative or representatives with respect to the Project specified in a Task Order.

"Project" means those specific services that the Owner sets forth in one or more Task Orders assigned to the Consultant.

"Services" means the testing, inspections and other necessary and related professional services required by a Task Order for the completion of the work described therein.

"Task Schedule" means the schedule of milestones and other time requirements established in each Task Order.

"Task" or "Task Order" is a description of the Services requested from the Consultant, the format of which is described generally in Paragraph 1.1.D and Exhibit B of this Agreement, and the description of the particular Services requested from the Consultant in a Task Order issued to the Consultant from time to time during the term of this Agreement.

"Term" means the duration of this Agreement, commencing upon the date specified by the Owner in a Notice to Proceed on Task Order No. 1 and, unless sooner terminated, shall end either on (a) the completion of the final Task Order then outstanding or (b) December 31, 2010, whichever event shall last occur. The Owner reserves the right to extend the term of this Agreement, in writing, for one additional year, at its sole discretion, on terms and conditions mutually agreed to between the parties.

ARTICLE I BASIC AGREEMENT

1.1 Structure of the Agreement

A. Consultant's Qualifications. The Consultant represents that it is duly-licensed in the State of Connecticut, if licensing is required, and is qualified and experienced in the fields of environmental investigation and remediation in accordance with the requirements of the Owner as set forth in one or more Task Orders. The parties are entering into this Agreement with the understanding that the Consultant will provide consulting engineering services through its own forces and related services, such as for example, drilling, sampling, laboratory testing and the like, necessary for the completion of each Task Order. The licenses of the Consultant, where licensing is required, shall be submitted to the Owner prior to the execution of this Agreement or promptly in advance of engaging any subcontractor and consultant not identified to the Owner at the time of the execution of this Agreement. The Consultant will conduct, prepare and present to the Owner for review and acceptance to undertake and complete the work of a Task Order, which shall be prepared in cooperation with the Owner's Representative, the Project Manager and the Construction Manager, if applicable, as determined by the Owner, as necessary to accomplish the Tasks in the manner more specifically set forth in this Agreement and in accordance with the Task Orders issued by the Owner.

B. Use of Task Orders. The consulting Services required by this Agreement will be assigned by Task Order to allow for the sequential or partial completion of work related to the Project in response to the City's proposed Project requirements. The Owner shall request Services by one or more Task Orders. The content, schedule and Compensation for each Task Order shall be negotiated prior to commencing Services under such Task Order.

C. Assignment of Tasks. The Owner shall identify and inform the Consultant of Tasks that it wishes the Consultant to perform, each such Task to be set forth in a written Task Order upon mutual agreement of the terms and conditions thereof between the Owner and the Consultant. Each additional Task Order will be considered an amendment to this Agreement, shall be incorporated by reference into this Agreement and shall become a part hereof as if fully set forth herein. Each Task Order shall be commenced by the Consultant within five

(5) business days of receipt of a written notice to proceed or on such later date that may be specified therein (each, a "**Notice to Proceed**").

D. **Task Order Format.** A format for a Task Order is attached as **Exhibit B**. Its inclusion as part of this Agreement illustrates the general framework to be used in authorizing each and every Task Order requiring the Consultant's Services for the duration of this Agreement. The Consultant will be required to prepare an estimate of man-hours for each Hourly Billing Rate (defined below) to be utilized through the Consultant's forces or through each subcontractor employed or to be employed to perform each Task Order for the duration of the Task Order. Items of work and other reimbursable expenses shall also be listed as individual line items. After negotiations with the Owner, the manpower estimate shall be attached to the Task Order.

E. **Authority to Request Additional Tasks or Services.** It is understood and agreed by the parties that, upon the Approval of this Agreement, only the Owner's Representative, designated by the Owner in writing from time to time to the Consultant, shall have the authority to add Tasks or Services to this Agreement.

F. **Non-Exclusivity.** The City reserves the right to enter into similar agreements with other environmental consultants during the Term of this Agreement and will endeavor to assign Task Order work to the Consultant and such other consultants in a manner believed to be in the City's best interests.

1.2 **Compensation.** The Owner shall compensate the Consultant for the authorized Services to be performed pursuant to this Agreement as follows:

A. **Basis.** The Consultant shall be compensated for each Task Order for a not-to-exceed price based upon (1) itemized man-hours by job category agreed to by the parties multiplied by the Hourly Billing Rates set forth in **Exhibit B**, (2) Reimbursable Expenses set forth in **Exhibit D**, (3) laboratory, field equipment rental and stock material as set forth in **Exhibit E**, and (4) the costs of Approved subcontractors and consultants (hereinafter "**Compensation**"). If required by the Owner, the Consultant shall submit projections for each month during the projected duration of such Task Order of the amounts of Compensation to be requested including its best estimate of Reimbursable Expenses (defined below) in order for the Owner to appropriately allocate funds for such Compensation.

B. **Established Hourly Rates Per Job Category.** Compensation to the Consultant, whether for its own forces or those of its subcontractors and consultants, shall be computed on the basis of hourly rates ("**Hourly Billing Rates**"). A job category hourly rate schedule for Services to be performed by the Consultant, its subcontractors and consultants is attached hereto as **Exhibit C** and incorporated herein by reference, which rate schedule will apply for the

duration of this Agreement. All employees shall perform work only in the job categories for which they are qualified using objective standards acceptable in the industry and at the rates set forth in such exhibit. Requisitions for payment shall be charged against each hourly rate or individual line item identified on each Task Order.

1.3 **Payment.** Payment of the Compensation set forth herein shall be made to the Consultant as follows:

A. **Submission of Invoices.** Payment of the Compensation set forth in this Agreement shall be made monthly in proportion to for actual hours expended in providing the Services completed during the prior month. The accumulated total Compensation at the completion of each Task Order, excluding Compensation for additional services requested in writing by the Owner in connection with each such Task Order, if any, shall not exceed the agreed-to Compensation payable for Services to be performed under each Task Order.

B. **Timing of Submission; Payment; Interest.** Invoices shall be submitted by the twentieth (20th) day of the month for Services rendered during the previous month. The Owner shall have thirty (30) days to review each complete invoice, and payment of all undisputed amounts for Compensation, shall be made within forty-five (45) days after receipt thereof. Notwithstanding anything herein to the contrary, Compensation shall not be paid on disputed invoices or portions thereof and no interest shall be payable to the Consultant on amounts withheld by the Owner based upon a good faith dispute with the Consultant.

C. **Responsibility for Certain Payments.** The Consultant shall remain responsible, and shall indemnify and hold harmless the Owner, from and against all liability for the withholding and payment of all Federal, state and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements (under ERISA, state law or otherwise) now existing or hereafter enacted and attributable to the Consultant, its subcontractors and consultants and their respective employees.

D. **Unauthorized Charges.** The Consultant expressly understands and agrees that the Owner shall not be liable for the payment of any Services or other work performed by the Consultant, its subcontractors and consultants based upon unauthorized representations of or directions from officers, agents or employees of the Owner other than the Owner's Representative which exceed the Budget for this Project ("**Unauthorized Charges**") unless the Consultant submits in writing to the Owner within thirty (30) days of rendering Services or other work that is not authorized or that may exceed the Budget a request for approval of such Unauthorized Charges. Unauthorized Charges that are not

brought to the Owner's attention within such 30-day period will not be honored and payment therefore will be deemed waived by the Consultant, its subcontractors and consultants.

1.4 **Use of Consultants and Subcontractors.** The Consultant has retained or will retain as subcontractors or consultants, at its sole cost and expense, full-service, licensed (where required) professionals to render the categories of service to complete each Task Order. The names and qualifications of such consultants will be disclosed to the Owner in writing for review and Approval prior to entering into any Task Order. The Consultant shall inform the Owner in writing in advance of engaging any other consultants not identified at the time of execution of a Task Order. The Owner shall have the right, in the exercise of its reasonable business judgment, to reject any such additional or substitute consultant or subcontractor and to request the Consultant to submit alternative proposals. The retention of such consultants and subcontractors shall not diminish or reduce the overall responsibility of the Consultant under this Agreement for the successful completion of the Task Order work.

1.5 **Project Responsibility and Staffing.**

A. **Consultant's Staffing.** An authorized principal of the Consultant will represent the Consultant in all matters relating to the contractual relationship between the Owner and the Consultant, which person may be removed or replaced as set forth herein in writing from time to time (the "**Consultant's Representative**") in the manner set forth below. It is agreed that the Consultant shall not remove the Consultant's Representative without the prior written approval of the Owner unless such individual has ceased his or her employment with the Consultant. However, the Consultant's Representative shall be removed and replaced, without cost or expense to the Owner, at the written request of Owner. If the Owner requests that the Consultant's Representative be replaced, the Owner shall be permitted to terminate this Agreement in the event a replacement, satisfactory to the Owner in the Owner's sole discretion, is not provided promptly.

A. **Consultant's Project Manager.** The Consultant shall designate a project manager in writing for each Task Order (the "**Consultant's Project Manager**"). The Consultant's Project Manager shall have responsibility for day-to-day activities on the Project, communications with the Owner's Representative and coordination of the work including, but not limited to, progress reports, meetings, schedule, deliverables and other typical contract administration functions.

B. **Consultants and Subcontractors.** The Project staff for each Task Order will consist of, at a minimum, the staff identified by the Consultant in the professional categories approved by the Owner at the time of execution of a

Task Order. The Consultant represents that all consultants and subcontractors employed by it in connection with this Agreement possess the requisite licensing (where required), education, training and experience to perform their job descriptions and functions in a competent and professional manner with respect to this Project. No consultant or subcontractor shall be replaced without the prior written approval of Owner. The Owner may, without incurring cost or expense, require the replacement of any consultant or subcontractor identified in a Task Order in the sole discretion of the Owner upon written notice to the Consultant.

1.6 **Time.** The Consultant shall complete each Task Order required by this Agreement in a timely fashion in accordance with a schedule for each Task Order (each, a "**Schedule**"). Once the parties hereto have agreed to the Schedule for a Task Order, all dates set forth in the Schedule, as the same may be amended from time to time in accordance with this Agreement, shall be **TIME OF THE ESSENCE**.

A. **Timely Performance an Essential Condition.** It is hereby understood and agreed by the Consultant that the date of commencement, the dates of required intermediate milestones, and the time for completion, as specified in this Agreement and in the accepted Schedule for the Services to be completed by the Consultant with respect to each Task Order issued by the Owner, are **ESSENTIAL CONDITIONS** of this Agreement.

B. **Commencement of Services.** It is mutually understood and agreed that the Services of the Consultant hereunder for each Task Order shall be commenced within five (5) days after the issuance of a Notice to Proceed by the Owner or on such later date specified therein.

1.7 **Representations and Warranties.** The Consultant represents and warrants, as of the date hereof and throughout the Term of this Agreement, as follows:

A. **Use of Qualified Personnel, Consultants and Subcontractors.** The Consultant represents that it is a corporation comprised or duly-licensed consultants, where licensing is required, has the requisite experience to undertake and complete the Services pursuant to the requirements of this Agreement, has in its employ, or will engage at its sole cost and expense, licensed (where required), experienced, qualified and trained personnel, subcontractors and consultants, and will use, or require those in its employ to use, quality equipment accurately calibrated, where accurate measurement is necessary, to competently perform the Services required by each Task Order.

B. **Consultant Possesses Adequate Resources and Personnel.** The Consultant represents that it is financially stable and has adequate resources and personnel to complete the Services in a timely fashion.

C. **No Conflicts.** The Consultant has disclosed, or shall disclose, in writing prior to the execution of any Task Order, all conflicts or potential conflicts of interest that may or are likely to have an adverse affect on its ability to independently protect the Owner's interests in connection with the Project, including but not limited to, the nature and specifics of its relationship with any other participants in the Project, for example the Construction Manager, other consultants and subcontractors, and the like. The Consultant represents that its performance of the Services described herein, and its representation of the Owner, will not result in a conflict of interest, will not violate any laws or contractual obligations with third parties, and is an enforceable obligation of the Consultant.

D. **Prior Approval of All Consultants.** The Consultant will not engage any consultant or subcontractor for any of the Services for any Task Order without prior written notice to and written Approval by the Owner and receipt of the Owner's written consent, except for those consultants and contractors specifically identified in this Agreement.

E. **No Violation of Law.** The Consultant represents that neither it, nor any of its officers, directors, owners, employees or, to the best of its knowledge any of its approved subcontractors and consultants, have committed a criminal violation of federal or state laws arising directly or indirectly from its business operations that resulted in the imposition of a monetary fine, injunction, criminal conviction or other sanction, and further represents that the Consultant shall take all reasonable steps to ensure that its officers, directors, owners, employees, agents, subcontractors and consultants shall comply with the requirements of all laws, rules and regulations applicable to this Agreement or to the conduct of its or their businesses in the performance of the Services under this Agreement.

F. **Quality and Performance of Services.** The Consultant represents that it will perform, or ensure the performance by others of, the Services in a good and workmanlike manner consistent with the level of skill and care ordinarily exercised by members of the profession currently practicing in the State of Connecticut under similar conditions and will diligently pursue the completion of such Services in accordance with the terms of this Agreement.

G. **Licenses and Permits.** The Consultant represents that it possesses, and will ensure that its subcontractors and consultants possess, all professional licenses and other licenses and permits in the State of Connecticut that may be required to perform the Services required by this Agreement.

H. **Observance of Proprietary Rights.** The Consultant represents and warrants that it will take reasonable steps to ensure that the performance of the Services will not infringe upon or misappropriate any United States copyright, trademark, patent, or the trade secret or other proprietary material of any third

persons. Upon being notified of such a claim, the Consultant shall, at the request of the Owner and in the Owner's sole discretion, (i) defend through litigation or obtain through negotiation the right of the Owner to continue using the Services of the Consultant while such claim of infringement is contested; (ii) modify the Services to be rendered at no cost, expense or damage to the Owner so as to make such Services non-infringing while preserving the original functionality, and/or (iii) replace the Services or the infringing or potentially infringing portion thereof with the functional equivalent. If the Owner determines that none of the foregoing alternatives provide an adequate remedy or resolution of the claim of infringement, the Owner may terminate all or any part of the Services and, in addition to other relief, shall be entitled to recover the amounts previously paid to the Consultant hereunder related to such claim of infringement.

I. **Y2K Compliance.** The Consultant represents that it will ensure that any computer program included as a deliverable Service or used in connection with the performance of any Service or Task Order hereunder operates substantially in accordance with the specifications for such Service or Task Order and is otherwise in compliance with Year 2000 Standards. For these purposes, "**Year 2000 Standards**" means that the deliverable Services, Task Orders and work, material or reports prepared in connection therewith records, stores, recognizes, interprets, processes and presents both 20th and 21st century dates using four (4) digit years and operates at a programming interface level with other programs for which it could reasonably be expected to operate without causing the other programs to violate such Year 2000 Standards.

J. **Communications and Coordination.** The Project Manager shall receive, control and coordinate all documents and arrange all meetings with the Consultant and third parties on behalf of the Owner. The Owner's Representative shall be informed of the nature and content of all direct communications with the State of Connecticut representatives in connection with the Project.

K. **Owner Shall Not Be Billed for Certain Taxes.** The Owner is not obligated to pay certain sales, use, gross receipts taxes, ad valorem or other taxes with respect to the Services rendered by the Consultant, its consultants and subcontractors, and the Consultant agrees not to invoice the Owner therefor. The Owner reserves the right to withhold pursuant to Section 12-430(7) of the Connecticut General Statutes, a percentage of the monies owed to any party that is a non-resident of the State of Connecticut but has not received an appropriate certificate from the Commissioner of Revenue pursuant to the aforesaid statute on account of sales taxes that may be owed by such non-resident to the State of Connecticut. Upon request of the Consultant, its consultants or contractors, the Owner's Purchasing Department will issue tax-exempt certificates to any party purchasing materials or rendering services to the Project for which a tax exemption is available.

L. **Recordkeeping and Audits.** The Consultant shall keep daily, weekly and monthly logs and other records detailing the Services rendered which shall contain sufficient detail as to type of activity performed by each employee, consultant and subcontractor working on the Project under the supervision of the Consultant, the job category of each such employee, the number of hours worked, etc. Such records shall be kept at the Consultant's principal place of business in the State of Connecticut. The Owner, its agent(s), or the representatives of any funding source shall have the right to inspect such records from time to time, with or without prior notice, during normal business hours of the Consultant.

ARTICLE II CONSULTANT'S RESPONSIBILITIES

2.1 General Description of Services

A. **Customary Consulting Services.** The Consultant's Services shall consist of the Services described in a Task Order, other services described in Article I hereof, and any other services normally performed by a consultant to complete a Project of this nature.

B. **Scope of Consultant's Services.** The scope of the Consultant's Services are described generally in this Agreement, and more specifically in each Task Order, and also include those services that are reasonable, consistent with and necessary to complete each Task Order, including but not limited to preparing and submitting written reports, keeping and distributing daily, weekly and monthly work logs demonstrating the Consultant's progress with respect to the Services and to each Task Order, and the like. All Consultant's Services and documents shall fully comply with the restrictions and requirements of all laws, rules and regulations of federal, state and local governmental and quasi-governmental agencies, authorities and funding sources having jurisdiction over or otherwise related to the Project, and other parties disclosed by the Owner and otherwise known to the Consultant as of the date of this Agreement, the date of any Task Order, or the date on which, for example, any governmental agency approves any permit for the Project, if any, or which, in the exercise of the best professional judgment of an independent consultant retained by the Owner, should have been known to Consultant.

C. **Notice of Meetings.** The Consultant shall give timely notice to Owner of any meetings that the Consultant feels necessary in connection with a Task Order with utility companies or city, state or other regulatory agencies. Scheduling of such meetings is to be done by the Consultant, after consultation with the Owner as to time and date of such meetings. Notwithstanding anything herein to the contrary, the Owner shall pay the Consultant for all pre-approved

and properly documented expenses incurred for trips on the Owner's behalf that exceed fifty miles from Bridgeport, Connecticut.

D. Cooperation with Other Professionals. The Consultant shall cooperate fully with any consultant employed by the Owner in connection with the Project and professionals employed by the Owner for work related to the Project.

2.2. Distribution of Project Information. The Consultant shall promptly furnish to the Owner's Representative and other designated parties copies of all, reports, test results, correspondence, studies, meeting minutes and other verbal record, on any media, created by the Consultant or which comes into the possession of the Consultant and required, desired or necessary to keep the Owner informed of the progress of the Consultant's Services, the progress of the Project, or as otherwise may be requested by the Owner pursuant to this Agreement and to a Task Order

ARTICLE III INFORMATION AND COMMUNICATION

3.1 Information to be Supplied. The Owner shall provide information regarding its requirements in the form of Task Orders. The Owner shall furnish to the Consultant such information with reasonable promptness to avoid delay in the performance and delivery of the Services. The Consultant shall be entitled to rely upon the completeness and accuracy of any Owner-supplied information unless, in the exercise of its best professional judgment, it knows or should know that such reliance would be unreasonable, in which case the Consultant shall inform the Owner's Representative in writing through the Project Manager of the unreliability or unreasonableness of the information supplied.

3.2 Owner's Representative. The Owner's Representative at the inception of this Agreement is Richard McHugh or his designee set forth in writing ("**Owner's Representative**"). Each such person or entity functioning in the capacity as the designated Owner's Representative shall act on behalf of the Owner with respect to this Agreement and all Task Orders and shall have authority to make decisions on which the Consultant can rely. The Owner's Representative shall not perform any other services performed by a consultant. The Owner's Representative shall examine documents, at each phase of the Services performed or to be performed by the Consultant, which are submitted by the Consultant from time to time, and shall render evaluations and decisions pertaining thereto promptly in order to avoid unreasonable delay in the performance and delivery of the Consultant's services. Any Approval or Approvals given by the Owner shall not relieve the Consultant of any of its obligations hereunder.

3.3 Project Manager; Authority to Direct Consultant. The Project Manager shall act in the interests of the Owner with respect to this Agreement and its Task Orders and shall have the authority to examine and review any and all of the Consultant's work products and/or the Services it provides, make recommendations to the Owner regarding such work and its quality, completeness and timeliness, and carry out and execute the decisions of the Owner's Representative with respect to the Consultant, its Services and work. With respect to the hierarchy of authority to act on behalf of the Owner, the Owner's Representative has primary authority to make decisions for the Owner and to direct the Consultant in connection with this Agreement. If authorized in writing by the Owner's Representative, the Project Manager may make decisions on behalf of the Owner and give limited direction the Consultant concerning the Services and any Task Order. Any Approval or Approvals given by the Project Manager on behalf of the Owner, shall not relieve the Consultant of any of its obligations hereunder.

3.4 Independent Legal and Accounting Services. The Owner shall furnish its own legal, accounting, auditing and insurance counseling services, however, the fact that the Owner possesses such support services will not relieve the Consultant of its responsibilities pursuant to this Agreement. The Consultant shall furnish, at its own overhead expense, its own legal, accounting, auditing and insurance counseling services.

3.5 Confidential Information. Each party hereby acknowledges that it may be exposed to confidential information which may not be available to the public or discoverable under the Freedom of Information Act ("**FOIA**") and other proprietary information belonging to the other party or relating to its business and affairs, including, without limitation, source code and design materials for work product and other materials expressly designated or marked as confidential ("**Confidential Information**"). Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the party; (iii) information received by a party from a third party who was free to disclose it; (iv) information properly disclosable under FOIA or (v) information required to be disclosed by a court of law or government or quasi-governmental authority.

(b) **Covenant Not to Disclose.** Each party hereby agrees that during the term of this Agreement and at all times thereafter it shall not use, commercialize or disclose the other party's Confidential Information to any person or entity, except to its own employees who have a "need to know," to such other recipients as the party claiming confidentiality may approve in writing in advance of disclosure, or as otherwise required by court order, statute or regulation. Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall a party use less than due diligence and care. Neither party shall alter or remove from any software,

documentation or other Confidential Information of the other party (or any third party) any proprietary, copyright, trademark or trade secret legend.

ARTICLE IV REMEDIES

4.1 **Default by Consultant.** It shall be a material default under this Agreement in the event that any of the following occur (each an “**Consultant’s Default**”): (i) The Consultant fails to expeditiously perform the Services required to be performed under each Task Order through no fault of the Owner thereby delaying the commencement, progress, or delivery of the Project, or (ii) the Consultant is slow to pay or fails to pay any subcontractor, consultant or agent of the Consultant, or (iii) the Consultant is declared to be bankrupt or insolvent, an assignment for the benefit of creditors is made by the Consultant, the Consultant shall file a voluntary petition in bankruptcy or insolvency, or a receiver shall be appointed for the Consultant and such appointment or bankruptcy or insolvency proceeding, petition, declaration or assignment is not set aside within thirty (30) days of filing, or (iv) any representation or certification made by the Consultant to the Owner shall prove to be false or misleading on the date said representation or certification is made, or (v) default shall be made in the observance or performance of any material covenant, agreement or condition contained in this Agreement required to be kept, performed or observed by Consultant, or (vi) there has been a material adverse change in the financial condition of the Consultant, or (vii) the Consultant, or any principal or officer of the Consultant shall be convicted of the commission of a crime punishable as a felony, or (viii) the Consultant violates a material provision of any laws, ordinances, rules, regulations or orders of any public authority in the performance of its duties hereunder. If such an Consultant’s Default has occurred and has not been cured within thirty (30) days, with or without written notice from the Owner to the Consultant, the Owner may declare the Consultant to be in default hereunder and exercise any remedies available to it, including the termination of this Agreement and any Task Order(s) then outstanding. In the event that the Owner terminates the Consultant for an Event of Default that is not cured after notice and such termination becomes the subject of arbitration, if the Owner’s termination of the Consultant is deemed to have been wrongful or inappropriate, such termination will be deemed converted to a termination for convenience by the Owner and the Consultant’s remedies shall be limited to those set forth herein with regard to termination for convenience.

4.2 **Default by Owner.** In the event the Owner shall fail to perform any of its material obligations pursuant to this Agreement (“**Owner’s Default**”), the Consultant shall give written notice within fourteen (14) days to the Owner. In the event that the Owner fails to cure a payment default within fourteen (14) days after receipt of such notice or fails to cure a non-payment default within sixty (60) days after receipt of such notice, the Consultant may declare the Owner to be in default hereunder and exercise any remedies available to it.

4.3 Termination by Owner Due to Consultant's Default. If the Consultant fails to supply enough properly-skilled and licensed (where required) professionals and employees, or proper materials, or if the Consultant commits a material violation of any laws, ordinances, rules, regulations or orders of any public agency or authority having jurisdiction, or otherwise commits an Consultant's Default under this Agreement, the Owner shall give written notice within fourteen (14) days to the Consultant. In the event that the Consultant fails to cure such default within seven (7) days after receipt of such notice, the Owner may declare the Consultant to be in default hereunder and exercise any remedies available to it. The Owner may, without prejudice to any right or remedy, terminate the employment of the Consultant and take possession of all plans, specifications, drawings, analyses, test results, samples and other data prepared, obtained by or in the possession of the Consultant, whether complete or not, with respect to the Task Order or Task Orders by whatever method the Owner may deem expedient. Additionally, the Owner may pursue any legal action available to it to obtain relief for actual damages suffered by reason of the Consultant's Default hereunder. In such event, the Consultant shall be liable to compensate and reimburse the Owner for all of its loss, cost and expense, including but not limited to attorney's fees and consultant's fees, which are caused by the Consultant's Default.

4.4 Termination by Consultant. Should the Owner commit an Owner's Default that continues beyond notice and passage of the cure period provided herein, the Consultant may, as its sole and exclusive remedy, terminate this Agreement. Upon such a termination, the Consultant shall be entitled to recover from the Owner all Compensation due for Services performed in accordance with the requirements of this Agreement to the date of such termination, and Reimbursable Expenses. The Consultant may not recover any other damages, costs or expenses from the Owner other than payment for Services performed up to the date of termination and Reimbursable Expenses.

4.5 Termination by Owner Without Fault of the Consultant. Upon fifteen (15) days' prior written notice, the Owner shall have the right to cancel and terminate this Agreement at any time whether or not an Consultant's Default exists hereunder, and the Owner shall incur no liability to Consultant or any other person by reason of such cancellation, except that, if the cancellation is for no fault of Consultant, the Owner shall pay to the Consultant all sums then due to the Consultant hereunder for Services rendered in accordance with this Agreement performed up to the date of termination.

4.6 Transfers on Termination. In the event of any termination of this Agreement by the Owner, the Consultant shall, upon written request of the Owner, return to the Owner within seven (7) days all papers, materials, test results, samples, analyses and other items on any form of media prepared by, in the possession of, or available to the Consultant relating to the Project whether

created by or at the request of the Consultant or created by others. In addition, each party will assist the other party in an orderly termination of this Agreement and the transfer of all aspects hereof, tangible and intangible. If requested by the Owner's Representative, the Consultant shall debrief the Owner with respect to the work performed and not performed to date of termination with good faith and due diligence. Such debriefing shall provide explanation, annotation, data and other information concerning drawings, schedules, deliverables and the like for which the Consultant is responsible under this Agreement. Furthermore, the Consultant shall relinquish, assign and transfer in a writing acceptable to the Owner all rights and claims to its Work Product, drawings, specifications, test results, analyses, samples and other deliverables that are part of this Agreement and take such other reasonable steps at the request of the Owner's Representative to facilitate the continuation of the work of the Consultant by another professional, provided, however, that the Consultant's name and seal may not be used on such items subsequently by one or more other professionals engaged by the Owner.

4.7 **Resolution of Disputes and Choice of Law.** The parties agree that all disputes between them arising under this agreement or involving its interpretation, if they cannot be first resolved by mutual agreement, shall be submitted to a court of competent jurisdiction over the parties located in Fairfield County, Connecticut.

4.8 **Claims For Additional Compensation and Time.** In an event occurs or other circumstances arise during the performance of the work that establish or may tend to establish a claim by the Consultant for additional Compensation and/or additional time to perform, the Consultant shall promptly make such claim to the Owner in writing within fourteen (14) days of the occurrence of such event or circumstances setting forth the facts giving rise to such claim under this Agreement and the additional Compensation or contract time requested by the Consultant. The Consultant shall not undertake to perform additional work without the prior written approval of the Owner. All claims for additional Compensation or additional contract time that are not asserted with such 14-day period are deemed waived by the Consultant.

ARTICLE V INDEMNIFICATION AND INSURANCE

5.1 **Indemnification.** The Consultant represents and warrants that it will employ its best professional judgment in the performance of the Services hereunder to ensure that design products are free from material defects that were known or should have been known to the Consultant in the exercise of reasonable care. To the fullest extent permitted by law, the Consultant, on behalf of itself and its subcontractors, consultants and agents (the "**Indemnitor**"), agrees to indemnify, save and hold Owner, its elected officials, department heads, employees, subcontractors and consultants (the "**Indemnitee**") harmless from and against any and all liability, damage, loss,

claim, demand, action and expenses of any nature whatsoever, including, but not limited to costs, expenses, consulting fees and reasonable attorneys' fees which arise out of or are connected with: (i) any negligent act, error or omission by the Indemnitor in the performance of this Agreement; (ii) the negligent failure of the Indemnitor to comply with the laws, statutes, ordinances or regulations of any governmental or quasi-governmental agency or authority having jurisdiction over the Project; or (iii) the breach of any material term or condition of this Agreement by the Indemnitor. The provisions of this indemnification article shall not be construed as an indemnification of the Indemnitee for any loss or damage attributable to the sole act or omission of the Indemnitee. The indemnity set forth above shall survive the expiration or any earlier termination of this Agreement.

