

AGENDA

CITY COUNCIL MEETING

MONDAY, MAY 16, 2011

7:00 P.M.

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

Prayer

Pledge of Allegiance

Roll Call

MINUTES FOR APPROVAL:

Approval of City Council Minutes: April 18, 2011

COMMUNICATIONS TO BE REFERRED TO COMMITTEES:

- 81-10** Communication from Public Facilities re Application for Driveway Permit: # 1775 Reservoir Avenue – Wilber Cross School, referred to Public Safety and Transportation Committee.
- 82-10** Communication from Central Grants and Community Development re Grant Submission: 2011-2012 Preventive Health and Health Services Block Grant for Bridgeport Health and