5.2 Insurance. The following insurance coverage is required of the Consultant and it is understood that the Consultant will require other coverage from every consultant and subcontractor in any tier according to the work being performed and shall ensure that all insurance coverage is issued and in force in accordance with the terms hereof. **The Consultant, its subcontractors and consultants may not enter the Project site or commence work unless and until all such insurance coverages are provided to, reviewed and approved by the Owner.**

A. Coverage Required. The Consultant shall procure, present to the Owner in advance of any Services performed, and maintain in effect for the term of this Agreement without interruption the insurance coverages identified below with insurers licensed to conduct business in the State of Connecticut and having a minimum Best's A + 15 financial rating or other rating acceptable to the City.

Errors and Omissions Insurance (claims made form) will be provided by all consultants and other professionals involved in the Project with minimum limits of \$3,000,000, or as otherwise required by the Owner.

Commercial General Liability (occurrence form) insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of operations conducted under this Agreement. Coverage shall be broad enough to include premises and operations, contingent liability, contractual liability, completed operations (24 months), broad form property damage, care, custody and control, with limitations of a minimum \$1,000,000 per occurrence and \$2,000,000 combined primary and excess coverage for each occurrence/aggregate and \$300,000 property damage.

Business Automobile insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of the use of owned, hired or non-owned vehicles in connection with business. Coverage will be broad enough to

include contractual liability, with limitations of \$1,000,000 combined primary and excess coverage for each occurrence/aggregate with a combined single limit for bodily injury, personal injury and property damage.

Workers' Compensation insuring in accordance with statutory requirements in order to meet obligations towards employees in the event of injury or death sustained in the course of employment. Liability for employee suits shall not be less than \$500,000 per claim.

B. General Requirements. All policies shall include the following provisions:

Cancellation notice—The Owner shall be entitled to receive from all insurance carriers an unequivocal agreement to provide not less than 30 days' prior written notice of cancellation, non-renewal or reduction in coverage, such notices to be given to the Owner at the following address: Purchasing Agent, City of Bridgeport, City Hall, 45 Lyon Terrace, Bridgeport, Connecticut 06604.

Certificates of Insurance—All policies will be evidenced by an original certificate of insurance on a ACORD-25S form delivered to the Owner and authorized with original signature or stamp of the insurer or a properly-authorized agent or representative reflecting all coverage required, such certificate to be delivered to the Owner prior to any work or other activity commencing under this Agreement.

Additional insured—The Consultant, its consultants and subcontractors will arrange with their respective insurance agents or brokers to name the Owner, its elected officials, officers, department heads, employees and agents, at no additional cost to the Owner, on all policies of primary and excess insurance coverages as additional insured parties except errors and omissions coverage and workers' compensation coverage, and as loss payee with respect to any damage to property of the Owner, as its interest may appear. The undersigned shall submit to the Owner upon commencement of this Agreement and periodically thereafter, but in no event less than once during each year of this Agreement, evidence of the existence of such insurance coverages in accordance with the terms of this Agreement. The City shall be designated as follows:

“The City of Bridgeport, its appointed and
elected officials, department heads, employees
and agents, ATIMA
Attention: Purchasing Agent
45 Lyon Terrace
Bridgeport, Connecticut 06604”

ARTICLE VI MISCELLANEOUS

6.1 **Singular, Plural, Gender, etc.** Wherever in this Agreement the context so requires, the singular number shall include the plural number and vice versa, and any gender herein used shall be deemed to include the feminine, masculine or neuter gender.

6.2 **Professional Services Contract.** This Agreement is entered into solely to provide for the work of various Task Orders for work related to the Project and to define the rights and obligations, risks and liabilities of the parties hereto. This Agreement, and any document or agreement entered into in connection herewith, shall not be deemed to create any other or different relationship between the Consultant and the Owner other than as expressly provided herein. The Consultant acknowledges that the Owner is not a partner or joint venturer with the Consultant and that the Consultant is not an employee or agent of the Owner.

6.3 **Prohibition Against Assignment.** The Consultant may not transfer, hypothecate or in any way alienate or assign its interest in this Agreement or delegate any duties to be performed by it hereunder without the prior written consent of Owner. The Owner may assign its interest in this Agreement at any time to any person or entity that assumes the Owner's obligations from the date of the assignment hereunder; provided, however, that absent express consent in writing by the Consultant, such assignment shall not release the Owner from its obligations to the Consultant hereunder for payment of all amounts due the Consultant pursuant to this Agreement.

6.4 **Time of the Essence.** All dates set forth in this Agreement, and/or in any accepted Task Order Schedule, as may be amended from time to time, is agreed to be critical to the completion of the Project and shall be considered of the essence to this Agreement.

6.5 **Notices.** All notices, requests, demands or changes of address required or desired by either party shall be in writing and shall be either personally delivered, delivered by messenger or overnight delivery service, or be delivered by registered or certified mail, return receipt requested, postage prepaid, and addressed to the other party at the address heretofore set forth (each a "Notice"). All Notices shall be deemed received, in the case of personal or overnight delivery service, upon receipt, or in the case of mailing, on the date of receipt thereof by the party to whom it is addressed or, if receipt is refused, upon the expiration of forty-eight (48) hours from the time of deposit of such mailed notice in an office of the United States Postal Service. A change of address of a party shall be set forth in the same manner as other required notices.

6.6 **No Waiver.** No waiver of any party's default hereunder by the other party hereto at any one time shall be construed as a waiver by such party of any subsequent breach of the same or another term of this Agreement by the other party.

6.7 **Ownership of Documents.** All drawings, specifications, surveys, test results, models, plans, computer programs, databases and other work product prepared by the Consultant or anyone employed by the Consultant in any form or media upon creation are and shall be the sole and exclusive property of the Owner, including without limitation all copyrights, rights of reproduction and reuse, and other interests relating thereto. The Owner and any entity affiliated with the Owner may reuse all such documents and data for future work in connection with the construction of the bulkhead Project or for future Projects, provided that the Owner shall not alter any drawings or specifications signed and sealed by the Consultant without its prior written consent. Except for termination of the Consultant's services as a result of a default, the Consultant shall have an irrevocable, non-exclusive license to copy and use such documents and data and may retain copies of such documents and data for re-use in the conduct of its professional practice.

6.8 **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of the Owner and the Consultant and their respective successors, assigns and legal representatives.

6.9 **Captions.** The captions and headings contained herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

6.10 **Governing Law; Venue.** This Agreement shall be construed in accordance with the laws of the State of Connecticut. Any mediation or arbitration shall be commenced and resolved in Bridgeport, Connecticut. In the event that any party affirmatively waives its right to arbitrate disputes that arise under this Agreement, any legal action brought to enforce any provision of obtain any interpretation of this Agreement or for other relief shall be brought in a State or Federal court of competent jurisdiction over the parties in Bridgeport, Connecticut.

6.11 **Entire Agreement.** Each party acknowledges that there are no prior or contemporaneous oral promises, undertakings or agreements in connection with this Agreement that are not contained herein. This Agreement may be modified only by a written agreement signed by all parties hereto. All previous negotiations and agreements between the parties hereto, with respect to the transactions set forth herein, are merged into this instrument, the documents or other materials referenced herein, the Task Orders, and

amendments hereto mutually agreed to in writing by the parties, which together fully and completely express the parties' rights and obligations.

6.12 **Partial Invalidity.** If any term or provision of this Agreement is believed to be illegal, unenforceable or in violation of the laws, statutes, ordinances or regulations or any public agency or authority having jurisdiction over the parties or the Project, then, such matter shall be submitted to arbitration in accordance with this Agreement to determine whether such term or provision is severable or if this Agreement is deemed to be a whole by a fair construction of its terms and provisions under Connecticut law. If such term or provision is found to be severable, this Agreement shall remain in full force and effect, such term shall be deemed stricken therefrom and this Agreement shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision. If such term is not found to be severable, this Agreement may be terminated by either party upon the giving of prompt written notice within ten (10) days after such determination, whereupon the rights and obligations of the parties shall be determined in accordance with the provisions of this Agreement as if a mutual, voluntary termination had occurred.

6.13 **Survival.** The terms, provisions, representations, warranties and certifications contained in this Agreement, or inferable therefrom, shall survive the completion of the Project, or the earlier termination of this Agreement as to the Services completed to the date of such termination, subject to all applicable statutes of limitation and repose.

6.14 **Waiver of Liens.** The Consultant hereby waives any right it may have to file or assert a mechanic's or materialmen's lien against the Project site or against the Project, including but not limited to, any rights granted to the Consultant by the laws of the State of Connecticut.

6.15 **Excusable Delay.** The parties hereto, respectively, shall not be in default of this Agreement if either is unable to fulfill, or is delayed in fulfilling, any of its obligations hereunder, or is prevented or delayed from fulfilling its obligations, in spite of its employment of best efforts and due diligence, as a result of extreme and unseasonable weather conditions, natural disasters, catastrophic events, mass casualties to persons or significant destruction of property, war, governmental preemption in a national emergency, enactment of law, rule or regulation or change in existing laws, rules or regulations which prevent any party's ability to perform its respective obligations under this Agreement, or actions by other persons beyond the exclusive control of the party claiming hindrance or delay. If a party believes that a hindrance or delay has occurred, it shall give prompt written notice to the other party of the nature of such hindrance or delay, its effect upon such party's performance under this Agreement, the action needed to avoid the continuation of such hindrance or delay, and the adverse effects that such hindrance or delay then has or may

have in the future on such party's performance. Notwithstanding notification of a claim of hindrance or delay by one party, such request shall not affect, impair or excuse the other party hereto from the performance of its obligations hereunder unless its performance is impossible, impractical or unduly burdensome or expensive, or cannot effectively be accomplished without the cooperation of the party claiming delay or hindrance, The occurrence of such a hindrance or delay may constitute a change in the scope of Services, and may result in the need to adjust the Compensation in accordance with the terms of this Agreement.

6.16 Non-Discrimination. The requirements for minority hiring and participation by disadvantaged businesses are set forth in Chapter 3.12 of the Municipal Code of Ordinances of the City of Bridgeport, which Chapter is attached here to as **Exhibit E**.

6.17 Precedence of Documents. The documents constituting this Agreement set forth in Paragraph 6.11 are intended to be complementary and shall be read together to include everything necessary for the proper execution and completion of the work set forth in every Task Order whether specified therein or not. However, to the extent that any conflicts, inconsistencies or ambiguity exist in the contract documents, the Consultant shall perform the more stringent requirement or adhere to the higher standard of work or performance involved. In the event of an irreconcilable conflict, then a determination shall be made by review of the various contract documents in the following descending order of precedence: This Agreement; any Task Order; any properly-executed change or amendment to a Task Order. As between figures given in drawings and the scale of measurements, the figures shall take precedence. Detail drawings shall have precedence over general drawings.

6.18 Council Approval of Agreement May Be Required. This Agreement may become effective upon the execution thereof by all parties and delivery of a fully-executed original to the Consultant. The Office of the City Attorney shall determine if the City Council must approve this Agreement, in which case it shall not become effective until the City Council of the City of Bridgeport approves the same, the Mayor executes the Agreement or it becomes

effective pursuant to the terms of the City Charter, and the Consultant receives an executed original thereof complete with all Schedules and Exhibits.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF BRIDGEPORT

By: _____
Name:
Title:
duly-authorized

CONSULTANT

By: _____
Name:
Title:
duly-authorized

Exhibit A

Advertisement and Consultant's Proposal

Exhibit B

Task Order Format

This Task Order No. ___ is made as of this ___ day of _____, [year] under the terms and conditions established in the Professional Services Agreement between the Owner and the Consultant dated _____, and shall constitute an amendment to such Agreement. This Task Order is issued for the following purpose, consistent with the Project defined in the Agreement:

[Brief description of the Project elements to which this Task Order applies.]

Section A—Scope of Services

A.1. The Consultant shall perform the following Services:

A.2. The following Services are not included in this Task Order, but shall be provided as additional Services if Approved in writing by the Owner.

A.3. In conjunction with the performance of the foregoing Services, the Consultant shall provide the following submittals/deliverables (“**Deliverables**”) to the Owner:

Section B—Task Schedule

The Consultant shall perform the Services and deliver the related documents, if any, according to the following Task Schedule:

Section C—Compensation

C.1. In return for the performance of the Services under this Task Order, the Owner shall pay the Consultant Compensation in the amount of [dollars], payable according to the following terms:

C.2. Compensation for any additional Services requested under this Task Order, if any, shall be paid by the Owner to the Consultant according to the following terms:

Section D—Owner's Responsibilities

The Owner shall perform and/or provide the following in a timely manner so as not to delay the performance or completion of the Services by the Consultant. Unless otherwise provided in this Task Order, the Owner shall bear all costs incident to compliance with the following:

Section E—Other Provisions

The parties agree to the following additional provisions with respect to this Task Order:

Except to the extent modified herein, all terms and conditions of the Agreement shall continue in full force and effect.

Owner

By: _____
Name:
Title:

Consultant

By: _____
Name:
Title:

Exhibit C

Hourly Billing Rates of Consultant and Each Consultant and Subcontractor

Reimbursable Expenses

Reimbursable Expenses shall include the following:

1. Shipping and handling of documents during design and construction documents phases.
2. Reproduction of documents for submittals to the Owner and regulatory agencies
3. In-house printing
4. Computer plots
5. Long-distance telephone
6. Local courier services
7. Out-of-city courier services
8. Mileage more than 50 miles from the Project site.

- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any rule, regulation or order issued under this Section, the Contract may be canceled, terminated or suspended, in whole or in part and such other sanctions may be imposed and remedies invoked as are provided under the provisions of Section 3.12.100(D) of the City of Bridgeport Ordinances and rules, regulations or orders issued pursuant thereto, or as provided by federal and state laws.

- G. The Contractor will include the provisions of subsection A of this Section, in every subcontract or purchase order unless exempted by rules, regulations or orders of the Office of Contract Compliance issued pursuant to Section 3.12.060 of the City of Bridgeport Ordinances, so that such provision will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Office of Contract Compliance may direct as a means of enforcing this Section, including sanctions for non-compliance in accordance with the provisions of Section 3.12.100 of the City of Bridgeport Ordinances.

2009 HOURLY RATES*

<u>BILLING CATEGORY</u>	<u>AVE. HOURLY RATE</u>
Senior Officer	\$ 61.64
Officer	\$ 51.97
Chief Scientist	\$ 51.97
Associate	\$ 48.27
Senior Engineer, Scientist, Analyst III	\$ 44.47
Senior Engineer, Scientist, Analyst II	\$ 40.90
Senior Engineer, Scientist, Analyst I	\$ 36.57
Engineer, Scientist, Analyst III	\$ 31.44
Engineer, Scientist, Analyst II	\$ 26.99
Engineer, Scientist, Analyst I	\$ 23.06
CADD, Survey, Technician III	\$ 20.99
CADD, Survey, Technician II	\$ 21.06
CADD, Survey, Technician I	\$ 15.48
Researcher, Clerical	\$ 17.92

* actual hourly rates, does not include mark-up for overhead or profit

DIRECT CHARGE SCHEDULE

F&O Staff Mileage	At Prevailing IRS Rate
F&O Vehicles	\$.85/mile
Printing/Reprographics	
Black & White Copy/Print	\$0.065/page
Color Copy/Print	\$0.40/page
Electrostatic Copy/Print	\$0.30/linear ft.
Inkjet Plotter	\$1.34/linear ft.
Inkjet Mylar	\$3.50/linear ft.
Subcontractors/Subconsultants	Cost plus 15%



2009 HOURLY RATES*

FIELD EQUIPMENT SCHEDULE	PER DAY (unless noted)
Air Sampling Pumps	\$15
All Terrain Vehicle	\$100
Bladder Pumps	\$25
Boat	\$50
Combustible Gas Indicator (CGI)	\$20
Concrete Coring Machine	\$250
Data Logger/Mini-Troll	\$75
Dissolved Oxygen/Temp/pH Meter	\$15
Generators	\$50
Geoprobe Sampling Rig	\$500 ^(a)
Ground-Penetrating Radar	\$250 ^(a)
Survey GPS Submeter Receiver	\$30 per hr
Hammer Drill	\$50
Hand Auger	\$25
Interface Probe	\$25
Low Flow Controller	\$50
Metal Detector	\$25
Multimeters	\$60
Confined Space Meter (Multi-Gas Meter)	\$30
Peristaltic Pumps	\$20
Petro Flag Sample	\$25
Photoionization Detector (OVM/PID)	\$65
Soil Gas Sampling Equipment	\$100
Soil/Sediment VOC Supplies (Terra Core)	\$2 per sample
Soil/Sediment SPLP/TCLP Supplies (Encore)	\$ 10 per sample
Soil Vapor Extraction (SVE) Pilot Test Equipment	\$260
Survey Levels	\$20
Total Organic Vapor Analyzer	\$65
Transit Time Flowmeter	\$130 per day, \$520 per week, \$1,706 per month
Turbidity Meters	\$15
Water Level Indicator	\$15
XRF Analyzer	\$250

(a) Plus expendables and standard hourly rate for operator.



FUSS & O'NEILL

Disciplines to Deliver

December 23, 2008

Mr. David P. Cote, P.E.
Office of the Department of Public Facilities
Construction Management Services Division
City of Bridgeport
999 Broad Street
Bridgeport, CT 06604

RE: Environmental Engineering Services – COB 11783

Dear Mr. Cote:

Fuss & O'Neill, Inc. would like to thank the City of Bridgeport for selecting us to provide environmental engineering services. We are pleased to provide the cost data requested in your September 30, 2008 letter and the associated "A-E Proposal Instructions."

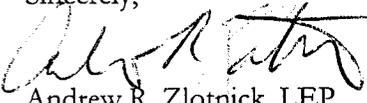
Please see the attached "Audit of Direct Labor, Fringe Benefits and General Overhead Cost (F.A.R.)" that we are providing in response to your request for Item 1 (Overhead on Direct Labor (ODL)) in the "A-E Proposal Instructions." The top of page 3 of the F.A.R. includes the requested ODL data.

I would like to direct you to pages 3 and 4 of the F.A.R. that include the information in your request for Item 2 (General and Administrative Expenses) in the "A-E Proposal Instructions."

In response to your request for Item 3 in the "A-E Proposal Instructions," I have also attached a rate schedule for our personnel and equipment. Please note that our rate schedule is based on average rates of personnel in each staff category and do not include mark-ups for overhead and profit.

We look forward to providing continued services and understand that the next step will be to enter negotiations to determine an Hourly Rate Schedule and draft our Contract for Services together with the City. Please feel free to contact me if you have any questions concerning the attached information.

Sincerely,



Andrew R. Zlotnick, LEP
Vice President

DEC 30 2008

56 Quarry Road
Trumbull, CT 06611

t (203) 374-3748
(800) 286-2469
f (203) 374-4391

www.FandO.com

Connecticut
Massachusetts

New York
Rhode Island

North Carolina
South Carolina

Attachments - Audit of Direct Labor, Fringe Benefits and General Overhead Cost (F.A.R.)
Rate Schedule

FUSS & O'NEILL, INC.

**AUDIT OF DIRECT LABOR, FRINGE BENEFITS
AND GENERAL OVERHEAD COSTS
(F.A.R.)
FOR THE YEAR ENDED JUNE 30, 2007**

FUSS & O'NEILL, INC.
CONTENTS
JUNE 30, 2007

	PAGE
Independent Auditors' Report	1
Statement of Direct Labor, Fringe Benefits and General Overhead Costs	3-4
Notes to Statement of Direct Labor, Fringe Benefits and General Overhead Costs	5-10
ADDITIONAL INDEPENDENT AUDITORS' REPORT AS REQUIRED BY GOVERNMENT AUDITING STANDARDS	
Independent Auditors' Report on Internal Controls	11-12

**INDEPENDENT AUDITORS' REPORT ON STATEMENT OF DIRECT
LABOR, FRINGE BENEFITS AND GENERAL OVERHEAD COSTS**

The Board of Directors
Fuss & O'Neill, Inc.

We have audited the statement of Direct Labor, Fringe Benefits and General Overhead Costs of Fuss & O'Neill, Inc. for the year ended June 30, 2007. This statement is the responsibility of the Company's management. Our responsibility is to express an opinion on this statement based on our audit.

We conducted our audit in accordance with generally accepted governmental auditing standards and the financial audit standards contained in the Government Auditing Standards issued by the Comptroller General of the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the Statement of Direct Labor, Fringe Benefits and General Overhead Costs. An audit also includes assessing the accounting principles used, the criteria for determining allowable costs, calculations to arrive at burden, fringe and overhead rates and significant estimates made by management, as well as evaluating the overall statement presentation. We believe that our audit provides a reasonable basis for our opinion.

The accompanying statement was prepared on a basis of accounting practices prescribed in Part 31 of Federal Acquisition Regulations as discussed in Note 2, and is not intended to be a presentation in conformity with generally accepted accounting principles.

In our opinion, the Statement of Direct Labor, Fringe Benefits and General Overhead Costs for the year ended June 30, 2007 presents fairly, in all material respects, the direct labor, fringe benefits and overhead of the Company for the year ended June 30, 2007 on the basis of accounting described in Note 2.

In accordance with the Government Auditing Standards, we have issued a report dated December 12, 2007 on our consideration of the Company's internal controls and its compliance with laws and regulations.

This report is intended solely for the use and information of Fuss & O'Neill, Inc. and government agencies or other customers related to contracts employing the cost principles of the Federal Acquisition Regulations and should not be used for any other any other purpose. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

December 12, 2007
Wethersfield, Connecticut

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FUSS & O'NEILL, INC.
STATEMENT OF DIRECT LABOR, FRINGE BENEFITS AND
GENERAL OVERHEAD COSTS
JUNE 30, 2007

	PER COMPANY REPORT	ADDITIONAL ADJUSTMENTS	NOTES	AS ADJUSTED	BFO RATES	ADJUSTMENTS TO FIELD
DIRECT LABOR	\$ 8,098,430	\$ (16,170)	7	\$ 8,082,260		\$ -
BURDEN AND FRINGE:						
Premium time	-	21,636	10	21,636		-
Paid leave	-	1,472,095	8	1,472,095		-
Profit sharing distribution	-	323,740	9	323,740		-
Payroll taxes	-	1,215,670	20	1,215,670		-
Employee insurance	-	1,578,014	21	1,578,014		-
Employee welfare	-	71,162	15	71,162		-
TOTAL BURDEN AND FRINGE	\$ -	\$ 4,682,317		\$ 4,682,317	57.93%	\$ -
OVERHEAD:						
Indirect salaries - office	2,064,598	(438,471)	10	1,626,128		-
Indirect salaries - engineers	7,485,003	(4,055,514)	12	3,429,489		-
Indirect salaries - officers	-	360,008	11	360,008		-
Temporary workers	56,164	-		56,164		-
Other payroll	31,014	-		31,014		-
F & O Overhead charges	(992,500)	(264,400)	23	(1,256,900)		-
Payroll taxes	1,215,670	(1,215,670)	20	-		-
Cafeteria plan expense	(12,812)	-		(12,812)		-
401-k plan expense	22,911	-		22,911		-
Insurance	1,578,014	(1,578,014)	21	-		-
Activity fund	41,833	-		41,833		-
Employee welfare	71,162	(71,162)	15	-		-
Meals & entertainment	121,724	(121,724)	17	-		-
Health & safety supplies	14,247	-		14,247		-
Required medical exams	11,219	-		11,219		-
Geopush expense other	27,678	-		27,678		-
Business planning expense	32,884	-		32,884		-
Mobile lab other expense	2,642	-		2,642		-
Freight & postage	87,000	-		87,000		-
Auto	240,542	(26,970)	13	213,572		-
Admin. Employee mileage	130,443	-		130,443		-
Other travel & lodging	106,659	-		106,659		-
Supplies	139,608	-		139,608		-
Rent	909,373	-		909,373		-
Building maint/repairs	164,883	-		164,883		-
Utilities	228,895	-		228,895		-
Telephone	61,888	-		61,888		-
Copier expense	4,761	-		4,761		-
Mobile cell phones	92,710	-		92,710		-
Office supplies	195,685	-		195,685		-
Equipment repairs	3,060	-		3,060		-
Equipment rental	92,908	-		92,908		-
Library expenses	34,209	-		34,209		-
Business development	57,658	(57,658)	17	-		-
Marketing and Miscellaneous expense	234,913	-		234,913		-
Professional development	217,991	-		217,991		-
Health & safety training	24,350	-		24,350		-
Education reimbursement	40,217	-		40,217		-
Dues	81,467	-		81,467		-
Employment advertising	177,426	-		177,426		-
Printing - outsource	304,272	-		304,272		-
Computer expense	814,882	-		814,882		(83,953)
Insurance	513,344	(22,552)	14	490,792		-
Interest income	(107,942)	107,942	17	-		-
Interest expense	108,639	(108,639)	17	-		-
Legal & accounting	289,138	(128,189)	17	160,947		-
Contributions	24,032	(24,032)	17	-		-
Other taxes	130,101	580	17	130,681		-
Miscellaneous expense	24,418	-		24,418		-
Miscellaneous income	(29,669)	-		(29,669)		-
Depreciation	520,251	-		520,251		-
Recoveries	(468,654)	-		(468,654)		-
Provision for doubtful accounts	11,000	(11,000)	17	-		-
PSP Contributions	358,320	(358,320)	22	-		-
Divisions bonuses	(9,159)	9,159	18	-		-
Proceeds from sale of equipment	-	-		-		-
Loss on disposal of assets	-	-		-		-
Deferred compensation	(1,112,306)	822,075	16	(290,231)		-
TOTAL OVERHEAD	\$ 16,468,763	\$ (7,182,561)		\$ 9,286,212	114.88%	\$ (83,953)
TOTAL BURDEN AND FRINGE	\$ -	\$ 4,682,317		\$ 4,682,317		\$ -
TOTAL BURDEN FRINGE & OVERHEAD	\$ 16,468,763	\$ (2,500,234)		\$ 13,968,529	172.81%	\$ (83,953)

ALLOCABLE TO FIELD	ALLOCATION PERCENTAGE	FIELD OFFICE	HOME OFFICE
\$ 8,083,260	3.31%	\$ 267,610	\$ 7,815,650
21,636	3.31%	716	20,920
1,472,095	3.31%	48,736	1,423,359
323,740	3.31%	10,718	313,022
1,215,670	3.31%	40,247	1,175,423
1,578,014	3.31%	52,243	1,525,771
71,162	3.31%	2,366	88,806
<u>\$ 4,682,317</u>		<u>\$ 155,016 57.93%</u>	<u>\$ 4,527,301 57.83%</u>
1,626,128	3.31%	53,825	1,572,303
3,429,489	3.31%	113,516	3,315,973
380,008	3.31%	11,918	368,092
56,164	3.31%	1,859	54,305
31,014	3.31%	1,027	29,987
(1,256,900)	1.36%	(17,094)	(1,239,806)
-	1.36%	-	-
(12,812)	3.31%	(424)	(12,388)
22,911	3.31%	758	22,153
-	1.36%	-	-
41,833	1.36%	569	41,264
-	1.36%	-	-
-	1.36%	-	-
14,247	1.36%	194	14,053
11,219	1.36%	153	11,066
27,678	1.36%	376	27,302
32,884	1.36%	447	32,437
2,642	1.36%	36	2,606
87,000	1.36%	1,183	85,817
213,572	1.36%	2,905	210,667
130,443	1.36%	1,774	128,669
106,659	1.36%	1,451	105,208
139,608	1.36%	1,899	137,709
909,373	1.36%	12,367	897,006
164,883	1.36%	2,242	162,641
228,895	1.36%	3,113	225,782
61,888	1.36%	842	61,046
4,761	1.36%	65	4,696
92,710	1.36%	1,261	91,449
195,685	1.36%	2,681	193,024
3,060	1.36%	42	3,018
92,908	1.36%	1,264	91,644
34,209	3.31%	1,132	33,077
-	1.36%	-	-
234,913	1.36%	3,195	231,718
217,891	3.31%	7,216	210,675
24,350	1.36%	331	24,019
40,217	3.31%	1,331	38,886
81,467	3.31%	2,697	78,770
177,426	3.31%	5,873	171,553
304,272	1.36%	4,138	300,134
730,929	1.36%	9,941	720,988
490,792	3.31%	16,245	474,547
-	1.36%	-	-
-	1.36%	-	-
160,947	3.31%	5,327	155,620
-	1.36%	-	-
130,681	1.36%	1,777	128,904
24,418	1.36%	332	24,086
(29,669)	1.36%	(403)	(29,266)
520,251	1.36%	7,075	513,176
(468,654)	1.36%	(6,374)	(462,280)
-	1.36%	-	-
-	1.36%	-	-
-	1.36%	-	-
-	1.36%	-	-
(290,231)	3.31%	(9,607)	(280,624)
<u>\$ 9,202,259</u>		<u>\$ 260,453 93.59%</u>	<u>\$ 8,941,806 115.61%</u>
<u>\$ 4,682,317</u>		<u>\$ 155,016</u>	<u>\$ 4,527,301</u>
<u>\$ 13,884,576</u>		<u>\$ 405,469 151.52%</u>	<u>\$ 13,469,107 173.54%</u>

FUSS & O'NEILL, INC.
 NOTES TO STATEMENT OF DIRECT
 LABOR, FRINGE BENEFITS AND GENERAL OVERHEAD COSTS
 FOR THE YEAR ENDED JUNE 30, 2007

1. The Company

Fuss & O'Neill, Inc. is a consulting engineering firm which was founded in 1967.

2. Basis of Accounting and Description of Accounting Systems

The company's policy is to prepare its overhead schedules, which support the statement of direct labor, fringe benefits and general overhead, on the basis of accounting practices prescribed by Subparts 9900 and Part 31 of the Federal Acquisition Regulations (FAR). Accordingly, the above mentioned statement is not intended to present the results of operation of the Company in conformity with Generally Accepted Accounting Principles.

The Company maintains a job-order cost accounting system for recording and accumulating of costs incurred under its contracts. Each project is assigned a job number so that costs may be segregated and accumulated in the Company's job-order cost account system.

The Company's method of estimating costs for pricing purposes during the proposal process is consistent with the accumulation and reporting of costs under its job-order cost account system.

3. Field Office

In calculating the field office pool, the allocation to indirect labor and fringe benefits is based upon the ratio of field office direct labor to total direct labor. The remaining field office pool allocation will be based upon the ratio of field indirect labor allocation to total home office labor.

4. Facilities Capital Cost of Money

The Company's audited facilities capital cost of money for the year ended June 30, 2007 is

	Balance 7/01/06	Balance 6/30/07
Capital Assets	\$6,021,649	\$6,434,730
Average Net Book Value	\$6,228,190	
Average AFR Rate	4.958%	
Facilities Capital Cost (Average X Rate)	\$308,794	
Direct Labor Base	\$8,083,260	
Facilities Capital Cost of Money Factor	3.82%	

FUSS & O'NEILL, INC.
 NOTES TO STATEMENT OF DIRECT
 LABOR, FRINGE BENEFITS AND GENERAL OVERHEAD COSTS
 FOR THE YEAR ENDED JUNE 30, 2007

5. Burden, fringe and overhead rates

Home office

The audited burden, fringe and overhead rate applicable to employees providing services from the home office for the year ended June 30, 2007 was as follows:

Burden and fringe	57.93%
Overhead	<u>115.61%</u>
 Total burden, fringe and overhead	 <u>173.54%</u>

Field office

The audited burden, fringe and overhead rate applicable to inspection labor for the year ended June 30, 2007 as follows:

Burden and fringe	57.93%
Overhead	<u>94.59%</u>
 Total burden, fringe and overhead	 <u>151.52%</u>

6. Computation of field allocation rates

ALLOCATION I:

$$\frac{\text{Total Field Project Labor}}{\text{Total Direct Labor}} = \frac{267,610}{8,083,260} = 3.31\%$$

This allocation does not have an effect on the field or home office overhead rates. If it was applied to all accounts, the field and home office rates would be the same.

The percentage should be applied to expenses common to both field and home office direct labor in equal proportions, i.e., indirect salaries, payroll taxes, group insurance, paid leaves and bonuses, legal and accounting, etc.

FUSS & O'NEILL, INC.
 NOTES TO STATEMENT OF DIRECT
 LABOR, FRINGE BENEFITS AND GENERAL OVERHEAD COSTS
 FOR THE YEAR ENDED JUNE 30, 2007

ALLOCATION II:

Allocated Supportive Services	$5,437,261 \times 3.31\%$	
Home office direct labor and indirect salaries	$7,815,650 + 5,437,261$	= 1.36%

This rate allocates to the field the "space costs" associated with supportive service labor.

This rate should be applied to rent, depreciation, utilities, etc.

DATA USED IN THE ABOVE CALCULATIONS:

Direct Field Office Labor	\$ 267,610
Direct Home Office Labor	<u>7,826,650</u>
 TOTAL DIRECT LABOR	 <u>\$8,083,260</u>
 Indirect salaries - office premium overtime	 \$ 21,636
Indirect salaries - engineers	3,429,489
Indirect salaries - officers	360,008
Indirect salaries - office	<u>1,626,128</u>
 INDIRECT SALARIES	 <u>\$5,437,261</u>

7. Direct Labor - adjustments are summarized as follows:

To reclassify employee bonus	\$ 312,885
To reclassify non-principals bonus	51,481
To reclassify principals wages	(7,648)
To reclassify job cost variance	(362,116)
Premium time included in direct labor	<u>(10,772)</u>
	 <u>(\$ 16,170)</u>

8. Paid leaves - adjustments are summarized as follows:

Paid leave - office personnel	\$304,184
To reclassify principals' compensation	(12,401)
Paid leave - direct labor	<u>1,180,312</u>
	 <u>\$1,472,095</u>

FUSS & O'NEILL, INC.
NOTES TO STATEMENT OF DIRECT
LABOR, FRINGE BENEFITS AND GENERAL OVERHEAD COSTS
FOR THE YEAR ENDED JUNE 30, 2007

9. Profit sharing plan

This amount represents the total distribution attributable to non-principal employees as follows:

Direct labor	\$ 288,129
Office salaries	<u>35,611</u>
	<u>\$ 323,740</u>

10. Indirect office salaries - adjustments are summarized as follows:

Reclassify premium time	\$ (21,636)
Reclassify principals' salaries	(112,651)
Paid leave included in indirect labor	<u>(304,184)</u>
	<u>\$ (438,471)</u>

11. Indirect principals' salaries - adjustments are summarized as follows:

Reclassify from indirect salaries office	\$ 112,651
Reclassify from indirect salaries tech.	348,291
Reclassify from paid leave	12,401
Reclassify from direct labor	7,648
Reclassify from deferred compensation	(377,973)
Reclassify from profit sharing	34,580
Reclassify from indirect	<u>222,410</u>
	<u>\$ 360,008</u>

12. Indirect indirect engineers' salaries - adjustments are summarized as follows:

Reclassify employee bonus	\$ (312,885)
Reclassify nonprincipal shareholders bonuses	(2,576,142)
Paid leave included in indirect labor	(1,180,312)
Reclassify portion of job cost variance	362,116
Reclassify principal's salary	<u>(348,291)</u>
	<u>\$(4,055,514)</u>

13. Truck expense and Employee mileage:

Adjustment made to truck expense for amounts which are directly billed	<u>\$ 26,970</u>
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FUSS & O'NEILL, INC.
 NOTES TO STATEMENT OF DIRECT
 LABOR, FRINGE BENEFITS AND GENERAL OVERHEAD COSTS
 FOR THE YEAR ENDED JUNE 30, 2007

14. Employee insurance was adjusted for amounts paid on behalf of all officers in the amount of \$22,552
15. Employee welfare was adjusted to reclassify from overhead in the amount of \$71,162.
16. Deferred compensation was adjusted for the present value of the amounts paid in the amount of \$822,075.
17. The following amounts represent unallowable costs pursuant to Federal Acquisition Regulations.

Income and deferred taxes	31.205-41	<u>\$ 580</u>
Contributions	31.205-8	<u>24,032</u>
Business promotion and advertising	31.205-14 and 31.205-1	<u>57,658</u>
Meals and entertainment	31.205.14	<u>121,724</u>
Provision for doubtful accounts	31.205-3	<u>11,000</u>
Unallowed and legal and accounting fees	31.205-33 and 31.205-27	<u>128,189</u>
Interest expense and interest income	31.205-20	<u>697</u>

FUSS & O'NEILL, INC.
NOTES TO STATEMENT OF DIRECT
LABOR, FRINGE BENEFITS AND GENERAL OVERHEAD COSTS
FOR THE YEAR ENDED JUNE 30, 2007

18.	Divisions bonuses disallowed	<u>\$ 9,159</u>
19.	Adjustment to field for CAD	<u>\$ 83,953</u>
20.	Reclassify from overhead to burden and fringe	<u>\$ 1,215,670</u>
21.	Reclassify from overhead to burden and fringe	<u>\$ 1,578,014</u>
22.	Reclassify from overhead to burden and fringe	<u>\$ 358,320</u>
23.	Adjust overhead charges	<u>\$ 264,400</u>

FUSS & O'NEILL, INC.

AUDIT OF DIRECT LABOR, FRINGE BENEFITS AND GENERAL
OVERHEAD COSTS

JUNE 30, 2007

ADDITIONAL INDEPENDENT AUDITORS' REPORTS

AS REQUIRED BY

GOVERNMENT AUDITING STANDARDS

**INDEPENDENT AUDITORS' REPORT ON
INTERNAL CONTROLS**

The Board of Directors
Fuss & O'Neill, Inc.

We have audited the Statement of Direct Labor, Fringe Benefits and General Overhead Costs of Fuss & O'Neill, Inc. as of June 30, 2007, and have issued our report thereon dated December 12, 2007. We have conducted our audit in accordance with generally accepted auditing standards and the financial audit standards contained in the Government Auditing Standards issued by the Comptroller General of the United States of America.

Compliance

As part of obtaining reasonable assurance about whether Fuss & O'Neill, Inc.'s statement is free from material misstatement, we performed tests of the Company's compliance with certain provisions of laws, regulations and contracts, including the provisions of the applicable sections of Part 31 of the Federal Acquisition Regulation, noncompliance with which could have a direct and material effect on the determination of the statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance that are required to be reported under Government Auditing Standards.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered Fuss & O'Neill, Inc.'s internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing an opinion on the statement and not to provide assurance on the internal control over financial reporting. The management of Fuss & O'Neill, Inc. is responsible for establishing and maintaining internal control over financial reporting. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control over financial reporting. The objectives of internal control over financial reporting are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with the Federal Acquisition Regulations Part 31.

Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

For the purpose of this report, we have classified the significant internal controls over financial reporting in the following categories: cash disbursements and payroll.

Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control over financial reporting that might be material weaknesses. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control over financial reporting and its operations that we consider to be material weaknesses.

This report is intended solely for the use and information of Fuss & O'Neill, Inc. and government agencies or other customers related to contracts employing the cost principles of the Federal Acquisition Regulations, and should not be used for any other purpose. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

December 12, 2007
Wethersfield, CT



City of Bridgeport, Connecticut
**DEPARTMENT OF CENTRAL GRANTS AND
COMMUNITY DEVELOPMENT**

999 Broad Street
Bridgeport, Connecticut 06604
Telephone (203) 332-5662
Fax (203) 332-5657

ANDREW J. NUNN
CAO

ALANNA C. KABEL
Deputy CAO of Central Grants
and Community Development

BILL FINCH
Mayor

COMM.# 67-08 Referred to ECD&E Committee on 2/17/2009.

MEMO

TO: Honorable Members of the City Council

FROM: Alanna Cavanagh Kabel, 
Deputy CAO for Central Grants & Community Development

RE: Grant Submission: Lead Poisoning Prevention and Control
Program

DATE: February 11, 2009

For your review and consideration, attached please find a resolution and executive summary for the Lead Poisoning Prevention and Control Program grant request to the State of Connecticut Department of Public Health and the CT Association of Directors of Health.

The purpose of these funds is to financially assist local health departments with the added cost of assuring compliance to new and more stringent State regulations concerning childhood lead poisoning, testing, case management and intervention activities.

Thank you for your consideration. Please contact me at 576-7134 if you have any questions or need any additional information.

Attachment

cc: Andrew Nunn, CAO
Dr. Marian Evans, Health Department Director
Valerie Sorrentino, Deputy Director
Alexandra McGoldrick, Grants Writer
Diane Toolan, Sr HCD Manager

RECEIVED
CITY CLERKS OFFICE
09 FEB 11 PM 2:55
CITY CLERK



EXECUTIVE SUMMARY
FOR ALL CITY COUNCIL AGENDA COMMUNICATIONS

PROJECT TITLE : Lead Poisoning Prevention and Control Program

RENEWAL NEW

DEPARTMENT SUBMITTING INFORMATION: Health and Social Services

CONTACT NAME: Valerie Sorrentino

PHONE NUMBER: 576-7110

PROJECT SUMMARY/DESCRIPTION:

Due to a strengthening in state regulations, the State Dept. of Public Health (DPH) and the Ct Association of Directors of Health (CADH) are awarding funds to the Bridgeport Health Department for increases services for childhood lead poisoning, testing, case management and intervention activities.

CONTRACT DATES:

January 1, 2009 – June 30, 2009

PROJECT GOALS AND PROCEDURES:

1. To screen and provide case management services to children who are at risk for or who test positively for lead poisoning.
2. To provide lead poisoning prevention education to parents and legal guardians of children at risk for elevated BLL's.
3. To provide environmental services including investigations, inspections, issuance of legal orders, oversight of implementation of controls or abatement of sources of lead exposure, relocation of persons with lead poisoning.

IF APPLICABLE

FUNDING SOURCES (include matching/in-kind funds):

Federal:
State: \$33,832
City:
Other:

FUNDS REQUESTED

Salaries/Benefits: \$12,000
Materials: \$5,000 Supplies: \$5,332
Training: \$5,000
Equipment: \$6,500:
Subcontracts: Yes No
If yes, supply listing and dollar amount (please attach)

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 solely for childhood lead poisoning testing, case management and intervention activities; 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 \$33,832 for the purpose childhood lead poisoning testing, case management and intervention activities; and,

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 testing, case management and intervention activities; and,
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 and documents as maybe necessary under this program.

CITY OF BRIDGEPORT
OFFICE OF THE CITY ATTORNEY

999 Broad Street
Bridgeport, Connecticut 06604-4328

CITY ATTORNEY
Mark T. Anastasi

DEPUTY CITY ATTORNEY
Arthur C Laske, III

ASSOCIATE CITY ATTORNEYS
Gregory M. Conte
Betsy A. Edwards
Melanie J. Howlett
Richard G. Kascak
Russell D. Liskov
John R. Mitola
Ronald J. Pacacha
Lisa R. Trachtenburg



ASSISTANT CITY ATTORNEYS
Christine Donahue Brown
Salvatore C. DePiano
R. Christopher Meyer
Eroll V. Skyers

Telephone (203) 576-7647
Facsimile (203) 576- 8252

COMM. # 68-08 Referred to Contracts Committee on (2/17/09)
February 11, 2009

The Honorable City Council
Of the City of Bridgeport
City Hall
45 Lyon Terrace
Bridgeport, CT 06604

RECEIVED
CITY CLERKS OFFICE
09 FEB 11 PM 4: 23
ATTEST
CITY CLERK

Re: Proposed First Amendment of a Certain License Agreement Between The City of Bridgeport and The First Tee of Metropolitan New York

Dear Honorable Councilpersons:

On behalf of the Bridgeport Board of Parks Commissioners I hereby respectfully submit a draft of the above-referenced proposed license agreement for referral to the City Council's **Contracts Committee at next Monday evening's Council meeting.**

Kindly be advised that at its meeting of February 10th the Parks Board approved this proposed amendment in principle (subject to City Council approval) and authorized Parks Director Charlie Carroll to negotiate final terms and provisions with First Tee.

Please ensure that Parks Director Carroll receives notice of the Contracts Committee meeting at which this proposal will be discussed.

Thank you for your attention to this matter.

Very truly yours,

Mark T. Anastasi
City Attorney

Cc: Charles Carroll, Dir. Parks & Rec.
Gregory M. Conte, Assoc. City Att.

**DRAFT
PROPOSED FIRST AMENDMENT TO A CERTAIN LICENSE FOR FACILITY
ACCESS AND USAGE FOR THE FIRST TEE PROGRAM DATED APRIL 1, 2006**

WHEREAS, THE CITY OF BRIDGEPORT, a municipal corporation located at 45 Lyon Terrace, Bridgeport, Connecticut 06604 (hereinafter, the "City" or the "Licensor") and The First Tee of Metropolitan New York having its principal place of business at 3545 Jerome Avenue, Bronx, New York, 10467 (hereinafter, "TFTMNY" or the "Licensee"), acting by Barry McLaughlin, its Executive Director, relating to access and usage of the Driving Range and Golf Course at Fairchild Wheeler Golf Course, 2390 Easton Turnpike, Fairfield, CT 06604. are desirous of amending the current License for Facility Access and Usage for the First Tee Program (dated April 1, 2006) at the premises known as FAIRCHILD WHEELER GOLF COURSE, to include Licensee providing additional golf professional services through a member of the Professional Golf Association for an initial term of 3 years.

NOW, THEREFORE, the parties agree as follows:

The Licensee shall provide additional golf professional services through a member of the Professional Golf Association for an initial term of 3 years.

The First Tee golf professional shall staff the Pro Shop and Driving Range, provide standard golf professional services including instruction, scheduling of golf rounds and tournaments, and otherwise marketing golf course events and operations, all in coordination with the Bridgeport Director of Parks and Recreation.

The Licensee annually shall retain the first \$50,000 from the driving range operations, and the revenue from pro shop sales and instructional lessons. All greens fees and all other gross revenues in excess of \$50,000 annually shall be paid to the Licensor, with reasonable allowances for maintenance expensed of the driving range and equipment as reasonably approved by the Director of Parks and Recreation.

The golf professional services shall be subject to the provisions of paragraph "6. Indemnification; Insurance" of the original License Agreement and all other terms and provisions of that agreement not in conflict herewith shall remain in full force and effect.

The First Tee of Metropolitan New York, Inc.

By: _____
Howard Druckman,
President
Duly-authorized

City of Bridgeport

By: _____
Name:
Title:
Duly-authorized

LICENSE FOR FACILITY ACCESS AND USAGE FOR THE FIRST TEE PROGRAM

AGREEMENT dated this 1st day of April 2006, between **THE CITY OF BRIDGEPORT**, a municipal corporation located at 45 Lyon Terrace, Bridgeport, Connecticut 06604 (hereinafter, the "**City**" or the "**Licensor**") and **The First Tee of Metropolitan New York** having its principal place of business at 3545 Jerome Avenue, Bronx, New York, 10467 (hereinafter, "**TFTMNY**" or the "**Licensee**"), acting by Barry McLaughlin, its Executive Director, relating to access and usage of the Driving Range and Golf Course at Fairchild Wheeler Golf Course, 2390 Easton Turnpike, Fairfield, CT 06604.

WHEREAS, the City, through the Board of Park Commissioners, has approved the Licensee's Operations "Plan" for the purpose of operating a youth golf and Life Skills program for the youngsters of Bridgeport;

WHEREAS the **TFTMNY** is a community-based initiative with non-profit 501-(c) (3) tax status under the United States Internal Revenue Code and would like to begin a relationship with the City to develop facilities and programs to serve the youth of the City and surrounding towns for years to come;

WHEREAS the **TFTMNY**, in conjunction with the MGA Foundation, Metropolitan Section PGA and The First Tee of Connecticut are interested in offering an In-School-Golf-Program to all grade levels of the Bridgeport School System involving junior instructional programs taught by local PGA professionals paid for by **TFTMNY** (the "**Program**");

WHEREAS, the **TFTMNY** desires to enter into an agreement with the City for the promotion and operation of such Program on the terms and conditions set forth herein with an ultimate goal of securing a long-term arrangement with the City of Bridgeport to create a permanent home for a facility to be known as "The First Tee of Bridgeport".

NOW, THEREFORE, in consideration of the privileges hereinafter granted by the City, the parties mutually agree as follows:

Definitions:

"**City**" means the City of Bridgeport, its City Council, the heads of its departments and agencies having jurisdiction over one or more aspects of this agreement and the performance thereof including the Board of Parks Commissioners and its properly-authorized agents, to the extent that they act in a manner consistent with the particular duties entrusted to them pursuant to state law, municipal ordinance, decree or contractual agreement.

"**Consent**" means that, whenever in this Agreement the Licensee is required by federal, state or local law, rule, regulation or ordinance to obtain or receive permission for, or whenever the State of Connecticut or the City has the right to approve, food items, merchandise, rental equipment, accounting methods and procedures, insurance coverages, bonds, budgets, programs, or other aspects of the Licensee's activities, the use of Fairchild Wheeler Golf Course or other City controlled property, accountings and reports of its business activities and the like, the Licensee is required to seek the prior written approval of the appropriate party. The Licensee will seek any Consent required from the City from either (a) Phil Handy, Director of the Department of Parks and Recreation, or his designee ("**Parks Director**") as to operational matters, (b) Mark T. Anastasi, the City Attorney, on legal matters, (c) the Director of the City's media coordinator, Caryn Kaufman, as to public relations and marketing matters, and (d) the Board of Parks Commissioners, or its designee, as to the approval of specific events and activities or specific performers not contemplated by this agreement, and any material changes to the approved Program after acceptance of this agreement.

"**Event Area**" means the area where the First Tee events and related activities will take place within the Fairchild Wheeler Golf Course.

"Fairchild Wheeler Golf Course" means the City-owned golf course located in the Town of Fairfield, Connecticut, having the boundaries set forth in **Exhibit A** attached hereto and made a part hereof.

"Parking Areas" shall mean those areas within the Fairchild Wheeler Golf Course permitted for the parking of automobiles.

1. **License to Promote and Stage Events.** The City hereby grants to the Licensee a personal, non-exclusive license to promote the Program at the Fairchild Wheeler Golf Course subject to the terms and conditions set forth herein ("**License**"). The Program is set forth and described in **Exhibit B** attached hereto and made a part hereof. This License shall be subject to rules and regulations as promulgated by the City from time to time for the use of public parks or for purposes of public health, safety and welfare. The License shall be effective upon approval of the City Council and delivery of a fully-executed original thereof to the Licensee.
2. **Access and Usage.** The TFTMNY shall utilize the Driving Range and Practice Putting Green from (a) April 1 through June 15th from 4:00 p.m.-6:00 p.m. on weekdays and Saturdays and (b) June 16 through October 31 from 9:00 a.m.-6:00 p.m. on weekdays and Saturdays. The Program will require between 10 to 12 hitting stations and access to the putting green. As players progress through the Program and become eligible to play holes on the Golf Course, the TFTMNY will request tee times from the City at non-peak times to allow course education. Sufficient mentors or staff members approved by the TFTMNY shall supervise such and disclose such activity in advance to, and to the satisfaction of, the Parks Director. The TFTMNY would also on occasion request at non-peak time access to the course for a tournament. Tournaments would require consent and would be scheduled in advance. Should the Driving Range become busy, the TFTMNY will adjust programming to accommodate the needs of the public at the direction of the Parks Director.
3. **Licensee to Assume All Risks Related to the Events.** The Licensee, by acceptance of this License, accepts and assumes all responsibility and all risks of operation directly or indirectly related to its Program under this agreement, and agrees to provide, at its sole cost and expense, all necessary supervision, labor, appliances and equipment necessary for the safe and efficient conduct of its activities on City property or private property related to the Program or otherwise. Except as may be expressly set forth herein, the Licensee shall remove all equipment, appliances, personal property, trash and miscellaneous items of every kind and nature from the Golf Course and City property immediately after the conclusion of its daily activities.
4. **Term of License.** The term of this Agreement shall begin effective April 1, 2006 and shall continue until April 1, 2010, with automatic renewal for successive five (5) year periods unless either party provides written notice to the other party prior to the beginning of any such period. Either party may terminate this Agreement for any reason upon six (6) months written notice to the other party.
5. **License Fee.** The TFTMNY agrees to compensate the City for the privilege of this License, as follows: See attached **Exhibit C**, payable in two equal installments. The first payment shall be made on or about June 1st of each calendar year, with the second payment to be made on or about November 1st of each calendar year. *(This fee structure will serve a placeholder until a final determination can be reached on the Program's desire to become the Driving Range Concessionaire. The program will submit a formal presentation with a master plan to include, a detailed financial plan, capital improvements site plan and program management layout.)*
6. **Indemnification; Insurance.** The Licensee agrees to defend, indemnify and hold harmless the City, its elected officials, officers, department heads, attorneys, employees and agents from and against any and all loss, claim, damage or expense of every kind, description and nature, including but not limited to damages, costs of settlement, attorneys' fees and costs of investigation and defense, arising out of this License regardless of timing, cause or duration, except that the Licensee shall not be responsible or obligated for claims arising out of the sole and proximate cause of the City, its elected officials, officers, department heads, attorneys, employees or agents. This provision shall survive the expiration or earlier termination of this License. The Licensee shall procure, present to the City, and maintain in effect for the Term without interruption the insurance coverages identified below with insurers

qualified to conduct business in the State of Connecticut and having a minimum Best's A + 15 financial rating or rating otherwise acceptable to the City.

Commercial General Liability (occurrence form) insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of operations conducted under this agreement. Coverage shall be broad enough to include premises and operations, contingent liability, contractual liability, completed operations (24 months), broad form property damage, care, custody and control, with limitations of a minimum \$1,000,000 per occurrence and \$300,000 property damage.

Business Automobile insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of the use of owned, hired or non-owned vehicles in connection with business. Coverage will be broad enough to include contractual liability, with limitations of \$1,000,000 combined primary and excess coverage for each occurrence/aggregate with a combined single limit for bodily injury, personal injury and property damage.

Workers' Compensation insuring in accordance with statutory requirements in order to meet obligations towards employees in the event of injury or death sustained in the course of employment. Liability for employee suits shall not be less than \$500,000 per claim.

(b) General requirements. All policies shall include the following provisions:

Cancellation notice—The City shall be entitled to receive from the insurance carriers not less than 30 days' written notice of cancellation, non-renewal or reduction in coverage to be given to the City at: Purchasing Agent, City of Bridgeport, City Hall, 45 Lyon Terrace, Bridgeport, Connecticut 06604.

Certificates of Insurance—All policies will be evidenced by an original certificate of insurance delivered to the City and authorized and executed by the insurer or a properly-authorized agent or representative reflecting all coverage required, such certificate required to be delivered to the City prior to any work or other activity commencing under this agreement.

Additional insured—The Consultant and its permitted subcontractors will arrange with their respective insurance agents or brokers to name the City, its elected officials, officers, department heads, employees and agents on all policies of primary and excess insurance coverages as additional insured parties and as loss payee with respect to any damage to property of the City, as its interest may appear. The undersigned shall submit to the City upon commencement of this agreement and periodically thereafter, but in no event less than once during each year of this agreement, evidence of the existence of such insurance. The City shall be described in such insurance as follows:

"The City of Bridgeport, its elected officials, officers, department heads, employees, agents, servants, successors and assigns ATIMA
Attention: Purchasing Agent
45 Lyon Terrace
Bridgeport, Connecticut 06604"

7. **Prohibition Against Security Interests, Liens, Encumbrances.** The Licensee shall not give, grant, or allow the placement of a security interest or lien upon its equipment, income, accounts receivable or contracts, except for purchase money security interests for equipment used to operate or support the Program, nor shall the Licensee allow any lien, charge, judgment or encumbrance to be placed upon City real property for any reason, including but not limited to, mechanic's and materialmen's liens. In the event that any lien is placed against the City's property, the Licensee shall take steps to immediately remove such lien against City property by payment or other satisfaction of such lien or by substitution of a bond or other surety to remove such lien within thirty (30) days of the placement of such lien. With respect to all mechanics and materialmen involved in the presentation of the Program and

related activities in the Golf Course, the Licensee shall pay all vendors, mechanics and materialmen promptly.

8. **Administrative and Storage Space.** The TFTMNY will be permitted to the Lawn Bowling Clubhouse location on terms and conditions approved in advance by the Parks Director for administrative, storage, restroom and classroom needs, subject to approval by the Town of Fairfield. Any electrical and water usage fees will be paid by the TFTMNY. The TFTMNY plans to remove this modular structure and replace it with a permanent structure if the Concession agreement is accepted.

9. **Golf Professional.** The Joint Venture will utilize and compensate a local PGA professional or other professionals to support the instruction component of the Programs. Since the Program is only available during certain times and days during April through late September, the designated professional will be available to offer golf lessons and lesson packages to the general public, on terms and conditions approved by the Parks Director. Such professionals will serve as independent contractors and such services will be included as part of the License. The TFTMNY agrees to be responsible for the activities of such professionals under their employ. Should the City find reason to terminate the contract of the golf professional, that is employed by both, the TFTMNY would ask for the right of arbitration.

10. **Capital Improvements:** In consideration for the License, TFTMNY shall make improvements at the Fairchild Wheeler as listed in Exhibit C, with approval and consent of both Program and City. By making the improvements to the Driving Range at its sole cost and expense, TFTMNY acknowledges that all permanent upgrades to the Driving Range will become the property of the City. The value of the improvements will benefit the Golf Course and will be deducted from the range access and usage amount as listed in Exhibit C. All defined Capital improvements will be agreed upon by both parties.

Dated:

The First Tee of Metropolitan New York, Inc.

Howard Druckman,
President
Duly-authorized

City of Bridgeport

By: _____
Name:
Title:
Duly-authorized

EXHIBIT "A"

Fairchild Wheeler Golf Course,
2390 Easton Turnpike, Fairfield, CT 06604.

Including:

Access to all Golf Course
Driving Range
Lawn Bowling Clubhouse

EXHIBIT "B"**"The Program"**

The First Tee of Metropolitan New York (TFTMNY) and The First Tee of Connecticut will jointly offer golf and Life Skills programming at Fairchild Wheeler Golf Course. The program will utilize the driving range, golf course and lawn bowling clubhouse to promote the game of golf while seamlessly instructing the participants on The First Tee Life Skills curriculum.

The program will be offered from (a) April 1 through June 15th from 4:00 p.m.-6:00 p.m. on weekdays and Saturdays and (b) June 16 through October 31 from 9:00 a.m.-6:00 p.m. on weekdays and Saturdays.

The program will be offered at little or no cost to participants. The participants for the program are primarily from the City of Bridgeport and surrounding Cities and Towns. The priority for participant access begins with Bridgeport residents, with other given access upon availability.

EXHIBIT "C"**Access & Usage Fee Structure
Capital Improvement Consideration**

Years one through five TFTMNY would compensate the City for access and usage at a rate of \$15,000 per year, plus an additional \$10,000 in Capital improvements, or a combination not less than \$25,000.

Years six through ten TFTMNY would compensate the City for access and usage at a rate of \$15,000 per year, plus an additional \$15,000 in Capital improvements, or a combination not less than \$30,000.

Years eleven through fifteen TFTMNY would compensate the City for access and usage at a rate of \$18,500 per year, plus an additional \$15,000 in Capital improvements, or a combination not less than \$33,500.

All Capital Improvements will be presented as part of a Master Plan and certain levels of improvement may be increased more than the amounts mentioned above to benefit both the City and TFTMNY. The Consent of the City and TFTMNY will be required before any project is begun. TFTMNY understands that all permits and approvals to perform work at Fairchild Wheeler will be their sole responsibility. All permanent fixtures and improvements will be come the property of the City of Bridgeport, their values will be stated and TFTMNY will be credited annually for such improvements. If the value of the Capital Improvements exceeds the required annual amount noted above then such excess amount will reduce the annual fee for usage and access as specified in Section 10 of the agreement.

This document serves a placeholder in anticipation of TFTMNY making a formal proposal to the City asking to become the Concessionaire of the Driving Range at Fairchild Wheeler. At that time TFTMNY will provide a new Master Plan which will supersede this placeholder document.

Submitted by: Barry K. McLaughlin, Executive Director
The First Tee of Metropolitan New York, Inc.

RESOLUTION

By Councilmember(s): Maria I. Valle, Carlos Silva
Tom McCarthy, Michelle A. Lyons
Leticia Colon, Angel M. dePara

District: 131st, 133rd, 134th, 136th, 137th

Introduced at a meeting
of the City Council, held:

February 17, 2009

Referred to: Public Safety & Transportation Committee

Re: Resolution to include in each regular monthly committee meeting, a discussion and update from the Police Chief or designee on quality of life matters being addressed by the Strategic Enforcement Team and other initiatives.

(SEE ATTACHED)

Referrals Made:

Attest: _____

City Clerk

***19-08 CONSENT CALENDAR**

Agreement with American Medical Response of Connecticut, Inc. for Emergency Medical Services.

**Report
of
Committee
on
Contracts**

Submitted: February 17, 2009

Adopted: _____
[Signature]

Attest: _____
City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

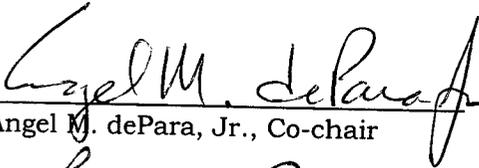
To the City Council of the City of Bridgeport:

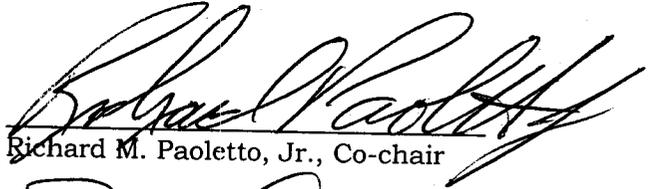
The Committee on **Contracts** begs leave to report; and recommends for adoption the following resolution:

***19-08 CONSENT CALENDAR**

RESOLVED, That the attached Agreement between the City of Bridgeport and American Medical Response of Connecticut, Inc. for Emergency Medical Services be and it hereby is, in all respects, approved, ratified and confirmed.

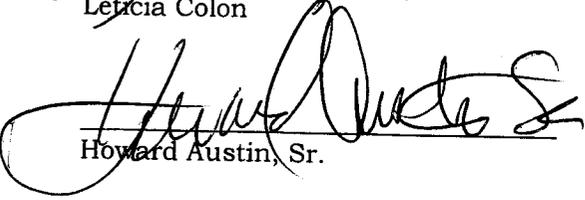
**RESPECTFULLY SUBMITTED,
THE COMMITTEE ON CONTRACTS**


Angel M. dePara, Jr., Co-chair


Richard M. Paoletto, Jr., Co-chair


Leticia Colon


Brian C. Crowe


Howard Austin, Sr.


Carlos Silva

James Holloway

CONTRACT APPROVAL FORM

Re: Contract b/t City of Bost + AMR Inc. (19-08)

This will certify that funds are available for the services outlined in this contract.

Date

For: Department of Finance

Title

RECEIVED
CITY CLERKS OFFICE
09 DEC -2 AM 11:45
ATTEST
CITY CLERK

This will certify that this contract is approved as to correctness of form.

12/29/08

Date



For: Office of the City Attorney
Gregory M. Conte

AGREEMENT BY AND BETWEEN THE CITY OF BRIDGEPORT AND AMBULANCE SERVICE FOR EMERGENCY MEDICAL SERVICES

AGREEMENT made as of this 1st day of November, 2008, by and between **American Medical Response of Connecticut, Inc.**, a licensed provider of high quality EMS with the capability to provide EMS within Bridgeport, CT., organized and existing under the laws of the State of Connecticut, and having an address at 335 Connecticut Avenue, Bridgeport, CT 06607 ("**AMR**") and the **City of Bridgeport**, a municipal corporation organized and existing under the laws of the State of Connecticut, and having an address at 45 Lyon Terrace, Bridgeport, CT 06604 (the "**City**").

WHEREAS, the State of Connecticut, under the authority of Public Act 75-112, established a policy for the development and regulation of emergency medical services; and

WHEREAS, pursuant to such policy, the State of Connecticut, through the Department of Public Health and Office of Emergency Medical Services, has promulgated regulations which (1) set standards for the operation of ambulance and invalid coach vehicles; (2) define and enforce the circumstances under which ambulance services shall be offered in the State of Connecticut; and (3) empower the Commissioner of Health to designate the primary ambulance provider at various levels thereof and the primary first responder for each municipality; and

WHEREAS, pursuant to the Connecticut General Statutes Sections 19a-176, 19a-177, Regulations of Connecticut State Agencies Section 19a-179-4, and the decisions of the State of Department of Public Health, AMR has been designated as the Primary Service Area Responder at the R-2 and R-5 levels for the municipality of Bridgeport; and

WHEREAS, pursuant to Section 7-148 (c) (7) (H) (xi) of the Connecticut General Statutes, the City is empowered to protect the public health; and

WHEREAS, pursuant to Section 7-148 (c) (4) (D) of the Connecticut General Statutes the City is empowered to provide for ambulance services; and

WHEREAS, the City is committed to promoting the fastest response and highest quality medical care for its citizens; and

WHEREAS, the City has determined that it is in its best interest to enter into a multi-year contract with AMR to provide ambulance service to the City; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the City and AMR hereby covenant and agree as follows:

SECTION 1: CONTENTS OF AGREEMENT: TERM

"**Advanced Life Support**" means procedures performed beyond the scope of authority of an Emergency Medical Technician-Basic ("EMT-Basic")

"**BASIC**" or "**R-2**" means a Mobile Intensive Care Unit (MICU) which is an emergency vehicle equipped in accordance with Sec. 19a-179-18 (b) of the Connecticut General Statutes regarding Emergency Medical Services and operated by a mobile intensive care provider at an EMT-Basic Level.

"MIC-P" or "R-5" means a Mobile Intensive Care Unit (MICU) which is an emergency vehicle equipped in accordance with Sec. 19a-179-18 (b) of the Connecticut General Statutes regarding Emergency Medical Services and operated by a mobile intensive care provider at a Paramedic level.

"Primary First Responder" or "R-1" means the EMS provider who is notified for initial response to a victim of sudden illness or injury.

"Primary Service Area" or "PSA" means the City of Bridgeport.

"PSAR" means the designated Emergency Medical Services provider for first call in the Primary Service Area.

"Response Time" means the total measure of time that starts from the earlier of: 1) Primary vehicle goes enroute; or 2) Two minutes after EMS Provider notification to the arrival of the EMS Provider on scene.

[NOTE: All capitalized terms herein shall have the meanings ascribed to them in this Agreement or in Section 19a-179-4, Connecticut State Regulations.]

- 1.1 This Agreement constitutes the entire Agreement between the parties and no warranties, inducements, consideration, promises or other inferences shall be implied or impressed upon such Agreement that are not herein set forth.
- 1.2 The terms and conditions of this Agreement shall be subject to and in compliance with the applicable statutes, regulations, ordinances and policies of various governmental and medical entities, which shall include but are not limited to the Public Health Code, Sect. 19a-179-4 et seq. and the regulations promulgated thereunder, Office of Emergency Medical Services of the State of Connecticut or its successors, Regional Council, City of Bridgeport, Joint Hospital Planning Council and Southwestern Regional Communications Center, Inc,
- 1.3 The term of this Agreement shall be for a period of five (5) years beginning as of November 1, 2008 and ending on October 31, 2013 ("Term"), unless the Agreement shall be terminated sooner pursuant to provisions hereinafter set forth.

SECTION 2: ASSIGNMENT OR TRANSFER

- 2.1 AMR shall not assign or transfer this Agreement or any of the rights and privileges granted hereby or any of the obligations hereunder, or enter into any contract requiring or permitting the performance of any responsibility under this Agreement by an independent contractor, unless otherwise expressly provided herein, without prior written approval signed by the Mayor of the City.
- 2.2 AMR shall give ninety (90) days written notice of its intention to assign or transfer its privileges hereunder. The City may refuse to grant approval of an assignment or transfer in the exercise of its commercial business judgment, reasonably exercised.
- 2.3 In the event AMR fails to secure express approval of the assignment or transfer, as provided herein, City may, at its option, determine and declare such an assignment or transfer as a breach of this Agreement and take appropriate action, including seeking

monetary damages or injunction or both.

SECTION 3: CITY OBLIGATIONS

- 3.1 The City shall not object to the Primary Service Area Permit for Basic and paramedic service to be kept by AMR for the duration of this Agreement as established and administered by the State of Connecticut, Department of Public Health, or its successor.
- 3.2 The City shall not transport medical patients unless extreme emergency conditions exist. Notice of such transfer shall be reported to the Fire Chief and AMR within 24 hours.
- 3.3 The City may, subject to availability and discussion, provide appropriate locations for AMR to be stationed when not assigned to a call, taking into account the time of day and the predicted call volume and predicted locations of potential calls. The City and AMR may consider four separate locations in City that would provide better access for AMR response. AMR shall review their location strategy monthly, and furnish a report to the City on its effectiveness as a part of the required monthly report.
- 3.4 AMR shall have the right of first refusal to serve all special events sponsored by the City, including Board of Education events.

SECTION 4: FINANCIAL TERMS OF THE PARTIES

- 4.1 Where AMR is acting in a stand-by status, it shall be paid at the rate of Fifty Dollars (\$50.00) per hour, provided that there shall be no charge for stand-by status when AMR has maintained that status for less than fifty-nine (59) minutes. This figure may be adjusted by negotiation. The total annual cost of payments under this Section must not exceed Ten Thousand (\$10,000) Dollars. In the event of a HAZMAT incident or other extended standby situation, AMR shall have the right to bill those insured and/or agencies (other than the City) that may provide coverage for such an event, at the rate set by the State of Connecticut Department of Public Health in the applicable AMR Rate Schedule.
- 4.2 In situations requiring response and emergency medical services by AMR, AMR may bill patients in accordance with the rates approved for AMR by the State of Connecticut Department of Public Health. When billing a patient, AMR agrees to do so in conformity with the usual and proper method of billing required or accepted under various reimbursement plans. All revenues from charges to patients or customers for ambulance and related services shall be the property of AMR.
- 4.3 Except as otherwise provided in Section 4.1 of this Agreement, the City shall not be responsible for any costs or charges and AMR shall not bill the City for any other cost, charges or other items covered under this Agreement. AMR agrees to provide paramedic and medical transport service to prisoners in police hold at no charge to the City. The City shall cooperate with AMR to the extent allowed by law in seeking information from prisoners to permit reimbursement to AMR from the prisoner, General Assistance, or other programs.

SECTION 5: AMBULANCE OBLIGATIONS

- 5.1 AMR agrees that it is licensed to perform the services and will maintain its license during the term of this Agreement. AMR will perform in a manner that will satisfy the terms of this contract and the laws, regulations and standards of the State of Connecticut.
- 5.2 AMR agrees that it will maintain at least four (4) fully licensed, fully staffed Mobile Intensive Care Paramedic (MIC-P) certified transport ambulances on available status seven (7) days a week, twenty-four (24) hours a day, every day of the year, within the City's service area.
- 5.3 AMR agrees that said MIC-P ambulance shall comply in every respect with regulations duly promulgated by the State of Connecticut through the Office of Emergency Services and with applicable C-Med protocols, and applicable OSHA standards.
- 5.4 AMR must supply all equipment and other articles used in the service as required by law and keep the same in clean, sanitary, and operable condition.
- 5.5 AMR and its vehicles, equipment and personnel providing service within the City will be subject to reasonable inspection at any time by the City of Bridgeport Health Department, Police Department, or Fire Department, or the State Department of Public Health to ensure compliance with these specifications.
- 5.6 AMR shall employ qualified personnel to meet the performance standards of this Agreement, subject to the reasonable approval of the Fire Chief, and shall, in accordance with applicable laws, promptly remove, counsel or discipline employees who do not meet the professional requirements of their position, mistreat the public, or otherwise conduct themselves in an unprofessional or deleterious manner in the discharge of their duties.
- 5.7 AMR shall provide a minimum of four (4) supervisors with one (1) on-duty in the City of Bridgeport at all times who shall have full operational responsibility for AMR. The on-duty supervisor shall be trained and licensed in "Advanced Life Support".
- 5.8 AMR shall receive and handle substantially all emergency medical service within the City of Bridgeport, which requests are received on an emergency telephone number 911 or through the request of Fire or Police personnel for emergency service.
- 5.9 The response time of every emergency call with a Primary Response Vehicle shall be in an expeditious manner, without taking undue safety risks for its personnel or the general public, to meet American Heart Association standards or future standards of eight minutes and fifty-nine seconds for ninety percent (90%) of all ALS calls dispatched as Priority 1 in the City. Certain permissible reasons for failing to meet the Response Time Requirements are set forth in section 5.10 below. The on-scene elapsed time is calculated from the point in time when notification of the call is given to AMR by the FCC until the responding unit arrives on scene, unless such definition is superseded by Connecticut statutes or properly promulgated regulations. This time period will permit no more than two minutes for AMR to dispatch a call received from the Bridgeport 911 authorities to AMR during which time AMR is assessing the call pursuant to the State mandated Emergency Medical Dispatch (EMD) protocols. An ambulance will be dispatched by AMR within a time not to exceed two minutes. This two minute EMD evaluation will not be

utilized to calculate the response time in accordance with the above. Any time in excess of the two minute EMD evaluation will be included within the response time calculations.

5.10 The calculation of response time noncompliance discussed in subsection 5.9 above shall exclude all calls that occur during any of the following circumstances:

- (a) Occasions of severe weather, as defined by the National Weather Service in Connecticut and covering the Fairfield County area in particular; or the City of Bridgeport, or the property owner has not plowed or sanded the route that is necessary for the ambulance response; or weather conditions including snowfall at a rate of one (1) inch per hour, or winds of thirty (30) miles per hour or greater, or visibility of less than one half of one mile.
- (b) Mass casualty situations, as declared by the Office of the Mayor of the City of Bridgeport or the Fire or Police Departments of the City of Bridgeport.
- (c) Responses to emergencies occurring on Highways I-95, the Merritt Parkway, the I-25-8 Connector, Metro North railroad or Amtrak railroad.
- (d) A motor vehicle collision that disables the ambulance which had been responding dispatched to the scene of a Priority 1 emergency in the City.
- (e) Traffic conditions in the City of Bridgeport that the Bridgeport or State Police determine unavoidably inhibits ambulance passage on roads necessary to access the Priority 1 emergency scene.
- (f) Situations in which the vehicles are required to take alternative routes due to extensive construction or architectural delays created by obstructions such as locked gates requiring special security access.
- (g) The Dispatcher provides the ambulance with an incorrect address to which to respond.
- (h) More than five (5) emergency responses are to be undertaken by the ambulance within the same sixty (60) minute period.
- (i) Other extenuating circumstances mutually agreed upon, in writing, by the City and AMR.

5.11 On or before the thirtieth day after each quarter AMR shall provide to the Fire Chief, and the Mayor of the City of Bridgeport, a summary of the data collected with respect to the calls received. Said report shall be in such form as is mutually agreed upon by the parties hereto and approved by the Fire Chief. Such report shall include statistics identifying the number of calls, average response time and percent of calls within 8 minutes and 59 seconds. The times reported shall be set forth in minutes and seconds and fractiles at a minimum with separate reports for the time from the 911 call to the service and the dispatch of the ambulance to the arrival on scene. Such statistics shall be reported for all ALS calls, all BLS calls and other types of calls as mutually

agreed upon by the parties.

- 5.12 Within thirty (30) days of receiving the quarterly report specified in Section 5.11 above, the City shall notify AMR of any deficiencies found therein.
- 5.13 In the event that AMR violates the response criteria, it shall be fined as follows:
- (a) For a response time between 80 to 85% percent of life-threatening calls for the quarter, AMR shall pay to the City a penalty of \$100.00 for each whole percentage point below 86%.
 - (b) For a response time between 70 to 79% percent of life-threatening calls for the quarter, AMR shall pay to the City a penalty of \$300.00 for each whole percentage point below 80%.
 - (c) For a response time from 0% to 69% percent, AMR shall pay a penalty of \$5,000 plus an additional One Hundred (\$100.00) Dollars for each and every call in that quarter which has an actual response time exceeding the Response Time Requirements.
- 5.14 AMR shall assist the City by providing the training and other in-service programs to enhance the proficiency and professionalism of first responder personnel as requested by the Fire Chief.
- 5.15 AMR shall forward copies of all complaints related to emergency medical service and transportation rendered in the City to the Fire Chief and will cooperate with the Fire Chief in the investigation and resolution of any such complaint.
- 5.16 AMR shall provide to the Fire Chief an emergency plan or be an active participant in the City of Bridgeport Mass Casualty Plan that will specifically set forth the method and means of responding to a mass casualty that will include among other items, the number of available personnel that could be available, the number of fully equipped ambulances that could be utilized from surrounding areas to arrive on scene within a short period of time, and the protocol to be used to assist in such a situation.

SECTION 6: INDEMNIFICATION OF CITY

- 6.1 AMR shall appear for, defend, indemnify and hold the City harmless from and against any and all suits, actions, proceedings, claims, losses, damages, costs and expenses, including reasonable attorney's fees and disbursements, incurred or arising on account of any wrongful or negligent act or omission by any of its personnel, agents or employees. The following insurance coverage is required of AMR and it is understood that AMR will require similar coverage from every contractor and subcontractor in any tier. AMR shall procure, present to the City, and maintain in effect for the duration of this Agreement without interruption the insurance coverages identified below with insurers licensed to conduct business in the State of Connecticut and having a Moody's or Best's financial rating acceptable to the City.

Commercial General Liability (occurrence form) insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of operations conducted under this agreement. Coverage shall be broad enough to include premises and operations, contingent liability, contractual liability, completed operations (24 months), broad form property damage, care, custody and control, with limitations of \$1,000,000 for each occurrence and \$5 million aggregate with a combined single limit for bodily injury, personal injury and property damage.

Business Automobile insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of the use of owned, hired or non-owned vehicles in connection with business. Coverage will be broad enough to include contractual liability, with limitations of \$5,000,000 for each occurrence/aggregate with a combined single limit for bodily injury, personal injury and property damage.

Workers' Compensation insuring in accordance with statutory requirements in order to meet obligations towards employees in the event of injury or death sustained in the course of employment. Liability for employee suits shall not be less than \$500,000 per claim.

Property Damage insuring against direct damage loss to buildings, structures or improvements covering the interest of the City.

General requirements. All policies shall include the following provisions:

Cancellation notice—The City shall be entitled to receive from the insurance carriers not less than 30 days' written notice of cancellation or non-renewal to be given to the City at: Fire Chief, Bridgeport Fire Department, 30 Congress Street, Bridgeport, Connecticut 06604.

Certificates of Insurance—All policies will be evidenced by a certificate of insurance authorized and executed by the insurer or a properly authorized agent or representative reflecting all coverage required and delivered to the City prior to any work or other activity commencing under this contract.

Additional insured—AMR and any subcontractor will arrange with their respective insurance agents or brokers to name the City, its elected officials, officers, department heads, employees and agents on all policies of primary and excess insurance coverages as additional insured parties and as loss payee with respect to any damage to property of the City, as its interest may appear. The undersigned shall submit to the City upon commencement of this Agreement and periodically thereafter, but in no event less than once during each year of this Agreement, evidence of the existence of such insurance coverages in the form of original Certificates of Insurance issued by reputable insurance companies licensed to do business in the State of Connecticut and having Best's or Moody's financial ratings acceptable to the City. Such certificates shall designate the City in the following form and manner:

The City of Bridgeport, its elected officials, officers, department heads, employees, agents, servants, successors and assigns, as their interest may appear

Attention: Fire Chief
Bridgeport Fire Department
30 Congress Street
Bridgeport, Connecticut 06604

- 6.2 AMR agrees to immediately provide notices of claims, administrative actions, complaints or notices of intent to sue for any incident while performing their duties as set forth herein in the City of Bridgeport.

SECTION 7: RECORDS MAINTENANCE AND INSPECTION

- 7.1 AMR shall maintain, or cause to be maintained during the term of this Agreement, complete and accurate records, books, files and or other documents relative to the services and charges set forth herein as required by State law. Furthermore, AMR will provide access to, and permit the City and/or its duly-authorized representative(s) to examine, review and audit all records, books, files and/or other documents relative to this Agreement or the operation of AMR and to furnish copies thereof to the City when requested by the City. Excluded are documents that are patient confidential or Ambulance personnel confidential unless authorized by the respective patient or employee. The City shall give AMR 48 hours' notice of such an inspection so that it may provide the appropriate personnel and documents for the inspection.
- 7.2 AMR shall provide the following to the Fire Chief on an annual basis all information required by law, including but not limited to the following:
- (a) All vehicle permits.
 - (b) Personnel certification.
 - (c) Annual copies of financial reports.
 - (d) Copies of all contracts with other agencies, some of which include the equipment maintenance, Joint Hospital Planning Council, Mutual-Aid Agreements and insurance certifications.
- 7.3 The City shall have the right to inspect the records of AMR pertaining to the delivery of the services hereunder at any time during regular business hours on weekdays (9:a.m. to 5:00p.m.) at the location specified in Section 9 below or at such other location as designated by the parties.

SECTION 8: TERMINATION OF AGREEMENT

- 8.1 This Agreement may be terminated in its entirety by the City or AMR by giving the other party ninety (90) days advance written notice if either party, or both parties, shall have defaulted in the performance of any material promise, covenant or agreement required to be performed by either party, or both, and the failure of either party, or both, to remedy such default or to take prompt action to remedy such default within a period of ninety (90) days after receipt of written notice from the complaining party to remedy the default.
- 8.2 The City shall have the right to terminate this Agreement in its entirety

immediately upon the occurrence of one or more of the following circumstances:

- (a) The filing by AMR of any voluntary petition in bankruptcy, or a petition seeking to reorganize, or the readjustment of its indebtedness under the federal bankruptcy laws or under any similar state laws, or if AMR shall make a general assignment for the benefit of creditors.
- (b) The filing of an involuntary petition in bankruptcy against AMR in which the appointment of a receiver, trustee or liquidator of the property of the concessionaire is ordered by a court of competent jurisdiction and such appointment is not vacated within thirty (30) days.
- (c) A violation by AMR of the applicable statutes, regulations, ordinances and policies for the aforementioned governmental medical entities.

- 8.3 No waiver of default of any of the promises, covenants or agreements to be performed, kept and observed by the parties under this Agreement shall be construed to act as a waiver of any subsequent default of any such promise, covenant or agreement.
- 8.4 AMR shall have the right to terminate this Agreement in its entirety upon the issuance by a court of competent jurisdiction an injunction, order or decree preventing or restraining or limiting in any substantial way the operation by AMR of its business.
- 8.5 This Agreement may be terminated by the Mayor if he, in his reasonable discretion, determines that the public health, safety, welfare or other legitimate municipal concerns so require.
- 8.6 Upon termination of the Agreement, AMR will provide to the State the PSAR designation for Basic and Paramedic Services to be reissued to the City or other ambulance service that may provide these services to the City of Bridgeport.
- 8.7 This agreement may be terminated in its entirety by AMR without cause provided AMR provides one hundred and eighty (180) days advance written notice.

SECTION 9: NOTICES

All notices shall be in writing and sent either certified mail, return receipt requested, postage-prepaid or by overnight courier to the addresses below or to such other address as the parties shall specify in writing:

If to AMR:

General Manager
American Medical Response
335 Connecticut Avenue
Bridgeport, CT 06607

With Mandatory Copy to:

Legal Department
American Medical Response, Inc.
6200 South Syracuse Way, Suite 200
Greenwood Village, Colorado 80111

If to the City of Bridgeport:

Bridgeport Fire Chief
City of Bridgeport
Fire Headquarters
30 Congress Street
Bridgeport, CT 06604

With a copy to:

City Attorney
City Hall Annex
999 Broad Street, 2nd Floor
Bridgeport, CT 06604

SECTION 10: SEVERABILITY

Nothing in this Agreement is intended to conflict with current state law or City directives or applicable law. If the terms of this Agreement are inconsistent with existing directives or with applicable law, then those portions of this Agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions of this Agreement shall remain in full force and effect. At the first opportunity for review of the Agreement after a determination by a court of the invalidity of said clause, such changes to that clause or portion only shall be reviewed and, as are deemed necessary to comply with the applicable law, will be accomplished by an amendment to this Agreement.

SECTION 11: TRAINING

Notwithstanding anything in this Agreement to the contrary, each party agrees, at its sole cost and expense, to provide the following training and certification to the other:

- (a) AMR agrees to provide Medical Response Training to the entire Bridgeport Fire Department and to its new members, including re-certification training every three (3) years.
- (b) The City agrees to provide annual vehicle extrication training to AMR employees.

SECTION 12: COMPLIANCE WITH FEDERAL LAW

- A. Compliance. The parties agree to comply in all material respects with all applicable federal and State laws and regulations including the federal Anti-kickback statute.
- B. Compliance Program and Code of Conduct. AMR has made available to each party a copy of its Code of Conduct, Anti-kickback policies and other compliance policies, as may be changed from time-to-time, at AMR's web site, located at: www.amr.net, and each party acknowledges receipt of such documents. AMR warrants that its personnel shall comply with AMR's compliance policies, including training related to the Anti-kickback Statute.
- C. Non-Exclusion. Each party represents and certifies that neither it nor any practitioner who orders or provide Services on its behalf hereunder, if any, has been convicted of any conduct that constitutes grounds for mandatory exclusion as identified in 42 U.S.C. § 1320a-7(a). Each party further represents and certifies that it is not ineligible to participate in Federal health care programs or in any other state or federal government payment program. Each party agrees that if DHHS/OIG excludes it, or any of its practitioners or employees who order or provide Services, from participation in Federal health care programs, the party must notify the other party within five (5) days of knowledge of such fact, and the other party may immediately terminate this Agreement, unless the excluded party is a practitioner or employee who immediately discontinues ordering or providing Services hereunder.
- D. Referrals. It is not the intent of either party that any remuneration, benefit or privilege provided for under the Agreement shall influence or in any way be based on the referral or recommended referral by either party of patients to the other party or its affiliated providers, if any, or the purchasing, leasing or ordering of any services other than the specific services described in this Agreement. Any payments specified herein are consistent with what the parties reasonably believe to be a fair market value for the services provided.

CITY OF BRIDGEPORT

By: _____
Bill Finch, Mayor

**AMERICAN MEDICAL RESPONSE
of Connecticut, Inc.**

By: _____
**Name: William Schietinger
Title: General Manager
Duly-authorized**

***39-08 CONSENT CALENDAR**

Amendment to Lease Agreement with N.E. Hangar Development, LLC - Dated September 2007

**Report
of
Committee
on
Contracts**

Submitted: February 17, 2009

Adopted: _____



Attest: _____

City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

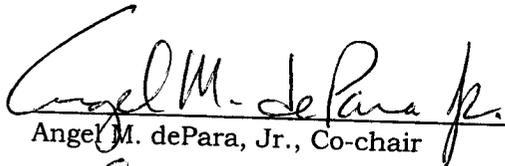
To the City Council of the City of Bridgeport.

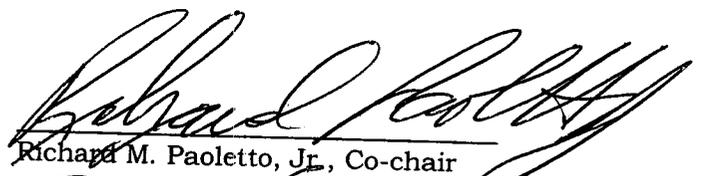
The Committee on Contracts begs leave to report; and recommends for adoption the following resolution:

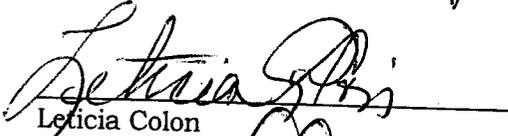
***39-08 Consent Calendar**

RESOLVED, That the attached Amendment to Lease Agreement between the City of Bridgeport (as Landlord) and N.E. Hangar Development LLC (as Tenant) Dated September 2007, be and it hereby is, in all respects, approved, ratified and confirmed.

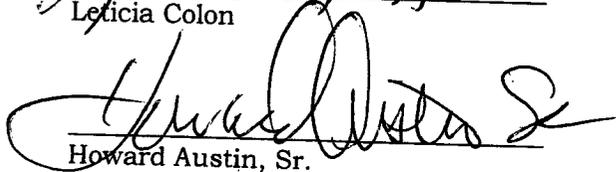
**RESPECTFULLY SUBMITTED,
THE COMMITTEE ON CONTRACTS**

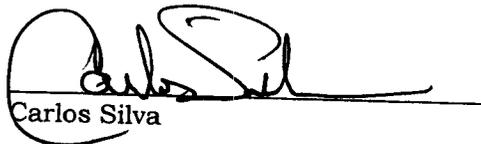

Angel M. dePara, Jr., Co-chair


Richard M. Paoletto, Jr., Co-chair


Leticia Colon


Brian C. Crowe


Howard Austin, Sr.


Carlos Silva

James Holloway

AMENDMENT TO LEASE BETWEEN CITY OF BRIDGEPORT AND
N.E. HANGAR DEVELOPMENT, LLC - Dated September 2007

SECTION 5 EXTENSION TERMS IS AMENDED AS FOLLOWS:

5. **Extention Terms.** Tenant shall have five (5) successive options to extend the term of this Lease each for an additional five (5) years (each, an "**Extension Term**"), upon the same terms and conditions then in effect, except as otherwise expressly provided herein, exercisable by the delivery of written notice to City by Tenant given not less than ninety (90) days prior to the expiration of the Initial Term of the then current Extension Term, as the case may be (a "**Extension Notice**"), provided this Lease is then in force and effect and Tenant is not in default, beyond the expiration of all applicable notice and cure periods, at the time of the exercise of its option with respect to, or the commencement of, the Extension Term in question (and in the case of the Second Extension Term, provided Tenant shall have effectively exercised the extension option for the First Extension Term and this Lease shall be in force and effect upon the expiration of the First Extension Term). Extension Term's Annual Based Rent shall be set by the Airport Commission.

IN WITNESS WHEREOF, the parties have executed this agreement on and as of the date first above written.

Signed, sealed and delivered
in the presence of:

CITY OF BRIDGEPORT

By: _____
William Finch
Mayor
Duly authorized

N.E. HANGAR DEVELOPMENT, LLC

By: _____
Name: Bud McGarry
Its: Managing Member
Duly authozed

LEASE
BETWEEN
CITY OF BRIDGEPORT (AS LANDLORD)
AND
N.E. HANGAR DEVELOPMENT, LLC (AS TENANT)
IGOR I. SIKORSKY MEMORIAL AIRPORT
DATED SEPTEMBER 2007

This Lease Agreement ("Lease") made and executed this _____ day of September, 2007 by and between **CITY OF BRIDGEPORT** (the "City"), a municipal corporation organized and existing under the laws of the State of Connecticut, with a principal address of 45 Lyon Terrace, Bridgeport, CT 06604, and **N.E. Hangar Development, LLC**, a Connecticut limited liability company ("Tenant"), with a principal address of 18 Stony Brook Rd., Darien, CT 06820.

WHEREAS, City is the owner of certain land and improvements located in the Town of Stratford, State of Connecticut, known as Sikorsky Memorial Airport, ("Airport"), and

WHEREAS, Tenant desires to lease certain land at the Airport located at or about the abandoned ramp to the former runway 16 at the Airport and access thereto through the access road, shown on Exhibit A attached hereto as hereinafter described for the purpose of making general improvements to the site, especially with regard to repaving the abandoned ramp area, general asphalt repair and maintenance, and removal of selected debris from site so that the site is suitable for general use as a sub-leased storage T-Hangar area for general aviation aircraft and tie down of general aviation aircraft on such leased land, and

WHEREAS, City desires to make available quality aeronautics-related facilities and services for use by the general public where applicable, and to that end, is agreeable to the undertakings of Tenant set forth herein, subject to the terms and conditions herein specified.

NOW THEREFORE, KNOW YE THAT:

1. **Lease; Leased Premises.** City for and in consideration of the rents, additional rents, terms, covenants and conditions herein defined, reserved and contained, does hereby demise and lease to Tenant, and Tenant does hereby hire and lease from City that certain real property shown and described in Exhibit A attached hereto, together with other improvements and related facilities existing on such real property as of the date of this Lease (collectively referred to herein as

“Existing Improvements” (such real property and Existing Improvements being collectively defined as the **“Leased Premises”**), subject only to the encumbrances set forth in **Exhibit B** attached hereto and made a part hereof, together with certain rights, services, licenses and privileges at the Airport as may be available to the general public, all subject at all times to all of the terms, obligations, restrictions, conditions, specifications and covenants hereinafter contained, either by attachment hereto or by reference thereto. City shall deliver exclusive possession of the entire Leased Premises to Tenant on the date of this Lease, free and clear of all tenants, subtenants, licensees or other occupants and subject only to the matters identified on **Exhibit B** attached hereto and incorporated herein. City hereby grants Tenant the right to clear the Leased Premises of debris and to repair and repave certain portions thereon, at Tenant’s sole cost. The T-Hangars shall not become property of the Landlord upon termination of this lease, but shall be the property of Tenant as a “trade fixture” and Tenant shall have right and obligation to remove same. All other Improvements made pursuant to this Lease shall become property of the Landlord upon leasehold termination.

(a) **Certain Non-Exclusive Rights.**

- (i) The parties hereto expressly acknowledge that the economic utilization of the Leased Premises requires that Tenant have reasonably unobstructed access to, and use of, the abandoned Runway 16 Aircraft ramp and apron which adjoins the Leased Premises (located as shown and identified as the **“Ramp”** on **Exhibit A** hereto) and which connects the Leased Premises to the Airport taxiways and runways. Therefore, during the Term of this Lease, Tenant, and any Subtenants, and their respective employees, agents, contractors, customers and invitees shall have a non-exclusive, but “preferential” or “first-priority”, license to use the abandoned runway 16 Ramp for Aircraft access to and from the Leased Premises and Aircraft taxiways and runways, for the provision of any other services Tenant is permitted to provide or offer under this Lease and to collect and retain fees (subject to the Additional Rent provisions of this Lease) for the provision of such services on, at or from the abandoned Runway 16 Aircraft Ramp. The non-exclusive license granted in this Section 1(a)(i) is intended to grant to Tenant, and any Subtenants, and their respective employees, agents, contractors, customers, invitees, a right to use the Runway 16 Aircraft Ramp for all purposes stated in this Section 1(a)(i) which is preferential to the rights of others, including the general public, in and to the Runway 16 Aircraft Ramp. City shall, at City’s sole cost, take such actions as Tenant may reasonably request, from time to time, to ensure to Tenant the full realization of the benefits intended to be conferred in this Section 1(a)(i).

- (ii) Tenant shall be responsible for removal of snow and ice down the center areas separating the T-Hangars and within 2 feet of the hangar doors. Tenant shall also remove snow from entry road to the "hold short line" as shown on Exhibit A for access to and from Leased Premises. City shall be responsible for remaining snow removal, with snow deposited in such a way as to not interfere with the Tenant's use of the Leased Premises.
- (iii) During the Initial Term and any exercised Extension Term, Tenant shall maintain the Leased Premises in good condition and repair. Landlord shall be responsible for all grass and grounds maintenance. Tenant shall be responsible for initial planting as may be desired.
- (iv) During the Term of this Lease, Tenant, and any Subtenants, and their respective employees, agents, contractors, customers and invitees shall have a non-exclusive right to use all Airport taxiways and runways; a non-exclusive right of vehicular access to and from access road shown on Exhibit A, over and across all public and private Airport roads (as the same may hereafter be relocated or constructed); as well as any easements or licenses over and across Airport property which may be necessary to bring utilities to the Leased Premises, and a non-exclusive right to use all Airport parking areas and all other facilities intended for the general use of all Airport tenants. If requested to do so by Tenant, City, as fee owner, shall grant easements to utility companies to provide utilities to the Leased Premises. The Tenant shall be responsible for the positioning and maintenance of the electric gate at the entry road (Exhibit A); however, Landlord shall maintain the electric cards, the card reader and the software for same and may charge a reasonable fee in connection with card transfer or replacement directly to subtenants or licensees. Tenant shall coordinate with Landlord for facility for monitoring same.

2. **Certain Definitions.**

Whenever used in this Lease:

- (a) "Additional Rent" shall mean any and all of the following: Percentage Rent (as defined in Section 6(a)), and any other payments (other than the Annual Unit Rent) required to be made by Tenant to City pursuant to this Lease.
- (b) "Aircraft" shall mean new or used aircraft of every kind and descriptions, including but not limited to, sea planes and rotary wing and accessories and equipment thereof
- (c) "Aircraft Products" shall mean Aircraft engines, parts, instruments, accessories, equipment and supplies (including radio and electronic equipment and ground support and Maintenance equipment) and all other products used in aviation, Aircraft or relating to the operating, servicing and Maintenance of Aircraft.
- (d) "Airport" means the Igor I. Sikorsky Memorial Airport.
- (e) "Airport Management Sublease"- intentionally deleted
- (f) "Annual Base Rent" is defined in Section 4(a).
- (g) [Intentionally deleted]
- (h) "Avionics" shall mean that branch of electronics which relate to aviation and includes all radio, navigational and electronic control equipment.
- (i) "Building Equipment" All heating, lighting and power equipment, pipes, pumps, conduits, plumbing, refrigeration, sprinkler, ventilating, air cooling and air conditioning equipment and apparatus, ducts and compressors, and any and all renewals and replacements of any thereof located on any Improvements constructed by Tenant.
- (j) [Intentionally deleted]
- (k) [Intentionally deleted]
- (l) [Intentionally deleted]
- (m) "Environmental Conditions" means known and unknown circumstances with respect to soil, surface waters, groundwaters, stream sediment, air and similar environmental media, on or adjoining the Leased Premises or the location of any Required Off-Site Improvements that could require remedial action and/or that may result in claims and/or demands by and/or liabilities to third parties, including, but not limited to governmental entities and that exist as of, or after, the Commencement Date of the Lease.

- (n) "Environmental Laws" means all federal, state and local laws, statutes, ordinances, codes, rules, regulations and guidelines (including consent decrees and administrative orders), now or hereafter existing, which govern or otherwise relate to the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of any Hazardous Substance or deal with protection of human health or the environment, all as may be from time to time amended.
- (o) "Environmental Violation" means (i) Any direct or indirect discharge, disposal, spillage, emission, escape, pumping, pouring, injection, leaching, release, seepage or filtration of any Hazardous Substance at, upon, under or within the Leased Premises, or from the Leased Premises to real estate contiguous thereto, in violation of any Environmental Law or in excess of any reportable quantity established under any Environmental Law, (ii) any deposit, storage, dumping, placement or use of any Hazardous Substance at, upon, under or within the Leased Premises or any real estate contiguous thereto in violation of any Environmental Law or in excess of any reportable quantity established under any Environmental Law, (iii) the abandonment or discarding of any barrels, containers or other receptacles containing any Hazardous Substances in violation of any Environmental Laws, (iv) any activity which would result in any liability, cost or expense to City or any other owner, mortgagee or occupier of the Leased Premises, or which could result in a creation of a lien on the Leased Premises, and (v) any other violation of or noncompliance with any Environmental Law.
- (p) "Existing Improvements" is defined in Section 1.
- (q) "Extension Term(s)" is defined in Section 5.
- (r) "Force Majeure" is defined in Section 27.
- (s) "Gross Receipts" as used in this Lease shall mean the actual payment to Tenant in consideration of the sale or lease of all goods and services furnished by Tenant, and made on or from the Leased Premises. It shall include any form of payment, including but not limited to cash, note, conditional sale contract or any debt instrument and shall include base rent under Subleases. Gross receipts shall not include (1) the amount of any federal state, or local excise, sale or use taxes; (2) the amount of any refund or credit for returns, overcharges or amount of any refund or credit for returns, overcharges or trade-ins; (3) the amount of any case, volume or other discounts actual allowed or paid; (4) any interest or other investment income earned on funds on deposit, and the amount of any interest, finance charge or other add-on charged in respect of deferred cash payments; (5) receipts from the sale or disposal of capital or operating equipment of supplies owned by Tenant and acquired for

its own use in the conduct of its operations; (6) revenues of Subtenants and Sublease rent in reimbursement of Annual Base Rent under this Ground Lease; (7) additional rental payments from Subtenants in respect of real estate taxes, payments in lieu of real estate taxes and operating expenses shall be excluded from Gross Receipts of Tenant, (8) revenues from sales of Aviation fuel, (9) the proceeds of any financing or borrowing by, or equity investment, in Tenant, (10) the proceeds of any sale or assignment of this Lease, (11) any proceeds of insurance or condemnation, (12) Subtenant security deposits (unless and until applied to pay Sublease base rent), or (13) amounts received by Tenant whose inclusion in the Gross Receipts of Tenant would result in double payment to City.

- (t) "Hazardous Materials" means any petroleum, petroleum products, fuel oil, explosives, reactive materials, asbestos containing materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment or as otherwise defined under the Environmental Laws.
- (u) "Improvements" All Existing Improvements and all buildings and other improvements hereafter constructed on the Leased Premises, together with all alterations and additions thereto and all restorations and replacements thereof and all Building Equipment. The T-Hangars shall not become property of Landlord during the term of the Lease nor upon termination of this Lease Agreement, nor shall Landlord claim any interest therein unless specifically granted to Landlord by T-Hangar Owner who shall purchase same as personal property and sublease a space on the ground lease from Tenant hereunder.
- (v) "Initial Improvements" [Intentionally deleted]
- (w) "Index" shall mean the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, U. S. City Average, "All Items" (1982-1984 equals 100). If the CPI Index is discontinued or revised, the average rate of inflation shall be determined by reference to the index designated as the successor or substitute index by the government of the United States.
- (x) "Initial Term" is defined in Section 4.

- (y) "Insurance Requirements" means all rules, orders, regulations and requirements of the Board of Fire Underwriters or other similar body or authority having jurisdiction and all insurance policies affecting the Tenant's use or occupancy of the Leased Premises, including any Improvements constructed by Tenant, or the use or occupancy of the Leased Premises.
- (z) "Lease Approval Contingency" [Intentionally deleted]
- (aa) "Lease Approval Period" [Intentionally deleted]
- (bb) "Leasehold Mortgage" Any mortgage, deed of trust or similar security instrument, which complies with the terms of Section 23(b) herein, which is a lien on the leasehold estate of Tenant created by this Lease, as same may be amended or modified from time to time,
- (cc) "Leasehold Mortgagee" The holder at any time of a Leasehold Mortgage and prior to the placement thereof "Leasehold Mortgagee" shall mean the issuer of a commitment for such Leasehold Mortgage.
- (dd) "Leased Premises" shall mean that certain real property shown and described in Exhibit A attached hereto.
- (ee) "Legal Requirements" All laws, statutes and ordinances (including, but not limited to, building codes and zoning regulations and ordinances), Environmental Laws, and the orders, rules, regulations and requirements of all federal, state, county and municipal governments, any agencies, officers, departments, boards and commissions thereof, which may now or hereafter be applicable to the Leased Premises or the Airport, or any part thereof, or the use or manner of use of all or any part of the Leased Premises or Airport.
- (ff) "Lordship Aviation Community" or similar name shall refer to an association of tenants, licensees, "business invitees" and sub-tenants of the south ramp leasehold, identified as abandoned Runway 16.
- (ff) [Intentionally deleted]
- (gg) [Intentionally deleted]
- (hh) Percentage Rent is defined in Section 6(a)
- (ii) "Permitted Use" shall mean, collectively, use of the Leased Premises and access thereto for the uses permitted and required in this Lease, and any other lawful uses which are ancillary to, or in support of, the foregoing specific permitted and required uses.
- (jj) "Permitted Encumbrances" shall mean only the encumbrances to the title to the Leased Premises identified on Exhibit B attached hereto.

- (kk) "Phase 2 Option" shall mean (x) the land up to the "hold short" line and outside of the VOR area on the South Ramp at the Airport as shown on Exhibit A and (y), a right to place additional permitted uses in the area described (x) in exchange for additional rent and gross receipts as may be generated by Tenant, provided, however, that this Option shall be exercised before the expiration of the Initial Term of this leasehold and not during any extensions hereof and provided that Tenant shall be responsible for compliance with all applicable state, local, federal and municipal regulations pertaining to same.
- (ll) "Prime" shall mean the Prime Rate of Interest, as most recently published in the Wall Street Journal (the "WSJ"), representing the base rate on corporate loans at large United States money center commercial banks. In the event the WSJ ceases to publish the WSJ's Prime Rate of Interest, Tenant shall, within ten (10) Business Days thereafter, select an equivalent commercial lending rate as the Prime rate hereunder and provide City with notice of Tenant's selection. At no time shall any interest rate payable under this Lease exceed the maximum rate permitted by the usury statutes governing this Lease, if any. If by application of the above interest rate formula, the Prime rate would exceed and violate such usury statutes, interest shall then accrue at the maximum rate permitted by applicable law. Interest shall be computed based upon a 360-day per year basis and paid for the actual number of days elapsed.
- (mm) [Intentionally deleted]
- (nn) [Intentionally deleted]
- (oo) "Required Improvements" shall mean, collectively, improvements to areas as specified by the Stratford Municipal authority pursuant to the terms of a special case permit. Tenant shall undertake and complete, at its sole cost and expense said terms and conditions as set forth in Exhibit C. The cost therefore shall be paid by Tenant. Landlord will continue to pay for "Light the Night" Program costs to public utility for as long as lights are maintained on the leasehold premises.
- (pp) [Intentionally deleted]
- (qq) "Sublease" means a sublease, or license, of all or any portion of the Leased Premises, or any Improvements constructed thereon by Tenant.
- (rr) "Subtenant" shall mean a sublessee or licensee under a Sublease.
- (ss) [Intentionally deleted]
- (tt) "Trade Fixtures" shall include, but is not limited to movable T-Hangars, any signs, electrical or otherwise, used for the purpose of identifying

Tenant or any Subtenant, and all machinery and equipment used in connection with operations at the Leased Premises which may be removed without material damage to the Improvements.

3. **Term Of Lease.** The term of this Lease (the "**Term**") shall consist of all of the following: the the Initial Term and any Extension Term(s) that Tenant effectively elects pursuant to Section 5, unless sooner terminated pursuant to any provision hereof or by law. All the provisions of this Lease shall, except to the extent expressly stated to the contrary, apply and be in effect and binding upon City and Tenant, from and after the date hereof for each portion of the Term.

4. **Initial Term.** The "Initial Term" shall be a period of five (5) years, commencing on the date (the "**Initial Term Commencement Date**") that is written as the date of execution by both parties herein and ending at 11:59 p.m., on the last day of the month immediately preceding the fifth (5th) anniversary of the Initial Term Commencement Date, or on such earlier date upon which this Lease shall terminate pursuant to the provisions hereof or law.

(a) **Annual Base Rent.** The Annual Base Rent to be paid by Tenant to City during the Initial Term shall be based solely on a "per unit" basis of \$780.00 per "unit" (65.00 per month) which shall be defined as an individual "T-Hangar". In no event shall the Annual Base Rent be due and owing until such time as blocks of ten individual T-Hangar units are licensed or sublet to third parties. Each "block" shall be assessed at \$7,800.00 per year as the Annual Base Rent. In the event that a partial block (of less than 10) is formed, the Annual Base Rent shall be pro rated accordingly to \$780.00 per unit as an Annual Base Rental. Until such time as a T-Hangar site is sub-leased, the monthly base rent shall be reduced to \$35.00 per unit.

(b) Annual Base Rent shall be as follows:

Period:

Unit Base Rent:

Year 1 of Initial Term

\$780.00 per unit x total finished units

Year 1 of any Extension Term shall be negotiated and adjusted by the City and the Tenant.

If the City and the Tenant cannot agree on the amount of Annual Rent for the Second Renewal, then the City and Tenant each shall at their sole expense, obtain independent appraisals as to the fair rental value of said property and the average of the two (2) appraisals shall be deemed to be the fair rental value for the Second Renewal. However, under no circumstances shall the Annual Rent for the Second Renewal be less than the last year for the First Renewal. If the Annual Rental is not fixed at the time of commencement of the Renewal, the Tenant shall pay at the rate of the above set rental and retroactive adjustments shall be made. All other

agreements and provisions of the instant contract shall be effective throughout the term of the renewal.

Successive Years of Initial Term and any Extension Term shall be the Annual Base Rent as provided, adjusted yearly pursuant to the then current Index.

Tenant agrees to pay Annual Unit Base Rent to City, without notice or demand, in equal monthly installments, in advance, on the first (1st) day of each calendar month during the Initial Term and any Extension Term in the amounts set forth above, with payment in advance of appropriate fractions of a monthly payment for any portion of a month at the expiration or termination of the Term. Tenant shall pay Unit Base Rent, as well as Additional Rent, in lawful money of the United States, at the office of City or such other place as City may designate, without any set-off, offset, abatement or deduction whatsoever, except as otherwise expressly provided in this Lease.

5. **Extension Terms.** Tenant shall have four (4) successive options to extend the term of this Lease each for an additional five (5) years (each, an "**Extension Term**"), upon the same terms and conditions then in effect, except as otherwise expressly provided herein, exercisable by the delivery of written notice to City by Tenant given not less than ninety (90) days prior to the expiration of the Initial Term or the then current Extension Term, as the case may be (a "**Extension Notice**"), provided this Lease is then in force and effect and Tenant is not in default, beyond the expiration of all applicable notice and cure periods, at the time of the exercise of its option with respect to, or the commencement of, the Extension Term in question (and in the case of the Second Extension Term, provided Tenant shall have effectively exercised the extension option for the First Extension Term and this Lease shall be in force and effect upon the expiration of the First Extension Term). Extension Term's Annual Based Rent shall be set by the Airport Commission.

(a) **Base Unit Rent Floor.** Under no circumstances shall the Annual Base Unit Rent for the First Year of the First Extension Term be less than the Annual Base Unit Rent payable for the final Year of the Initial Term. Under no circumstances shall the Annual Base Unit Rent payable for the prior term of each extension period be less than the Annual Base Unit Rent payable for the final Year of each extension period. All other agreements and provisions of the Lease shall be effective throughout the applicable Extension Term.

6. **Additional Rent And Fees Payable To City.**

- (a) Percentage Rent. - As Additional Rent for the Leased Premises, during the Initial Term and any exercised Extension Term, except for initial T-Hangar sale, Tenant shall pay City, monthly, two percent (2%) of any and all revenue that may be charged by Tenant to licensees, or subtenants, or otherwise and reflected as "gross revenue" for revenue contemplated such as T-Hanger, rental payments daily tie down fees, continuing aviation educational programs or fees that may be charged coincident with permitted uses of the Leased Premises. Payment is to be made within thirty (30) days after the expiration of each month. Excepted from Percentage Rent is any income derived by Tenant. For the tie downs, those payments being set forth in Section 6(c).
- (b) Transfer Fees: Landlord may assess a \$1,000.00 transfer fee for each T-Hangar unit that is sold, transferred or conveyed. Tenant must register each transfer with Landlord's designated agent and such transfer will not be a recognized T-Hangar unit leasehold or licensee unless a receipt is provided to Tenant for payment of fee. This transfer fee may not be assessed for initial T-Hangar licensees or subleases.
- (c) Exterior Tie-Down Fees: For each tie down that is leased, other than on a daily basis, a monthly fee of \$35 shall be paid by the Tenant to the City.
- (d) Late Payments. Payments of Annual Based Rent and Additional Rent shall by check made payable to City of Bridgeport, and shall be addressed to the Airport Manager, Sikorsky Memorial Airport, Stratford, Connecticut, unless directed by City in writing to address them to another unit. If any amount to be paid by Tenant to City under the provisions of this Lease remains unpaid more than fifteen (15) days after the respective due date for the receipt of statement and payment therefore, City may assess against Tenant a penalty for late payment at a rate of one and one-quarter (1.25%), per month, on such unpaid amount. The penalty shall be billed to and added to the account of Tenant each month thereafter until payment is made.
- (e) Reports of Gross Receipts. During the Initial Term and any exercised Extension Term, Tenant agrees that, at its own expense, it shall prepare and deliver statements of Gross Receipts to City within ninety (90) days following each of the hereinafter specified events (where appropriate):
- (i) at the end of each year within the Initial Term of this Lease.
 - (ii) the end of each year of any exercised Extension Term.
 - (iii) the effective date of any termination of this Lease during the Initial Term or any exercised Extension Term.

Such statement(s) shall be prepared and certified by Tenant's Finance Department. During the Initial Term of this Lease and any exercised Extension Term, Tenant shall

maintain at the Airport, or other Connecticut site, complete records of all sales and services and business conducted by Tenant at the Leased Premises, including records of all receipts. All such records shall be kept in accordance with good accounting practices and maintained for inspection for a period of not less than seven (7) years. City hereby reserves the right, upon reasonable prior notice to Tenant, to review, examine and/or audit the records of Tenant with respect to the calculation of Additional Rent at the offices of Tenant and at mutually convenient times during Tenant's normal office business hours.

7. Impositions.

- (a) Impositions. During the Initial Term and each Extension Term, if any, Tenant shall also pay, as Additional Rent, directly to the appropriate taxing or other governmental authorities having jurisdiction, at least ten (10) days prior to the last day on which they may be paid without penalty or interest, all personal property taxes, use taxes, occupancy taxes, business license taxes, and all other taxes and governmental charges, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind or nature, whether similar or dissimilar, levied or imposed upon or relating to the Leased Premises or arising from or levied against the operation, use, occupancy or possession of all or any part of the Leased Premises (all of which taxes and charges are sometimes hereinafter referred to collectively as "Impositions" and individually as "Imposition"). Provided said taxes may be lawfully assessed, Tenant shall submit to City within ten (10) days after the last day upon which each Imposition may be paid without penalty or interest, official receipts, or other proof reasonably satisfactory to City, showing the payment thereof, together with a copy of each tax return required to be filed by Tenant in connection therewith.
- (b) Apportionment at End of Term. Impositions, whether or not a lien upon the Leased Premises, shall be apportioned between City and Tenant at the expiration or sooner termination of the Initial Term and any exercised Extension Term, so that Tenant shall pay only the amount of such portion of the Impositions allocable to the Initial Term and any exercised Extension Term.
- (c) Right to Contest. Tenant, at its own cost and expense, after notice to City, may contest the amount or validity of any Imposition, in any manner permitted by law, in Tenant's name, and whenever necessary, in City's name, provided that Tenant does so with due diligence and in good faith. City will cooperate with Tenant and execute any documents or pleadings reasonably required for such purposes, provided that the same shall be without cost, liability or expense to City. Such contest may include appeals from any judgment, decree or order until a final determination is made by a court or governmental department or authority having final jurisdiction in the matter. However,

notwithstanding such contest, Tenant shall pay the contested Imposition in the manner and on the dates provided for in this Article 7 and, if permitted by law, Tenant may pay the same under protest. If either party shall receive any refund with respect to Impositions paid in whole or in part by the other, then within thirty (30) days after such receipt, such party shall pay to the other party its pro rata share of the net amount of such refund (after deducting the costs, including reasonable legal fees and expenses, of obtaining it).

- (d) Tax Statements. The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any or Imposition, or of nonpayment of such Imposition, may be relied on by City as sufficient evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.
- (e) Exclusions. Nothing herein contained shall require Tenant to pay municipal, state or federal income taxes assessed against any City (including any successor to City's interest as landlord hereunder), municipal, state or federal capital levy, estate, succession, inheritance or transfer taxes of City (including any successor to City's interest as landlord hereunder), or corporation franchise taxes imposed upon City (including any successor to City's interest as landlord hereunder); provided, however, that if at any time during the Term of this Lease the methods of taxation prevailing at the commencement of the Term shall be altered so as to cause the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and the Improvements thereon to be levied, assessed and imposed, wholly or partially, as a capital levy, or otherwise on the rents received therefrom, or if any tax, corporation franchise tax, assessment, levy (including but not limited to any municipal, state or federal levy), imposition or charge, or any part thereof, shall be measured by or based in whole or in part, upon the Improvements and shall be imposed upon City (including any successor to City's interest as landlord hereunder), then all such taxes, assessments, levies, impositions or charges, or the part thereof so measured or based, shall be deemed to be included within the term Impositions for the purposes hereof, to the extent that such Impositions would be payable if the Improvements were the only property of City (including any successor to City's interest as landlord hereunder) subject to such Impositions, and Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions.
- (f) Mandatory Airport Services. [Intentionally Deleted]

8. Optional Aircraft Services.

(ii) Hazardous Materials/Underground Tanks. To the City's knowledge:

- (A) City has not caused or permitted any uses of the Leased Premises, to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Materials or solid waste, except in compliance with all applicable Environmental Laws, and has not caused or permitted and has no knowledge of any Environmental Condition on the Leased Premises or the Airport;
- (B) all plants, buildings or structures on the Leased Premises comply with all applicable Environmental Laws;
- (C) the Leased Premises do not contain any asbestos or other Hazardous Materials and no such materials are located on, in or under the Leased Premises; and
- (D) there are no underground and aboveground tanks at the Leased Premises

(iii) Completeness/Continuing Obligations. No representation, warranty or statement of City contained in this Section or contained in any exhibit, certificate, schedule or other document furnished by City to Tenant pursuant hereto or on connection with a transaction contemplated herein, contains any untrue statement of a fact or omits disclosing a material fact with regard to environmental matters. The representations and warranties of City set forth herein shall continue indefinitely and survive the termination of this Lease. As used herein "City's knowledge" means the actual knowledge, as of the date of this Lease, of the current Airport Manager, Assistant Airport Manager, and the current members of the Airport Commission.

(b) City's Obligations and Tenant's Rights: Environmental Conditions. The parties recognize that Environmental Conditions may exist on or adjoining the Leased Premises, or the location of any Required Off-Site Improvements, which could require remedial action and/or may result in claims and/or demands by and/or liabilities to third parties, including, but not limited to, governmental entities. It is City's obligation, at its sole cost and expense, to comply or ensure compliance with, all matters arising out of Environmental Laws, agreements with governments, and court and administrative orders with respect to Environmental

Conditions on the Airport, including the Leased Premises and the location of any Required Off-Site Improvements, except with respect to any Environmental Condition or Hazardous Materials first introduced by Tenant. In the event that Tenant is notified by a third-party or governmental entity or discovers the existence of any Environmental Condition (excluding any Environmental Condition or Hazardous Materials first introduced by Tenant), the result of which may require remedial action or form the basis for the assertion of a claim by any third-party, including claims of governmental entities, Tenant shall promptly notify City thereof, and City shall, at its sole cost and expense, proceed with due diligence to take all action necessary to eliminate the Environmental Condition in a manner and to standards consistent with Environmental Laws and in a manner which does not materially interfere with or reduce the utility of Tenant's intended use of the leasehold property. In the event that City fails to immediately proceed with due diligence, Tenant may, at its option, proceed to take such action as necessary to comply with Environmental Laws pursuant to the terms of Section 3(g)(iv) hereof and shall continue to have all rights to indemnity as set forth in this Lease.

- (c) City's Indemnification Obligations. City shall indemnify Tenant against any and all damages, claims, losses, liabilities, and all expenses, including, without limitation, reasonable legal, accounting, consulting, and engineering fees and other expenses which may be imposed upon or incurred by Tenant, its employees, officers, directors, successors and assigns, or asserted against Tenant, its employees, officers, directors, successors and assigns arising out of or in any way connected with: (i) City's obligations and Tenant's rights under this Section 17; or (ii) any Environmental Condition, including the exposure of any person or property to any Environmental Condition, not caused by Tenant; (iii) any expenses incurred by Tenant in connection with the next paragraph; or (iv) any costs incurred by Tenant in connection with Tenant's remediation of any Environmental Conditions not caused by Tenant.

City shall, with competent counsel and other professionals reasonably acceptable to Tenant, and at the sole cost and expense of City, take all steps necessary to defend and protect Tenant from and against the obligations contained in the paragraph above. Tenant reserves the right, however, to defend itself against and to respond as it sees fit, to the obligations outlined above, and to perform any of City's obligations and cure City's breaches and defaults hereunder following City's failure to do so, and the exercise of this right shall in no way reduce or alter the obligations of City herein.

16. Maintenance Of Leased Premises.

- (a) Maintenance and Repair. Tenant shall, throughout the Initial Term and any exercised Extension Term, at Tenant's sole cost and expense, keep and maintain in good order, condition and repair the Leased Premises (including, without limitation, the Improvements), and Tenant shall not commit or suffer any waste with respect thereto. Tenant shall promptly make all repairs, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, foreseen as well as unforeseen, necessary to keep the Leased Premises in good and lawful order and condition, and said repair shall be at least equal in quality and class to the original work. Tenant shall keep and maintain all portions of the Leased Premises, and the curbs and sidewalks adjoining the in a clean and orderly condition, free of accumulation of dirt, rubbish, snow and ice as provided herein
- (b) Mechanic's Liens. Tenant shall not suffer or permit any mechanic's or other liens to be filed against the Leased Premises, or Improvements, or any part thereof, or against Tenant's leasehold estate therein, by reason of any work, labor, services or materials done for, or supplied to, or claimed to have been done for, or supplied to, Tenant or anyone holding the Leased Premises or any part thereof through or under Tenant. If any such lien shall at any time be filed against the Leased Premises, Tenant shall take such action as bonding, deposit, payment or otherwise as will cause the same to be discharged of record within forty (40) days after the filing thereof. If Tenant shall fail to discharge any such lien within such period, then, in addition to any other right or remedy of City, City may, but shall not be obligated to, procure the discharge of record of the same either by paying the amount claimed to be due or by deposit in court or by bond, and City shall be entitled, if City so elects, to compel the prosecution of an action for the foreclosure of any such lien by the lienor (which City may, at its option, elect not to defend or to defend in such manner as City shall determine in its sole discretion) and to pay the amount of the judgment, if any, in favor of the lienor with interest, costs and allowances. Any amount paid or deposited by City for any of the aforesaid purposes, and all legal and other expenses of City, including counsel fees, in defending any such action or in obtaining the discharge of any such lien, together with interest thereon at the rate of eighteen percent (18%) per annum, or the then maximum lawful interest rate, whichever shall be less, from the date of payment or deposit, shall be due and payable by Tenant to City on demand.
- (c) Disclaimer of City Responsibility. Nothing contained in this Lease shall be deemed to be, or construed in any way as constituting, the consent or request of City, express or implied, by inference or otherwise, to any person, for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, improvement, or repair of or to the Leased Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the

rendering of any services or any material which might in any way give rise to the right to file any lien against City's interest in the Leased Premises. Further, City hereby gives notice to all persons who may furnish labor or materials to Tenant at the Leased Premises that City does not consent to the filing of any mechanic's or other lien against City's interest or estate in the Leased Premises, and that all persons furnishing labor and materials to Tenant shall look only to Tenant's credit and such security as Tenant may furnish for the payment of all such labor and materials.

17. **Future Alterations.**

(a) **General.** After the completion of the Initial Improvements pursuant to the terms and conditions of Section 3 (e), Tenant shall have the right at any time and from time to time during the Term to make, at its sole cost and expense, changes, alterations or improvements in or to the Initial Improvements and/or Leased Premises (any of the same being a "**Future Alteration**") up to the "hold short line". These additional improvements are referred to as the Phase Two Option which must be exercised, if at all, within the first ten years of the initial leasehold term. Tenant agrees to comply with any applicable regulations pertaining to said improvements.

(i) Title to any Future Alterations constructed by Tenant, as well as all renewals, restorations and replacements of any thereof, shall immediately vest in and belong to Tenant as its sole and absolute property, without further action on the part of either party and without cost or charge therefor to City. Trade Fixtures shall remain the sole property of Tenant.

(ii) It is acknowledged and agreed that Tenant is not responsible for any adverse Environmental Conditions which shall include, but not be limited to, contamination of subsoils and/or ground water which may exist on the Leased Premises as of the commencement date of this Lease.

18. **Provision Of Utilities and Other Essential Services By City.** In addition to the covenants of City set forth in Section 26 herein:

(a) **Airport Maintenance.** City, at its sole cost and expense, shall at all times maintain in good operating condition the runways, taxiway and Airport roadways and parking areas at the Airport, except those areas occupied

by Tenant. City shall in a timely manner remove snow from runways and taxiways and Airport roadways unless as otherwise stated herein.

(b) Utility Connections. At all times during the Term of this Lease, City shall, at its sole cost and expense, maintain or cause to be maintained, all utility systems that are available on the Airport as of the date of this Lease, such as water, sewer, electricity, gas and telephone. Tenant shall have the right to connect, at Tenant's cost, to all such utility systems and to obtain such rights, at Tenant's cost, as may be required for telephone and any other utility lines or facilities necessary or convenient for the performance of its operations. Tenant shall be granted easements or licenses over and across Airport property (outside of the Leased Premises) as may be necessary to bring utilities to the Leased Premises, at Tenant's cost. Utility service to the Leased Premises shall be separately metered and paid for by Tenant.

(c) Utility Payments. Tenant shall arrange for, and shall promptly pay when due all charges for, gas, water, sewer, electricity, fuel, light, heat, power, telephone or other communication service or other utility or service used, rendered or supplied to, upon or in connection with the Leased Premises throughout the Term.

19. Signs. Tenant has the right to erect advertising and identification signs at the public entrance to the Airport and on the Leased Premises and the right to erect directional signs on land owned by City adjacent to roadways leading to the Leased Premises as shall be approved by City, which approval will not be unreasonably withheld, delayed or conditioned.

20. Assignment and Subletting.

(a) Certain Pre-Approved Transfers. Provided Tenant is not in default under this Lease beyond the expiration of all applicable notice and cure periods, Tenant may, without City's consent, but upon not less than ten (10) days' notice to City, sublease, in whole or in part, the Leased Premises, and/or any Improvements, and/or space in any Improvements, to any person or entity, provided such Subtenant is required or permitted to use the applicable sublease premises only for one or more Permitted Uses. License or sub-leasing of individual T-Hangar units shall not trigger this consent clause but, rather shall be subject to the imposition of the \$1,000.00 transfer fee. Provided Tenant is not in default under this Lease beyond the expiration of all applicable notice and cure periods, Tenant may, without City's consent, but upon not less than thirty (30) days' prior notice to City, assign Tenant's right, title and interest in and to the Lease to:

(i) any entity controlling, controlled by or under common control with Tenant, it being acknowledged that "control"

shall mean (i) having the power to make or veto all major decisions with respect to such entity, or (ii) direct or indirect ownership of fifty percent (50%) or more of the ordinary voting securities or other equity interests;

(ii) any successor to Tenant whether by merger, consolidation or sale of Tenant's assets or ownership interest; or

(iii) a Leasehold Mortgagee, whether by foreclosure of a Leasehold Mortgage, or assignment in lieu of foreclosure of a Leasehold Mortgage, and any transferee, successor, assignee or nominee of a Leasehold Mortgagee.

(b) Proposed Transfers Requiring Consent. Any assignment of this Lease of the Leased Premises, in whole or in part, to any entity outside the scope of (a) above, shall be subject to City's prior written consent, which City shall not unreasonably withhold, delay or condition and City's failure to respond to a written request for consent within forty-five (45) days of the delivery of Tenant's request to City shall be deemed to constitute City's irrevocable consent to such request.

(c) Subtenant Non-Disturbance. Upon written request from Tenant, City will enter into agreements with Subtenants of Tenant which will provide that City will not evict such Subtenants in the event of termination of this Lease ("non-disturbance agreements"). Such nondisturbance agreements shall be in form reasonably satisfactory to City and Tenant and shall be subject to the following conditions:

(i) any Leasehold Mortgagee having a Leasehold Mortgage on the Leased Premises shall provide a similar written nondisturbance agreement for such Subtenant;

(ii) each nondisturbance agreement hereunder shall be valid only if, and for so long as, the Subtenant is not in default of any of its obligations under its Sublease with Tenant beyond the expiration of all applicable notice and cure periods;

(iii) each Subtenant under a nondisturbance agreement shall be bound to attorn to a new Tenant, or to City, and not more than three (3) months rent in advance of the then current rent shall have been paid to Tenant;

(iv) City shall not be required to assume any of the construction obligations of Tenant under this Lease, or any obligations of Tenant to make Subtenant improvements under any Sublease.

- (d) Liability. In the event of a permitted assignment and assumption of Tenant's interest in this Lease, Tenant shall be released from its obligations or liabilities under this Lease arising from and after the effective date of such assignment and assignee shall be deemed to have assumed all obligations of Tenant under this Lease first arising from and after the effective date of such assignment. In the case of any subletting, Tenant shall remain primarily liable, as principal rather than as surety, for the prompt payment of rents and for the performance and observance of all the covenants, terms and conditions of this Lease to be performed or met by Tenant thereunder.

21. **Mortgages: Encumbrances.**

- (a) City Covenant. City shall not mortgage, pledge, hypothecate, encumber or assign its interest in and to the Leased Premises, or Improvements thereon, or its interest in and to this Lease.

- (b) Leasehold Mortgages. Tenant covenants and agrees as follows:

- (i) Except for any Leasehold Mortgage, Tenant shall not encumber the leasehold estate hereby granted, the Leased Premises, or any subleases of the Leased Premises or the rents thereunder with any liens or similar rights, without City's prior written consent, which shall not be unreasonably withheld, delayed or conditioned.
- (ii) Tenant shall not, at any time, encumber City's fee estate in the Leased Premises with any liens or encumbrances.
- (iii) City shall have no liability for repayment of any amount of the Leasehold Mortgage, nor for the performance of any obligations, covenants, or agreements in respect thereof, either before or after the expiration or prior termination of this Lease. In order to qualify as a Leasehold Mortgage, any mortgage executed by Tenant shall include the following language:

This mortgage is executed upon the condition that no purchaser at any foreclosure sale, or assignee under an assignment in lieu of foreclosure, shall acquire any right, title or interest in or to the lease hereby mortgaged, unless the said purchaser or assignee, or the person, firm or corporation to whom or to which such purchaser's or assignee's right has been assigned, shall, in the instrument transferring to such purchaser or to such assignee the interest of tenant under the lease hereby mortgaged, assumes and agrees to perform all of the terms, covenants and conditions of that lease thereafter to be observed or performed on the part of such

tenant; that no further or additional mortgage or assignment of the lease hereby mortgaged shall be made except in accordance with the provisions contained herein; and that a duplicate original of said instrument containing such assumption agreement, duly executed and acknowledged by such purchaser or such assignee and in recordable form, shall be delivered to City under the hereby mortgaged lease immediately after the consummation of such sale, or, in any event, prior to taking possession of the premises demised thereby.

(iv) Tenant shall not be in default in the performance or observance of any of its covenants, agreements, or obligations under this Lease at the time any Leasehold Mortgage is granted. For the purposes of this Section, the word "default" shall mean default beyond the expiration of applicable grace periods, if any.

(c) Notices to Leasehold Mortgagee. In the event that Tenant's interest under this Lease is subject to any Leasehold Mortgage, City will give to the Leasehold Mortgagee a copy of each notice of default from City to Tenant, and shall do so at the time of giving such notice to Tenant. So long as the Leasehold Mortgage remains outstanding and unsatisfied, City will give to the Leasehold Mortgagee a copy of any notice received by City of any rejection of this Lease by any trustee in bankruptcy of Tenant.

(d) Forbearance by City. Leasehold Mortgagee shall have a period of time equal to the period of time permitted Tenant for curing any default under this Lease as herein provided or, if greater, thirty (30) days after receipt by Leasehold Mortgagee of notice of such default, during which time it shall have the right, but not any obligation, to remedy such default of Tenant, by paying any rent, taxes and assessments owing by Tenant, making any repairs and improvements, making any deposits or doing any other act or thing required of Tenant by the terms of the Lease; and all payments so made and all things so done and performed by Leasehold Mortgagee shall be as effective to prevent the rights of Tenant from being forfeited or adversely affected because of any default under this Lease as the same would have been if done and performed by Tenant; provided, however, that if the act or omission does not involve the payment of money from Tenant to City and (i) is of such a nature that it could not be reasonably remedied by Leasehold Mortgagee within said thirty (30) day period or such period as is permitted Tenant under the Lease, or (ii) the nature of the default, act or omission, the requirements of local law or prudent mortgage lending practices require Leasehold Mortgagee to take possession of, appoint a receiver with respect to, or to foreclose on, or otherwise commence legal proceedings to recover possession of, the Leased Premises in order to effect such

remedy and such legal proceedings and consequent remedy cannot reasonably be achieved within the said thirty (30) days, then Leasehold Mortgagee shall have such further time as is reasonable under the circumstances to effect such remedy provided that Leasehold Mortgagee shall notify City within thirty (30) days after receipt of City's notice of Leasehold Mortgagee's intention to effect such remedy, and, provided further, that if required under the circumstances, Leasehold Mortgagee shall institute legal proceedings to appoint a receiver for the Leased Premises or to foreclose on or recover possession of the Leased Premises within said thirty (30) day period and thereafter (subject to any stay in a bankruptcy proceeding) prosecute said proceedings and remedy with due diligence to completion.

(e) New Lease. City will issue a New Lease (as defined in this), subject to the following conditions:

- (i) if Tenant's interest hereunder shall have been sold, assigned (other than for security purposes) or otherwise transferred by the Leasehold Mortgagee pursuant to the exercise of any right, power or remedy of the Leasehold Mortgagee, or pursuant to judicial proceedings, and if satisfactory provision for indemnification of City against any adverse claims arising out of or with respect to this Lease shall have been made;
- (ii) if no rent, Additional Rent, or other sums payable hereunder shall then be due and payable to City;
- (iii) if the Leasehold Mortgagee or any other purchaser of Tenant's interest hereunder shall have arranged for the correction of any default susceptible of being corrected by New Tenant under the New Lease referred to herein; and
- (iv) if this Lease shall not have been terminated pursuant to the terms hereof by reason of a default.

If all of the aforesaid conditions are met, then City, within twenty (20) days after receiving written request therefor and upon payment of all expenses, including, without limitation, reasonable attorneys' fees and expenses incident thereto, will execute and deliver a New Lease (the "New Lease") of the Leased Premises to the Leasehold Mortgagee or its nominee, purchaser, assignee or transferee, as the case may be ("New Tenant"). Such New Lease shall be for the remainder of the term of this Lease, on the same terms and conditions as are contained herein and with priority equal thereto. Upon execution and delivery of such New Lease, City, at the cost and expense of the New Tenant, shall take such steps as shall be necessary to cancel and discharge this Lease of record and to remove Tenant from the Leased Premises, and New Tenant shall be deemed to be the landlord under any Subleases, and any Subleases which may theretofore have

been assigned and transferred to City shall thereupon be assigned and transferred, without recourse by City, to the New Tenant.

(f) New Lease After Termination. In the event of termination of this Lease by reason of default, City shall give prompt notice thereof to the Leasehold Mortgagee. City shall, upon written request of the Leasehold Mortgagee, made at any time within twenty (20) days after the giving of such notice by City, enter into a New Lease of the Leased Premises with the Leasehold Mortgagee, or its designee, and shall do so within twenty (20) days after receipt of such request. Such New Lease shall be effective as of the date of such termination of this Lease, and shall be for the remainder of the term of this Lease, at the same rent and upon the same terms, covenants, conditions and agreements as are herein contained; provided, however, that Leasehold Mortgagee shall:

- (i) contemporaneously with the delivery of such request pay to City all Base Rent and Additional Rent and other charges payable to City under this Lease which City has specified as being due in any notice to Leasehold Mortgagee;
- (ii) pay to City, at the time of execution and delivery of such New Lease, all sums for Base Rent and Additional Rent and other charges which would have been due and payable to City under this Lease had it not been terminated as aforesaid, such sums to be computed from the date of termination of this Lease to the date of execution and delivery of such New Lease, inclusive, together with all expenses (including reasonable attorneys' fees) incurred by City in connection with the termination of this Lease and with the execution and delivery of such New Lease, less the net amount of all sums received by City from subtenants under occupancy leases up to the date of commencement of such New Lease; and
- (iii) on or prior to the execution and delivery of such New Lease, agree in writing that promptly following the delivery of such New Lease, Leasehold Mortgagee (or its designee) will perform or cause to be performed, all of the other covenants and agreements herein contained on Tenant's part to be performed, to the extent that Tenant shall have failed to perform the same to the date of delivery of such New Lease and the same are reasonably susceptible of being performed by Leasehold Mortgagee.
- (iv) Nothing herein contained shall be deemed to impose any obligation on the part of City to deliver physical possession of the Leased Premises to Leasehold Mortgagee or its

designee, unless City, at the time of execution and delivery of the New Lease, shall have obtained physical possession of the Leased Premises.

- (v) If, during the period of twenty (20) days referred to in Subsection (f) of this, requests for such New Lease shall be made by more than one Leasehold Mortgagee, then, provided the provisions of this Section are complied with, City shall be required to execute and deliver such New Lease to that Leasehold Mortgagee (or its designee) lowest in order of priority of lien who:
- (A) cures all defaults under all prior Leasehold Mortgages,
 - (B) delivers to City certificates or letters from the holders of all prior Leasehold Mortgages which certify or state that no default then exists under such prior Leasehold Mortgages (other than defaults caused by City's termination of this Lease), and
 - (C) executes and delivers, at the time of execution of such New Lease, new mortgages to the holders of all prior Leasehold Mortgages which constitute a lien on this Lease, which new mortgages shall contain the same terms and conditions and secure the same amounts as the said prior Leasehold Mortgages.
 - (D) Upon execution and delivery of a New Lease hereunder, City, at the expense of the New Tenant, shall take such steps as shall be necessary to cancel and discharge this Lease of record, and the New Tenant shall be deemed to be the landlord under any Subleases, and any Subleases which may theretofore have been assigned and transferred to City shall thereupon be assigned and transferred, without recourse by City, to the New Tenant.
- (vi) Notice to City of Mortgages. Notwithstanding any of the provisions of this Section, City shall not be required to comply with any of the provisions of this Article unless City has received notice of the existence of the Leasehold Mortgage, together with copies of the Leasehold Mortgage and any amendments or modifications thereto and the name and address of the Leasehold Mortgagee to which notices shall be sent.

(vii) Consent of Leasehold Mortgagee Required. No cancellation, surrender or modification of this Lease shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee.

(viii) Reasonable Modifications. If, in connection with obtaining, continuing or renewing a Leasehold Mortgage, a Leasehold Mortgagee shall request modifications of this Lease as a condition of such financing, City shall not withhold, delay or defer its consent thereto, provided that such modifications do not materially adversely affect the rights or obligations of City or Tenant hereunder or materially adversely affect City's rights or obligations under this Lease.

22. Estoppel Certificates. City and Tenant shall, without charge, at any time and from time to time, if requested by the other, or by any existing or prospective Leasehold Mortgagee, within ten (10) days after any such request, execute, acknowledge and deliver to the requesting party, or its designee, any instrument submitted by City or Tenant, or their designee, certifying, verifying, stating, or representing the information sought in response to the following:

(1) the date of this Lease, the date when the term commenced, and the date when Base Rent commenced to accrue hereunder;

(2) that this Lease is unmodified and in full force and effect; or, if there have been any modifications, that the Lease is in full force and effect as modified and stating the modifications and the dates thereof;

(3) whether or not there are then existing any setoffs or defenses against the enforcement of any of the terms and/or conditions of the Lease and any modifications hereof upon the part of Tenant to be performed or complied with; and, if so, specifying the same;

(4) the dates, if any, to which the rent, and other sums on Tenant's part to be paid hereunder have been paid in advance;

(5) the date of expiration of the Lease term;

(6) the rate of Rent then payable under this Lease;

(7) whether or not there have occurred any defaults or events of default under this Lease; and

(8) such other matters as may be reasonably requested.

23. **No Broker.** Tenant agrees with and represents and warrants to Landlord that Tenant did not negotiate through or communicate with any broker in connection with this transaction. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all loss, liability, costs and expenses (including reasonable counsel fees), resulting from any claims that may be made against Landlord by any broker or any other person claiming a commission, fee or other compensation by reason of this transaction, if the same shall arise by, through or on account of any act of Tenant or its representatives.

24. **Covenants By City.** City covenants to observe and perform the following covenants at all times during the term of this Lease. In the event of a breach of any covenant of City, which is not fully rectified within thirty (30) days of Tenant's delivery of notice of breach to City, Tenant may, upon delivery of a further notice to City, elect to terminate this Lease effective as of the date specified in such notice in which event City shall be liable for all losses, damages, costs and expenses suffered or incurred by Tenant, including reasonable attorneys' fees, by reason of City's breach of this Lease.

- (a) **Quiet Enjoyment.** City represents and warrants to Tenant that Tenant shall have the quiet and peaceful enjoyment of the Leased Premises so long as no Event of Default exists, and that the rights therein granted to Tenant are in conformity with any and all applicable Federal State, and local laws, regulations and policies, and any and all other binding obligations of City with respect to the Airport.
- (b) **Police; Fire Protection.** City agrees that it will provide fire and police protection to the Leased Premises at all times during the term of this Lease in accordance with the principles of good Airport management and in compliance with any and all regulations of the Federal Aviation Administration (FAA).
- (c) **Airport Operating Standards.** City shall maintain and operate the Airport at all times during the term of this Lease in accordance with its obligations to the United States under applicable Federal laws and regulations, provided, however, City shall, at its sole cost, maintain in full force and effect, FAA certifications, in existence as of the date of this Lease, relative to the operation of the Airport, and the Airport shall be maintained at no less than its operating parameters as of the date of this Lease and existing runways shall not be shortened, whether physically, or by legal displacement of landing threshold, and the Airport shall maintain, in effect, any currently existing aviation easements benefiting the Airport. Subject to its foregoing obligations, City reserves the right and Tenant agrees that City shall have the right to develop or improve the landing and approach areas of the Airport as it sees fit, together with the right to prevent Tenant from erecting or permitting to be erected any building or other structure on the Airport which reduces the usefulness of the Airport for Aircraft operating or

constitutes a hazard to Aircraft; provided however, that no such development or improvement shall be made which has the effect of denying Tenant enjoyment of the Leased Premises.

- (d) Roads and Taxiways. City shall maintain all Airport roadways and taxiways providing access to the Leased Premises in good condition and repair.
- (e) Future Encumbrance. City shall not grant or permit any encumbrance to the title to the Leased Premises, or the Airport, which shall adversely affect Tenant's Permitted Use.
- (f) No Grant Repayment Required. City represents, warrants and covenants that the demolition of any or all of the Existing Improvements, including, but not limited to, the terminal building existing on the Leased Premises as of the date of this Lease will not require repayment, in whole or in part, of any federal or state grant monies. In the event that any federal and/or state grant funds shall be required to be repaid by reason of the demolition of any of the Existing Improvements, then, notwithstanding anything to the contrary in this Lease, City shall be solely responsible to repay such sums. In the event City shall fail to repay any such grant monies required to be repaid by reason of the demolition of the Existing Improvements, then, if such failure shall materially adversely affect the purpose of this Lease, or the rights granted Tenant under this Lease, Tenant may elect either to (1) terminate this Lease effective upon delivery of notice of such election to City, in which event neither party hereto shall thereafter have any further liability, right or obligations hereunder, except for such matters as are expressly intended to survive the termination of this Lease, or (2) repay such grant monies and offset the amount paid from Base Unit Rent and Additional Rent otherwise due and payable hereunder, together with interest on Tenant's expenditures at the rate of Prime (in effect at the time Tenant incurs such expenditures), plus two percent (2%), per annum, until such expenditures are fully offset against rent otherwise due and payable.
- (g) Adherence to Deed Restriction. City covenants not to release, seek or permit the release of, the restrictive covenant in a Quit-Claim Deed from the United States of America and Reconstruction Finance Corporation to the City, dated February 3, 1949, recorded in Volume 237, Page 451 of the Stratford Land Records limiting the use of the airport property to "public airport purposes".

25. Tenant Defaults.

(a) Event of Default. The following events shall be an "Event of Default" hereunder:

(i) If Tenant shall fail to perform or comply with any of the provisions contained in this Lease, or if Tenant shall cease business operations and abandon the Leased Premises, and Tenant shall not have remedied the same within the thirty (30) days of notice hereof from City, this Lease shall be deemed to have been breached and Tenant shall be in default. Notwithstanding the foregoing, in the case of a non-monetary default which cannot with due diligence be cured within a period of thirty (30) days, Tenant shall have such additional time to cure same as may reasonably be necessary, provided (i) Tenant commences to cure such failure within the thirty (30) day period and proceeds promptly, effectively, continuously, and with due diligence to cure such failure after receipt of said notice, and (ii) within such initial thirty (30) day period, Tenant provides City with notice describing with reasonable specificity the steps Tenant shall take to effect such cure and the time which is anticipated to be required to effect such cure.

(ii) The entity that is the Tenant at the time in question shall consent to an adjudication as bankrupt or file a petition in bankruptcy or such a petition be filed against Tenant (and such involuntary filing not be dismissed within 90 days).

(b) Legal Fees. If Tenant commits an Event of Default, Tenant agrees to pay City's costs, including reasonable attorney's fees incurred in enforcing this Lease.

26. Termination of Lease.

(a) Termination by City. Subject to the rights of Leasehold Mortgagees herein, this Lease may be terminated by City on not less than ninety (90) days written notice in the event of an uncured Event of Default.

(b) Termination by Tenant. This Lease may be terminated by Tenant on not less than thirty (30) days notice in the event of (i) a material default by City in the performance of its covenants and obligations under this Lease which is not cured within thirty (30) days of Tenant's delivery of notice of such default to City, (ii) any breach or violation of any covenant of City set forth herein, which is not cured within thirty (30) days of Tenant's delivery of notice of such breach to City or (iii) in the event of the inability of Tenant (or the public) to use and operate Aircraft at the Airport in the manner, and to the full extent permitted by the Airport's present landing areas and approach characteristic as may

be described in the Airport Master Plan or Layout Plan and by existing FAA regulations and other applicable laws or regulations or the inability of Tenant to conduct the Permitted Use at the Leased Premises where such inability continues for a period in excess of thirty (30) days and results from one or more of the following:

- (i) Any decision, order, rule, regulation or action of a Federal or State Court, the FAA or other public authority;
- (ii) Any condemnation or temporary or permanent taking, by City, State of Connecticut or the United States, in whole or in part, of the Airport, including the Leased Premises or any part thereof or of its landing or approach areas, as may be described on the Airport Master Plan or Layout Plan; or
- (iii) Any interference by a governmental agency with the use of the Airport, its landing areas or approaches for the operation of Aircraft or any interference by any governmental agency with the conduct of Tenant.

Notwithstanding the foregoing, Tenant shall not exercise its right to terminate this Lease under this Section 26(b) by reason of any matter which cannot, with due diligence, be cured, by City, within a period of thirty (30) days. In such event, City shall have such additional time to cure same as may reasonably be necessary, provided (i) City commences to cure such default under this Section 26(b) within such thirty (30) day period and proceeds promptly, effectively, continuously, and with due diligence to cure such failure after receipt of said notice, and (ii) within such initial thirty (30) day period, City provides Tenant with notice describing with reasonable specificity the steps City shall take to effect such cure and the time which is anticipated to be required to effect such cure.

27. **Force Majeure.** Neither City nor Tenant shall be deemed to be in breach of this Lease by reason of failure to perform any of its obligations hereunder, if while, and to the extent that such failure is due to embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior government authority, rebellion or any other condition or circumstances whether similar to or different from the foregoing (it being agreed that the foregoing enumeration shall not limit or be characteristic of such conditions or circumstances) which is beyond the control of City or Tenant (excluding any financial inability to perform) or which could not be prevented or remedied by reasonable effort and at reasonable expense.

28. **Agent For Service Of Process Upon City.** City Clerk of City of Bridgeport or his/her successors in office is hereby appointed as agent for service of process upon City for any action arising out of or as a result of this Lease, such

appointment to be in effect throughout the Term of this Lease, including any supplements hereto and any extensions thereof, if any, and six (6) years thereafter, except as otherwise provided by statute.

29. **Notices.** Any notice, demand, consent, approval, direction, agreement or other communication required or permitted hereunder or under, any other documents in connection herewith, shall be in writing and shall be directed as follows:

If to City:

City of Bridgeport
Attn: John Ricci, Airport Manager
Igor Sikorsky Memorial Airport
1000 Great Meadows Road
Stratford, CT 06497
Facsimile: (203)-576-8166

With a copy to:

Office of City Attorney
999 Broad Street, 2nd Floor
Bridgeport, Connecticut 06604
Attn: City Attorney
Facsimile: (203)- 576-8252

If to Tenant:

N.E. Hangar Development LLC
c/o Bud McGarry
18 Stony Brook Rd.
Darien, CT 06820
Attn: Bud McGarry
Facsimile: (203) 319-3363

With a copy to:

Bainton McCarthy LLC
Three Stamford Landing
46 Southfield Ave., Suite 360
Stamford, CT 06902
Attn: Heather M. Brown
Facsimile: (203) 655-2210

or to such changed address or facsimile number as a party hereto shall designate to the other party hereto, from time to time, in writing. Notices shall be (i) personally delivered (including delivery by Federal Express, United Parcel Service or other comparable

nation-wide overnight courier service) to the offices set forth above, in which case they shall be deemed delivered on the date of delivery (or first Business Day thereafter if delivered other than on a Business Day or after 5:00 p.m. New York City time to said offices); (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused by the addressee in which event they shall be deemed delivered on the date of delivery is refused; or (iii) sent by means of a facsimile transmittal machine, in which case they shall be deemed delivered at the time and on the date of receipt thereof confirmed by telephonic acknowledgment or first Business Day thereafter if received other than on a Business Day or after 5:00 p.m. New York City time. "**Business Days**" means all days, excluding Saturdays, Sundays and all days observed by the State of Connecticut or the Federal Government as legal holidays.

It is understood and agreed that nothing hereinabove contained shall preclude the parties hereto from subsequently agreeing, in writing, to designate alternate persons (by name, title and affiliation) to which such notice(s) is (are) to be addressed; alternate means of conveying such notice(s) to the party(ies); and/or alternate locations to which the delivery of such notice(s) is (are) to be made, provided such subsequent agreement(s) is (are) concluded pursuant to the adherence to this Section 31.

30. **Tenant's Obligation to Surrender Premises.** Upon expiration or termination of this Lease, Tenant shall peaceably quit, deliver up, and surrender the Leased Premises to City free of all claims, and in good order, repair, and condition. Upon such expiration or termination City may, pursuant to applicable lawful process, enter upon, re-enter, possess, and repossess itself of the Leased Premises and may have, hold, and enjoy the Leased Premises and all rental and other income therefrom, free of any claim by Tenant with respect thereto. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have no obligation to remove any Improvements constructed by Tenant on the Leased Premises and Tenant shall not be required to restore the Leased Premises, or any portion thereof, to its condition on the date of this Lease.

31. **Civil Rights Provisions.** Tenant agrees and warrants that in the performance under this Lease it will not discriminate or permit discrimination or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, sex, mental retardation/or physical disability including, not limited to, blindness, unless it can be shown by Tenure that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut, and further agrees to provide the Commission of Human Rights and Opportunities with such information which may be requested by the Commission concerning the employment practices and procedures of Tenant as relate to the provisions of Section 4-114a of the General Statutes of Connecticut, as revised.

32. **Provisions Required By Federal Government.**

- (a) Right to Enter Airspace. City reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of Aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in the airspace such sound as may be inherent in the operation of Aircraft, now known or hereafter used for the navigation of or flight in the airspace, together with the emission of fumes or particles incidental to Aircraft navigation, and for the use of the airspace for the landing on, taking-off from or operating on the Airport.
- (b) No Interference with Aircraft. Tenant expressly agrees, for itself, its successors and assigns, to prevent the use of the Leased Premises for purposes which will (a) produce electrical interference with radio communications, (b) make it difficult for pilots to distinguish between airport lights and others, (c) project glare in the eyes of pilots, (d) impair visibility in the vicinity of the Airport, or (e) otherwise endanger the landing, take-off and maneuvering of Aircraft.
- (c) Obstructions to Air Navigation. City retains the continuing right in the Leased Premises to prevent the erection or growth of any building, structure, tree or other object extending into the airspace above 85' Mean Sea Level (MSL), and to remove from the airspace, at Tenant's expense, or at the sole option of City, as an alternative, to make and light as obstructions to air navigation, any such building, structure, tree, or other object now upon, or which in the future may be upon, the Leased Premises, together with the right to ingress to, egress from, and passage over the Leased Premises for the purposes stated herein.
- (d) Non-Discrimination. If any aeronautical services or activities are to be offered, performed or conducted on the Leased Premises:
- (i) Tenant agrees that in the exercise of the rights and privileges herein granted for the furnishing of aeronautical services to the public that it will:
 - (A) Furnish the service on a fair, equal and not unjustly discriminatory basis to all users thereof, and
 - (B) Charge fair, reasonable, and not unlawfully discriminatory, prices for each unit or service; provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

- (ii) It is specifically understood and agreed that nothing herein contained shall be construed as granting, or authorizing the granting of, an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

33. **Small Business Enterprise.** In its use and construction of its Improvements and maintenance of the Leased Premises, Tenant shall utilize best efforts to follow the City's MBE Ordinance.

34. **Miscellaneous.**

- (a) **Entire Agreement.** The terms and provisions herein contained constitute the entire agreement between the parties and shall supersede all previous communications representations or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof, and no agreement or understanding varying or extending the same shall be binding upon either party hereto unless in writing and duly executed by the party to be bound thereby. The invalidity of any single paragraph or clause shall not serve to invalidate the remainder of the Lease and the remaining terms and conditions of this Lease shall then continue in full force and effect.
- (b) **Successors and Assigns.** All terms of this Lease shall be binding upon, inure to the benefit of and be enforceable by, the parties hereto and their respective legal representatives, successors and assigns (subject to Section 22).
- (c) **Interpretation.** City and Tenant acknowledge each to the other that both they and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any amendments or exhibits hereto.
- (d) **Counterparts.** This Lease may be executed in any number of counterparts, each of which so executed shall be deemed an original; such counterparts shall together constitute but one agreement.
- (e) **Governing Law.** This Lease shall be governed and construed according to the laws of the State of Connecticut, United States of America, without reference to its conflicts of law rules.
- (f) **Notice of Lease.** This Lease shall not be recorded. However, Tenant and City shall execute a Notice of Lease in accordance with Connecticut General Statutes Section 47-19, which Tenant shall record on the Stratford Land Records.
- (g) **Captions.** Wherever appropriate in this Lease, personal pronouns shall be deemed to include the other genders and the singular to include the

plural. The captions hereof are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof. All Article and Section references set forth herein shall, unless the context otherwise specifically requires, be deemed references to the Articles and Sections of this Lease.

- (h) Severability. If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall be invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.
- (i) Jury Trial. Tenant and City both waive a trial by jury of any or all issues arising in any action or proceeding between the parties hereto or their successors, under or connected with this Lease, or any of its provisions.
- (j) Effect of Termination of this Lease. [Intentionally deleted]

IN WITNESS WHEREOF, the parties have executed this agreement on and as of the date first above written.

Signed, sealed and delivered
in the presence of:

Marcia L. Rosa
Rebecca Cabanas

CITY OF BRIDGEPORT

By: John M. Fabrizi
John M. Fabrizi
Mayor
duly-authorized

[Signature]
Anna M. Wheeler

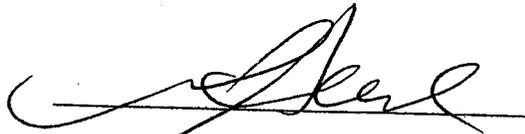
N.E. HANGAR DEVELOPMENT LLC

By: Bud McGarry
Name: Bud McGarry
Its: Managing Member
Duly authorized

STATE OF CONNECTICUT)
)
COUNTY OF FAIRFIELD)

ss. ~~South Norwalk~~ Bridgeport

On this 28 th day of Nov, 2007, before me, the undersigned, personally appeared Bud McGarry, and acknowledged himself to be the Managing Member if of N.E. Hangar Development LLC, a limited liability company, and that he as such Managing Member, being authorized so to do, executed the foregoing instrument as his free act and deed and the free act and deed of such limited liability company for the purposes therein contained, by signing the name of the limited liability company by himself as such officer.



Notary Public

My Commission Expires: 1/31/12

STATE OF CONNECTICUT)
)
COUNTY OF FAIRFIELD)

ss. Bridgeport

On this ___ th day of _____, 2007, before me, the undersigned, personally appeared John Fabrizi, and acknowledged himself to be the Mayor of City of Bridgeport, a municipal corporation organized and existing under the laws of the Sate of Connecticut, being authorized so to do, executed the foregoing instrument as his free act and deed and the free act and deed of City of Bridgeport for the purposes therein contained, by signing the name of City of Bridgeport by himself as such officer.

Notary Public

My Commission Expires:

EXHIBIT A

(Description of Leased Premises)

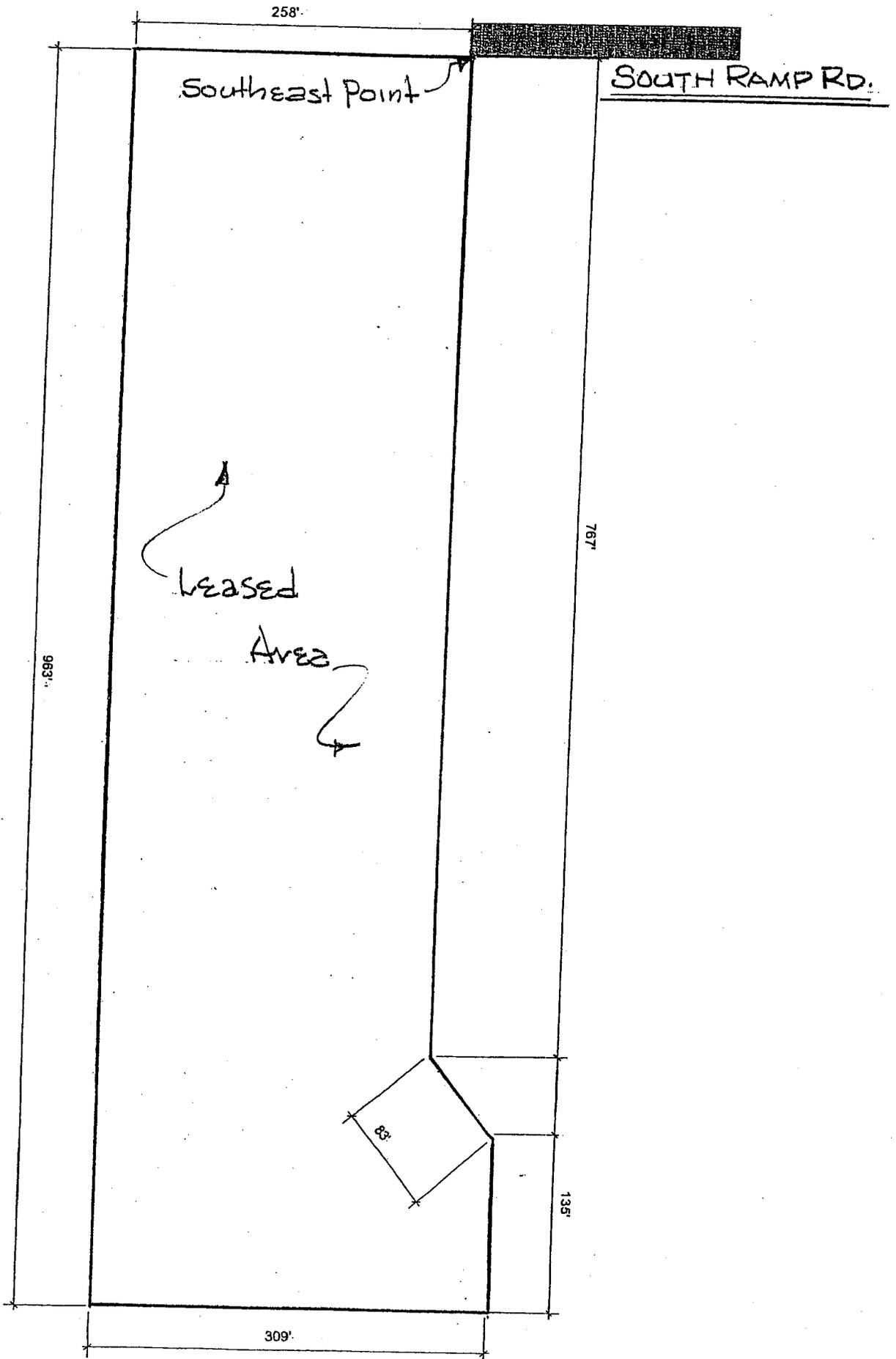


EXHIBIT B

(Legal Description)

Commencing at the intersection of the South Ramp Road with the abandoned runway 16-34 from the south east point.

Southerly 767'; Southeasterly 83'; Southerly again 135'; Westerly 309'; Northerly 963'; Easterly 258'.

EXHIBIT C



TOWN OF STRATFORD

CONNECTICUT
06615

ZONING COMMISSION
2725 MAIN STREET
STRATFORD, CT 06615
203-385-4017

April 19, 2007

N.E. Hanger Development LLC
C/o Bud McGarry & Eugene Shapiro
18 Stoneybrook Road
Darien, CT. 06820

Re: LORDSHIP BLVD, SIKORSKY MEMORIAL AIRPORT, SOUTH RAMP

Dear Sir:

This is to officially notify you that at a meeting of the Zoning Commission held April 17, 2007 it was voted to grant your petition, for approval of a waiver of use under Sections 4.1 and 20.1 of the Zoning Regulations in order to refurbish the south ramp and to install pre-fabricated T-hangers for storage of small private aircraft on property located in an RS-4 District, with the following stipulations.

1. The current high pole lighting in the south ramp area shall be eliminated. The applicant shall work with the zoning staff on a low level lighting plan that minimizes any impact to residential properties.
2. There shall be a maximum of 65 T-hangers at this location.
3. A landscaping plan shall be submitted to the zoning staff that adds some trees along Stratford Road and some landscaping around the proposed T-hanger area.

In accordance with the State Statutes the appeal period will expire on May 10, 2007.

If a building permit is not obtained within eighteen months this approval shall be considered null and void.

Regards,

GARY LORENTSON

Planning & Zoning Administrator
ZONING COMMISSION



*40-08 CONSENT CALENDAR

Agreement with the United States of America, re:
DTFANE-09-L-00022

Report
of
Committee
on
Contracts

Submitted: February 17, 2009

Adopted: _____

Attest: 
City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

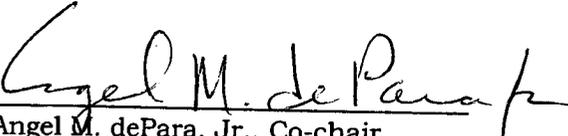
To the City Council of the City of Bridgeport.

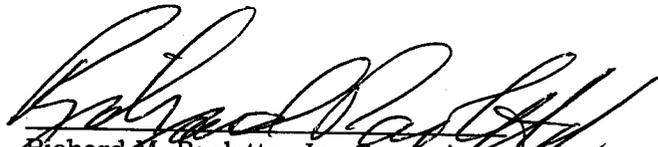
The Committee on **Contracts** begs leave to report; and recommends for adoption the following resolution:

***40-08 Consent Calendar**

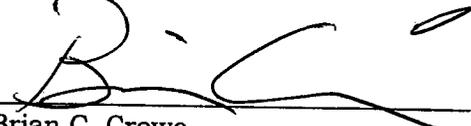
RESOLVED, That the attached Lease Agreement between the City of Bridgeport and United States of America, regarding DTFANE-09-L-00022, be and it hereby is, in all respects, approved, ratified and confirmed.

**RESPECTFULLY SUBMITTED,
THE COMMITTEE ON CONTRACTS**


Angel M. dePara, Jr., Co-chair


Richard M. Paoletto, Jr., Co-chair


Leticia Colon


Brian C. Crowe


Howard Austin, Sr.


Carlos Silva

James Holloway

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
NEW ENGLAND REGION
12 NEW ENGLAND EXECUTIVE PARK
BURLINGTON, MASSACHUSETTS 01803

LEASE NO: DTFANE-09-L-00022
FACILITY: RCL
LOCATION: SIKORSKY MEMORIAL AIRPORT
BRIDGEPORT, CONNECTICUT

LEASE

BETWEEN

THE CITY OF BRIDGEPORT

AND

UNITED STATES OF AMERICA

THIS LEASE, made and entered into this _____ day of _____ in the year two thousand and eight is hereby entered into by **The City of Bridgeport**, whose address is Sikorsky Memorial Airport, 1000 Great Meadow Road, Stratford, CT 06615 **Lessor**, and **The United States of America**, hereinafter called the **Government**. This lease shall become effective when it is fully executed by all parties. The terms and provisions of this lease, and the conditions herein, bind the Lessor the Lessor's heirs, executors, administrators, successors, and assigns.

WITNESSETH: The parties hereto for the consideration hereinafter mentioned, covenant and agree as follows:

1. **Premises** - The lessor hereby leases to the Government the property described below.

A parcel of land, approximately 85' X 25', adjacent to the Government's existing RCL tower, as depicted on a sketch dated 12/9/08 attached hereto and made a part of as Exhibit "A". It is agreed and understood that upon completion of a survey by the Government, a formal legal description will be incorporated into the lease.

A. Together with a right-of-way for ingress to and egress from the premises; (For Government Employees, their Agents and Assigns) a right-of-way for establishing and maintaining a pole line or pole lines for extending electric power and/or telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all right-of-way to be over said lands and adjoining lands of the Lessor, and unless herein described otherwise, to be by routes reasonably determined to be the most convenient to the Government.

B. And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of Government facilities.

C. And the right to make alterations, attach fixtures and erect additions, structures, or signs, in or upon the premises hereby leased, which alterations, fixtures, additions, structures or signs so placed in or upon, or attached to the said premises shall be and remain the property of the Government.

2. The parties hereto agree as follows:

That the Government will move the waveguides going into the former AFSS building and tie them into a new shelter to be located NW of the RCL tower as shown on Exhibit "A",

That the Government will install a 7' fence with a 1' outrigger and gate around the tower and shelter. The fence will extend to the existing fence, segregating the former AFSS parking lot from the RCL site plot.

That no part of the shelter, fence, telco or power cabling will connect to the former AFSS building.

That the Government will not put any security restrictions on any future tenants of the former AFSS building regardless of any changes in threat level conditions.

That the Government will move the HVAC units adjacent to one of the RCL tower legs so that the Government's fence does not preclude access to the unit.

That the Government will have access to four (4) parking spaces outside the fence to allow for personnel and equipment access.

3. **Term** – To have and to hold, for the term commencing on **January 1, 2009** and continuing through **September 30, 2009**.

4. **Renewal Options** – The lease may, at the option of the Government, be extended beyond the **30th Day of September 2009** upon the terms and conditions herein specified and no extension shall extend beyond the **30th day of September 2019**. The Government shall notify the lessor no later than ninety (90) days before the expiration of the lease term, of its intent to exercise the option(s) or of its intent to vacate the premises at the end of the lease term.

5. **Consideration** – For and in consideration of the benefit to Sikorsky Memorial Airport and the general public using same, the Lessor grants to the Government all the terms and conditions stated herein at no cost.

6. **Cancellation** – The Government may terminate this lease, in whole or in part, if the Real Estate Contracting Officer (RECO) determines that a termination is in the best interest of the Government. The RECO shall terminate by delivering to the lessor a written notice specifying the effective date of the termination. The termination notice shall be delivered by registered mail, return receipt requested and mailed at least 30 days before the effective termination date.

7. Interference With Government Operations - The Lessor agrees not to erect or allow to be erected any structure or obstruction of whatsoever kind or nature on the site or adjoining land within the airport boundaries that may interfere with the proper operation of the facilities installed by the Government under the terms of this Lease unless consent hereto shall first be secured from the Government in writing.

8. Funding Responsibility For Government Facilities - The Lessor agrees that any relocation, replacement, or modification of any existing or future Government facilities covered by this Lease during its term or any renewal thereof made necessary by airport improvements or changes which in the Government's opinion interfere with the technical and/or operational characteristics of the Government facilities will be at the expense of the Lessor, except when such improvements or changes are made at the written request of the Government. In the event such relocations, replacements, or modifications are necessitated due to cause not attributable to either the Lessor or the Government, funding responsibility shall be determined by the Government.

9. Quiet Enjoyment - The Lessor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.

10. Subordination, Non-Disturbance and Attornment - The Government agrees, in consideration of the warranties herein expressed, that this lease is subject and subordinate to any and all recorded deeds of trust, mortgages, and other security instruments now or hereafter imposed upon the premises, so long as such subordination shall not interfere with any right of the Government under this lease. It is mutually agreed that this subordination shall be self operative and that no further instrument shall be required to effect said subordination.

In the event of any sale of the premises, or any portion thereof, or any such transfer of ownership, by foreclosure of the lien of any such security instrument, or deed provided in lieu of foreclosure, the FAA will be deemed to have attorned to any purchaser, successor, assigns, or transferee. The succeeding owner will be deemed to have assumed all rights and obligations of the lessor under this lease, establishing direct privity of estate and contract between the Government and said purchasers/transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided that such transferees shall promptly provide, following such sale or transfer, appropriate documentation deemed necessary by the Real Estate Contracting Officer, and shall promptly execute any instrument, or other writings, as shall be deemed necessary to document the change in ownership.

11. **NOTICES** – All notices/ correspondence shall be in writing, reference the lease number and reference the lease number, and be addressed as follows:

TO LESSOR:

The City of Bridgeport
Sikorsky Memorial Airport
1000 Great Meadow Road
Stratford, CT 06497

TO GOVERNMENT:

Federal Aviation Administration
12 New England Executive Park
Burlington, MA 01803
Attn: Real Estate Contracting Officer

12 a. **CONTRACT DISPUTES (Nov. 03)** All contract disputes and arising under or related to this lease contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A Lessor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

(b) All Contract Disputes shall be in writing and shall be filed at the following address:

(1) Office of Dispute Resolution for Acquisition, AGC-70,
Federal Aviation Administration,
800 Independence Ave., S.W.,
Room 323,
Washington, DC 20591
Telephone: (202) 267-3290,
Facsimile: (202) 267-3720; or

(c) A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the lease contract claim involved. A contract dispute is considered to be filed on the date it is received by the ODRA.

The full text of the Contract Disputes clause is incorporated by reference. Upon request the full text will be provided by the RECO.

12b. Protest

(a) Protests concerning Federal Aviation Administration Screening Information Requests (SIRS) or awards of lease contracts shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A protestor may seek review of final FAA decision only after its administrative remedies have been exhausted.

(b) Offerors initially should attempt to resolve any issues concerning potential protests with the Real Estate Contracting Officer.

(c) Protests shall be in writing and shall be filed at:

(1) Office of Dispute Resolution for Acquisition, AGC-70,

Federal Aviation Administration

800 Independence Ave., S.W. Room 323

Washington, D.C. 20591

Telephone: (202) 267-3290 Facsimile: (202) 267-3720

(2) At the same time as filing the protest with the ODR, the protestor shall serve a copy of the protest on the Real Estate Contracting Officer (RECO).

(d) A protest is considered to be filed on the date it is received by the ODR and shall be filed:

(i) Not later than seven (7) business days after the date the protestor knew or should have known of the grounds for the protest; or

(ii) if the protestor has requested a post-award debriefing from the RECO, not later than five (5) business days after the date on which the RECO holds that debriefing.

The full text of the Protest clause is incorporated by reference. Upon request the full text will be provided by the RECO.

13. ANTI-KICKBACK – The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (The Act) prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States Government or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.

14. COVENANT AGAINST CONTINGENT FEES (AUG-02): The Lessor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

15. OFFICIALS NOT TO BENEFIT (OCT-96): No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit

16. Non-Restoration

It is hereby agreed between the parties, that upon termination of its occupancy, the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property which is the subject matter of this lease. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment shall become the property of the Lessor.

17. Hazardous Substance Contamination

The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the RCL facility. The Lessor agrees to remediate at its sole cost, any and all other hazardous substance contamination found on the leased premises. The Lessor also agrees to save and hold the Government harmless for any and all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the leases premises not directly attributable to the installation, operation and/or maintenance of the RCL facility.

18. Examination of Records

The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative from either shall, until 3 years after final payment under this contract have access to and the right to examine any of the Lessors directly pertinent books, documents, paper, or other records involving transactions related to this contract.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written:

THE CITY OF BRIDGEPORT

THE UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

BY: _____

BY: _____

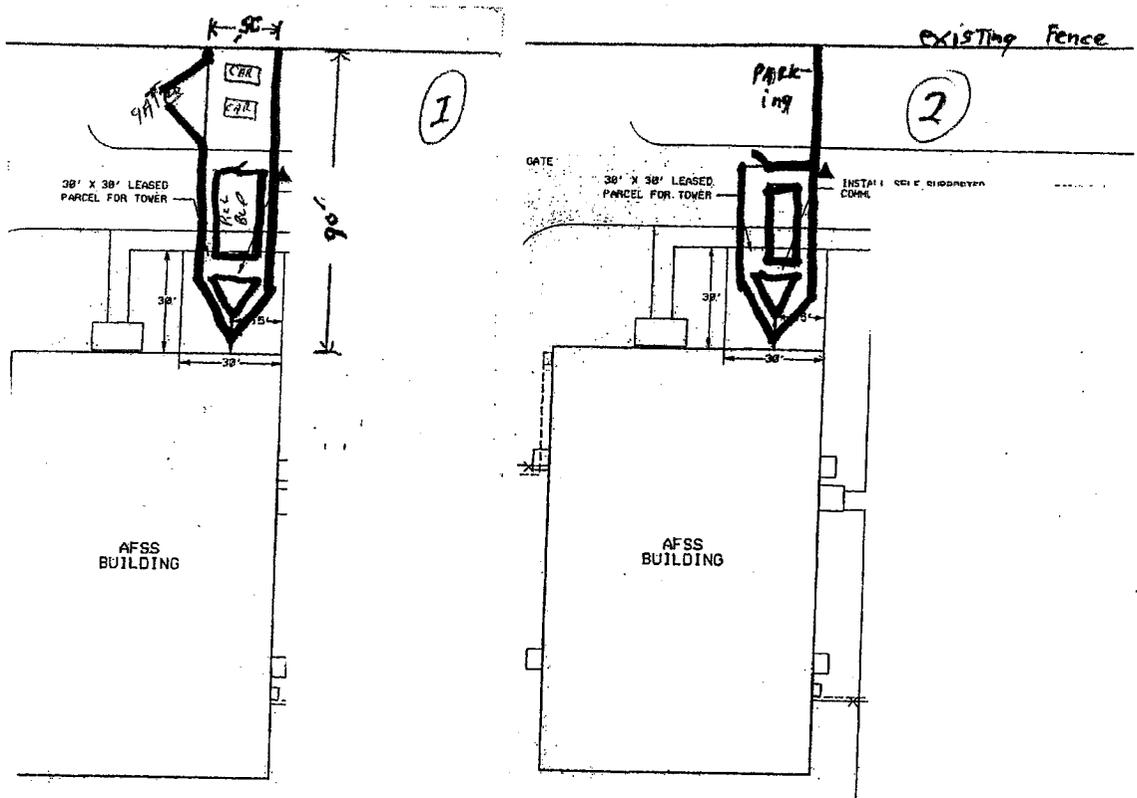
TITLE: _____

TITLE: CONTRACTING OFFICER

DATE: _____

DATE: _____

EXHIBIT "A"



***41-08 CONSENT CALENDAR**

**Agreement with Laborers International Union of
North America (LIUNA)**

**Report
of
Committee
on
Contracts**

Submitted: February 17, 2009

Adopted: _____

Attest: _____


City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

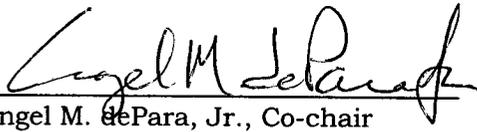
To the City Council of the City of Bridgeport:

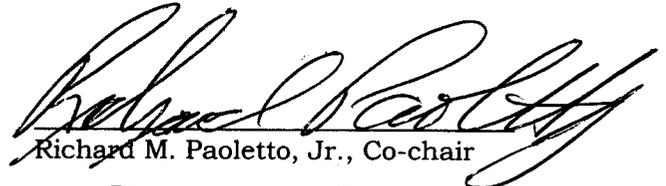
The Committee on **Contracts** begs leave to report; and recommends for adoption the following resolution:

***41-08 CONSENT CALENDAR**

RESOLVED, That the attached Agreement between the City of Bridgeport and the Laborers International Union of North American (LIUNA) be and it hereby is, in all respects, approved, ratified and confirmed.

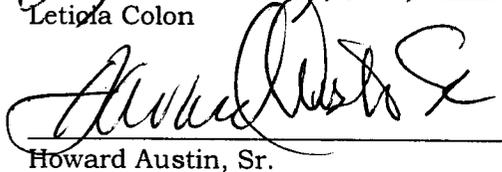
RESPECTFULLY SUBMITTED, THE COMMITTEE ON CONTRACTS

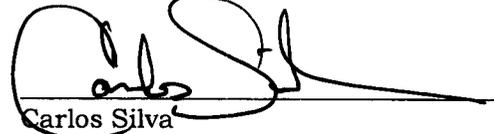

Angel M. DePara, Jr., Co-chair


Richard M. Paoletto, Jr., Co-chair


Leticia Colon


Brian C. Crowe


Howard Austin, Sr.


Carlos Silva

James Holloway

TENTATIVE AGREEMENT

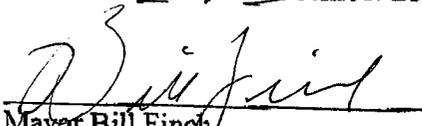
The undersigned parties, the City of Bridgeport ("City") and the Connecticut Laborers' District Council For The Bridgeport Public Employees Local Union 200 ("LIUNA") hereby agree that the following represents their Tentative Agreement ("Agreement") with respect to a successor contract to that which expired on June 30, 2008:

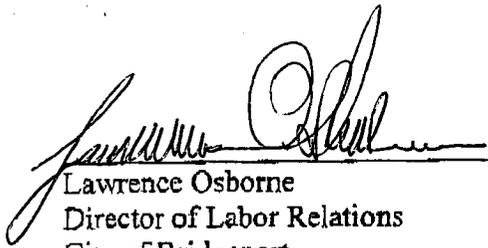
1. All pertinent articles of the collective bargaining agreement shall be amended and changed to reflect a zero percent (0%) increase in pay for the period July 1, 2008 through June 30, 2009;
2. Article 35 of the collective bargaining agreement shall be amended to reflect a duration of two years – from July 1, 2008 through June 30, 2010;
3. Article 15 and Article 19 of the collective bargaining agreement shall be amended to reflect a contract re-opener indicating that wages and medical benefits will be the subject of negotiations for the period July 1, 2009 through June 30, 2010;
4. All LIUNA bargaining unit members shall take a minimum of six (6) furlough days in accordance with Exhibit A ("Furlough Program") which is attached to this Agreement. It is understood and agreed by the undersigned parties that bargaining unit members must submit their selected days by no later than January 20, 2009 or the City will make the selection of days for the affected bargaining unit member(s). This furlough requirement shall not apply to April Griffin and Jennifer Gondola. In addition it is understood and agreed that the following bargaining unit members shall be taking ten (10) furlough days;
 - a. Rosemary Zolyomi
 - b. Diane Delmedico
 - c. Philip White
 - d. Jill Bruno

Furthermore, it is understood and agreed that bargaining unit member Art Harris shall be taking nine (9) furlough days and that bargaining unit member Melissa Kuian shall be taking twelve (12) furlough days
5. Loretta Williams has resigned effective January 2, 2009. In the event Ms. Williams does not rescind her resignation decision the undersigned parties agree that the following shall be their agreement on the issues of layoffs and replacing positions:
 - a. Ms. Williams position will not be re-filled;
 - b. The layoff notices issued by the City on or about December 5, 2008 to bargaining unit members shall be postponed and its agreed those bargaining unit members shall be laid off on May 1, 2009;
 - c. No other bargaining unit layoffs shall occur (except those which are related to grant issues or those which concern School Based Health Center employees) until May 1, 2009;

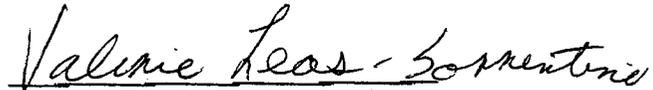
6. In the event Ms. Williams rescinds her resignation decision the undersigned parties agree that the following shall be their agreement on the issues of layoffs:
 - a. The layoff notices issued by the City on or about December 5, 2008 to bargaining unit members shall be postponed and its agreed those bargaining unit members shall be laid off on March 27, 2009;
 - b. No other bargaining unit layoffs shall occur (except those which are related to grant issues or those which concern School Based Health Center employees) until March 27, 2009;
7. The undersigned parties agree to immediately meet and discuss the issue of bumping as contained in Article 7 of the collective bargaining agreement. These discussions shall be designed to try and reach bilateral agreement however, these discussions are not considered negotiations and therefore, are not subject to statutory binding arbitration. The parties further agree that during these discussions, the timelines for Step III of the Grievance Procedures (Article 14 of the collective bargaining agreement) for the individual pending lay-off/bumping grievances (Robert Luby, Jennifer Gondola, Joseph Wincze, Michael Beitman) will be waived for a period of 60 days. Upon conclusion of the 60 days, if no agreement is reached, the union reserves the right to proceed to arbitration.
8. The undersigned parties agree to be obligated to meet and discuss the issues of cost savings that may arise from time to time (in an effort to avoid layoffs). These discussions shall be designed to try and reach bilateral agreement however, these discussions are not considered negotiations and therefore, are not subject to statutory binding arbitration;
9. All other collective bargaining agreement language (See agreement July 1, 2004 – June 30, 2008) not referenced in this Agreement shall remain in the collective bargaining agreement for the period July 1, 2008 – June 30, 2010.
10. The two (2) positions of Project Manager in Construction Services will be eliminated as of January 2, 2009. The people currently holding those positions will be transferred to the following vacant positions in Community Development as of January 5, 2009: Joseph Gambino will assume the position of Manager of Housing Construction and Physical Development at a salary of \$60,000; Sean Archer will assume the position of Home Program Specialist at a salary of \$55,000.

Dated this 5 day of Jan December 2008.


Mayer Bill Finch
City of Bridgeport


Lawrence Osborne
Director of Labor Relations
City of Bridgeport

1/5/09


Valerie Leas-Sorrentino, Business Manager
LIUNA Local 200

1/5/09

***55-08 CONSENT CALENDAR**

Agreement with AFSCME, Local 1522

**Report
of
Committee
on
Contracts**

Submitted: February 17, 2009

Adopted: _____

Attest: _____


City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

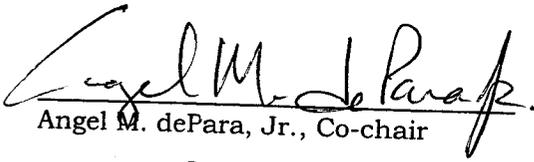
To the City Council of the City of Bridgeport:

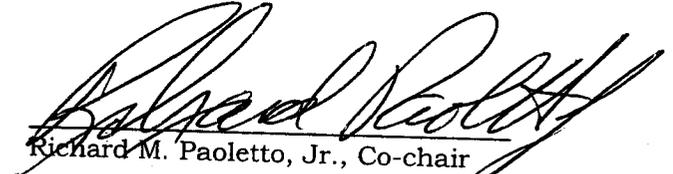
The Committee on **Contracts** begs leave to report; and recommends for adoption the following resolution:

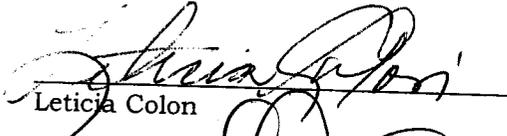
***55-08 CONSENT CALENDAR**

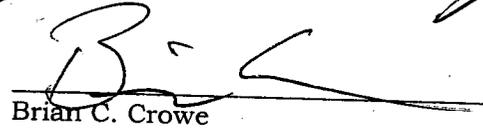
RESOLVED, That the attached Agreement between the City of Bridgeport and AFSCME, Local 1522, be and it hereby is, in all respects, approved, ratified and confirmed.

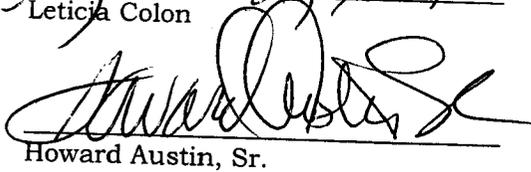
**RESPECTFULLY SUBMITTED,
THE COMMITTEE ON CONTRACTS**

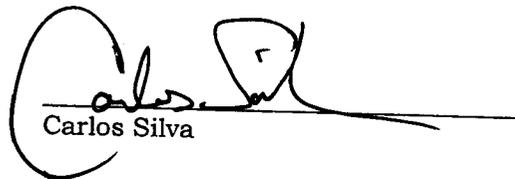

Angel M. dePara, Jr., Co-chair


Richard M. Paoletto, Jr., Co-chair


Leticia Colon


Brian C. Crowe


Howard Austin, Sr.


Carlos Silva

James Holloway

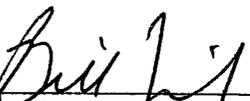
Tentative Agreement

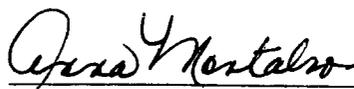
The following terms and conditions represent a tentative agreement between the City of Bridgeport and AFSCME Local 1522. This tentative agreement is subject to ratification by the parties herein;

1. WAGES

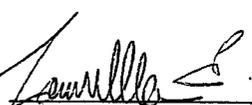
July 1, 2008	(0%)
July 1, 2009	(0%)
July 1, 2010	(2.5%)
January 1, 2011	(2.5%)
July 1, 2011	(2.5%)
January 1, 2012	(2.5%)

2. Step movement to remain unchanged in accordance with the collective bargaining unit agreement.
3. Effective July 1, 2010 the parties shall enter negotiations as it relates to the collective bargaining unit salary scale.
4. There shall be no lay-off of collective bargaining unit employees through June 30, 2010.
5. There shall be a health benefits re-opener (premium cost share) effective July 1, 2010.
6. Members of the collective bargaining unit shall take five (5) furlough days between July 1, 2008 and June 30, 2009.
7. The duration of the above terms and conditions shall be effective July 1, 2008 to June 30, 2012. All other terms and conditions of the collective bargaining unit agreement shall remain unchanged.


Bill Finch
Mayor
Date: 1/16/09


Anna Montalvo
President, Local 1522
Date: 1/16/09


Thomas Fascio
Staff Representative
AFSCME Council 4
Date: 1/16/09


Lawrence E. Osborne
Director of Labor Relations
Date: 1/16/09


Richard Dietz
Vice President, Local 1522
Date: 1-16-09

Agreement with AFSCME, Local 1303, City Attorney' Union.

**Report
of
Committee
on
Contracts**

Submitted: February 17, 2009

Adopted: _____

Attest:  _____
City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

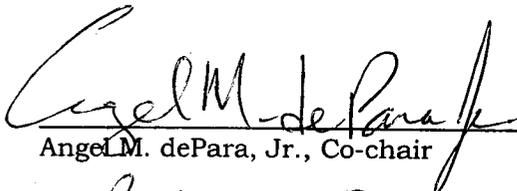
To the City Council of the City of Bridgeport:

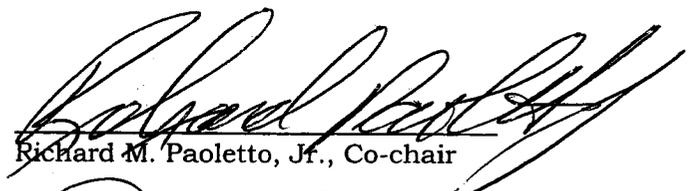
The Committee on **Contracts** begs leave to report; and recommends for adoption the following resolution:

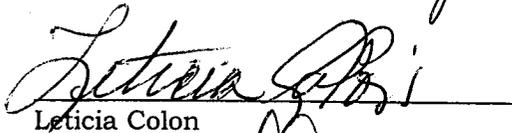
***56-08 CONSENT CALENDAR**

RESOLVED, That the attached Agreement between the City of Bridgeport and AFSCME, Local 1303, City Attorney's Union, be and it hereby is, in all respects, approved, ratified and confirmed.

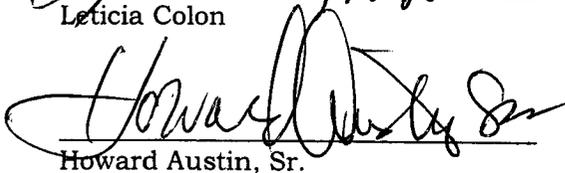
RESPECTFULLY SUBMITTED, THE COMMITTEE ON CONTRACTS

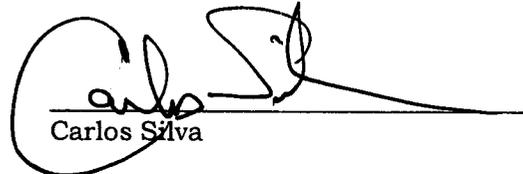

Angel M. dePara, Jr., Co-chair


Richard M. Paoletto, Jr., Co-chair


Leticia Colon


Brian C. Crowe


Howard Austin, Sr.


Carlos Silva

James Holloway

**AGREEMENT BETWEEN THE CITY OF BRIDGEPORT AND
BRIDGEPORT CITY ATTORNEYS' UNION
LOCAL 1303-272, COUNCIL #4 AFSCME, AFL-CIO
RE: WAGE AND BENEFITS RE-OPENER JULY 1, 2008**

This agreement is made and entered into by and between the City of Bridgeport ("employer") and the Bridgeport City Attorneys' Union, Local 1303-272, Council #4, AFSCME, AFL-CIO ("union") on the July 1, 2008 wage and benefit re-opener pursuant to Paragraph 39.2 of the collective bargaining agreement between employer and union effective July 1, 2004 through June 30, 2010.

1. **Furlough-** The union and employer agree that the union members will take a five (5) day unpaid furlough in Fiscal Year 2008-09. The union and employer recognize that because of the unique responsibilities of the union members as attorneys for the City of Bridgeport that it may not be possible for said members to take a furlough by March 29, 2009 and therefore the employer and union agree that pursuant to the oversight management authority of the City Attorney and Office of Labor Relations that union members can take said unpaid furlough up until June 30, 2009. For those union members who do not elect to spread out their furlough contribution evenly per pay check up to June 4, 2009, said union members agree that their furlough contribution will be given the week of March 30, 2009 through April 4, 2009. The union agrees that it will cooperate with the employer with respect to all paper work that must be completed to assist employer in implementing the furlough program.
2. **Wages-** For the July 1, 2008 wage re-opener the union and the employer agree that wages shall be increased three percent (3%). However the union and the employer agree that said wage increase will not take effect until January 1, 2010. The union and employer agree and understand that the wage increase is a deferment and that there will be no retroactive payment made to the union employees from the effective date of the increase (January 1, 2010) back to the date of the re-opener (July 1, 2008).
3. **Benefits-** The union and employer agree that all other benefits detailed in the collective bargaining agreement between employer and union effective July 1, 2004 through June 30, 2010 shall remain in effect.

Dated this day of January 2009

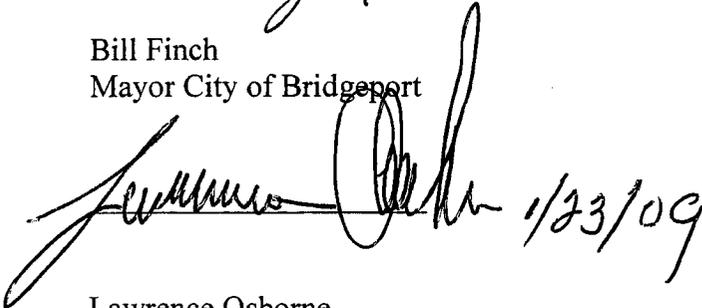


1-23-09

John R. Mitola
President Bridgeport
City Attorneys'
Union, Local 1303-272,
Council #4, AFSCME, AFL-CIO



Bill Finch
Mayor City of Bridgeport



Lawrence Osborne
Director of Labor Relations
City of Bridgeport

62-08
(Ref.# 77-07)

COMMUNICATION

FROM: Valerie Sorrentino, Deputy Director
Health & Social Services

Co-Sponsor by: Councilmember, Angel M. dePara, D-136th

Re: Grant Submission: re: 2008-2010 Elderly Health Screening Grant.

REFERRED TO: IMMEDIATE CONSIDERATION

CITY COUNCIL: February 2, 2009 (OFF THE FLOOR)

ADOPTED: _____

ATTEST: 

APPROVED: _____


Mayor

Referrals:

NOTIFIED ON FEBRUARY 24, 2009:
Ms. Valerie Sorrentino, Deputy Director
Health & Social Services Dept.

CITY CLERK

21:11PM 02B3J60
RECEIVED
CITY CLERKS OFFICE



BILL FINCH
Mayor

City of Bridgeport
Department of Health & Social Services

752 East Main Street, Bridgeport, Connecticut 06608
Telephone (203) 576-7680 • Fax (203) 576-8311

MARIAN EVANS, MD
Director of Health & Social Services
E-mail: evansm0@ci.bridgeport.ct.us

COMM.# 62-08 (REF.# 77-07) Ref'd for IMMEDIATE CONSIDERATION ON 2/2/2009 (OFF THE FLOOR)

February 2, 2009

To: Honorable City Council
From: Valerie Sorrentino
Re: **2008 – 2010 Elderly Health Screening Grant**

The Department of Health and Social Services seeks immediate consideration for Mayor Finch or his designee to enter into contract with the State Department of Social Services for an Elderly Health Screening Grant and to sign all related documents, contracts and resolutions.

The grant, @ \$90,097, provides health screening, education, assessments and physical examinations for over 750 Bridgeport senior citizens at 15 sites throughout the city.

Please note that this grant was initially approved for a one year contract at the June 16, 2008 City Council meeting. A copy of the resolution #77-07 is attached. The State Department then changed to a two-year grant cycle. Another resolution is needed to enter into contract for the two years. There are no other changes to the program.

Thank you for your attention to this matter and please feel free to call me at X7110 with any questions.

VS/

RECEIVED
CITY CLERKS OFFICE
09 FEB -3 AM 9:05
CITY CLERK



CITY OF BRIDGEPORT
OFFICE OF THE CITY CLERK
LEGISLATIVE DEPARTMENT

45 Lyon Terrace, Bridgeport, Connecticut 06604 • Telephone (203) 576-7081 • Fax (203) 332-5608

FLEETA C. HUDSON
City Clerk

ANN L. MURRAY
Assistant City Clerk

June 27, 2008

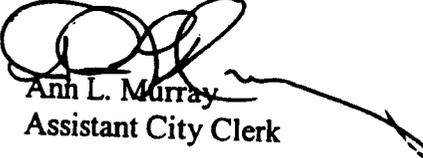
Valerie Sorrentino, Deputy Director
Department of Health & Social Services
Human Services
City of Bridgeport, Connecticut

Dear Ms. Sorrentino:

The City Council of the City of Bridgeport on June 16, 2008 adopted the following resolution #77-07:

RESOLVED, That the Mayor, Bill Finch, is empowered to enter into and amend contractual instruments in the name and on behalf of this Contractor with the Department of Social Services of the State of Connecticut for a 2008 - 2009 Elderly Health Screening Grant and to affix the corporate seal.

Attest:


Ann L. Murray
Assistant City Clerk

ALM:lp

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

WHEREAS, this funding has been made possible through a grant for Elderly Health Screening and,

WHEREAS, funds under this grant will be used to provide elderly health screening, testing and education for Bridgeport senior citizens, ages 60 and over 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 Social Services in an amount not to exceed \$90,097 for the purpose of providing elderly health screening, testing and education for Bridgeport senior citizens, ages 60 and over; and

NOW THEREFORE, BE IT RESOLVED BY THE City Council:

That it is cognizant of the City's grant application and contract to the State Department of Social Services to provide elderly health screening, testing and education for Bridgeport senior citizens, ages 60 and over and

That it hereby authorizes, directs and empowers the mayor or his designee to execute and file such application with the State Department of Social Services for an Elderly Health Screening Grant and to provide such additional information and to execute such other contracts and documents as maybe necessary under this program.



**EXECUTIVE SUMMARY
FOR ALL CITY COUNCIL AGENDA COMMUNICATIONS**

PROJECT TITLE : Elderly Health Screening Grant

RENEWAL X NEW

DEPARTMENT SUBMITTING INFORMATION: Health Department

CONTACT NAME: Valerie Sorrentino

PHONE NUMBER: 576-7110

PROJECT SUMMARY/DESCRIPTION:

The Elderly Health Screening Program, funded through the State Department of Social Services, provides health services including health education, assessments, early detection and follow-up services to Bridgeport senior citizens. The program has been in operation since 1973. In 2007, through a contractual agreement with Bridgeport Hospital, a full time registered nurse was hired to staff the program. Bridgeport Hospital pays the majority of the salary and fringe benefits for the RN which allows the City to operate the program full time.

CONTRACT DATES:

July 1, 2008 – June 30, 2010

PROGRAM GOALS AND OBJECTIVES

The goal of the Bridgeport Elderly Health Screening Program is to improve and monitor the quality of health of 750 Bridgeport seniors, ages 60 and over, through education, prevention and early detection. At least 750 seniors will be served each year either at their senior center or housing complex (list is attached) or at a Health Department community health fair. Measurable objectives include:

1. 100% of seniors who are screened are educated on appropriate health care maintenance.
2. 50% of women/men will receive a breast/prostate cancer screening. 100% of those with abnormal test results will be referred to appropriate clinical personnel for follow-up services.
3. 50% of seniors will receive a diabetes screen, with 100% of those with abnormal results receiving appropriate follow-up services.

IF APPLICABLE

FUNDING SOURCES (include matching/in-kind funds):

Federal:
State: \$90,097
City:
Other:

FUNDS REQUESTED

Salaries/Benefits:
Office/Medical Supplies: \$ 8,097
Refreshments: \$1,000
Mileage: \$1,000
Subcontracts: Yes X No
If yes, supply listing and dollar amount (please attach)

Approximately \$40,000 per year will be sub-contracted to Bridgeport Hospital to pay partial salary and fringe benefits for the registered nurse.

***Elderly Health
Screening List
And Schedule***

Barnum House
140 Fairfield Ave, BPT
203-384-0243
Annette
Call to Schedule

Bridgeport Elderly
2400 North Avenue Bpt
203-367-2677
Dorothy
1st or 2nd Friday
Monthly. 11am to 12:30

Forest Green and
Fireside Housing
75 Stewart Ave, Bpt
730 Palisade Ave, Bpt
FG -725 Palisade
Ave,Bpt
203-337-8848
Judy and Sister Mercita
75- 1st Friday of Month
730 &725 Tuesday or
Friday 2-4pm

Clifford House
1450 Main Street Bpt
203-367-0808
Isabel
2nd Tuesday of Month
11am to 1pm

Harborview Towers
376 East Washington
Avenue Bpt
203-337-8893
Manager: Maria
Coordinator: Monica
Afternoons ..Varies

***All Schedules are
subject to change
always***

Washington Heights
115 Washington Avenue
Bpt
203-367-8171
Amber
2nd Monday of the
Month 10:30am to 1pm

Towers II
1491 Central Avenue,
Bpt
203-579-1659
Giselle
Thursday qmonth-call to
confirm..1pm to 3pm

Twin Towers
199 Yacht Street
Black Rock, Bpt
203-579-7697
Maria
Q month Day-Varies –
Call –Afternoons 1pm to
3pm

Laurel wood Place
585 Norman Street
Bpt,
203-579-0577
Arnetta-203-579-2014
1st Tuesday of Month
9am to 11am

Stratfield Apartments
1241 Main Street
Bpt Entrance on Chapel
203-366-4321 office
367-6323 fax
Janis Call to Confirm
Q month Wednesday
1pm to 3pm

CONFIRM ALWAYS

North Bethany Senior
Center
20 Thorne St,Bpt
Carey 203-576-7730
3rd Friday 10:30am
to 1pm

Black Rock Senior
Center
Bonnie 203-576-7258
Last Wednesday of
Month 11:15am to 1pm

Eisenhower Senior
Center
263 Golden Hill Road
Bpt Rose Hoyt 203-
576-7993
Every Wednesday
9:45am till 12 noon
except on BRC day
Foot MD monthly on
Thursday. 8am to 10am

Ella Jackson Senior
Center
338 Connecticut
Avenue,Bpt
203-332-4346
Paulette Mack
1st Thursday of Month
10 am to 12 noon

East Side Senior Center
1057 East Main
Bpt
203-576-7212
Martha Santiago
Every Thursday except
on EJ day then change
10am to 12:00

COMM.# 64-08 Referred to Public Safety Committee on 2/17/2009.

Resolution

By Council Members Maria Valle, D-137 and Carlos Silva, D-136

For introduction at the meeting of the City Council to be held on February 17, 2009

For referral to the Committee on Public Safety and Transportation.

Resolution to include in each regular monthly committee meeting, a discussion and update from the Police Chief or designee on quality of life matters being addressed by the Strategic Enforcement Team and other initiatives.

Whereas, City Council Members are accountable to their constituents for addressing concerns that affect their quality of life.

Whereas, the Bridgeport Police Department, initially through the Neighborhood Enforcement Team and now through the Strategic Enforcement Team are addressing quality of life issues.

Be it resolved that a discussion with and update from the Police Chief or his designee on efforts to address quality of life matters be included in each regular monthly meeting of the Public Safety and Transportation Committee beginning with the meeting on March 3, 2009.

ATTEST
CITY CLERK
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09 FEB 10 PM 4: 59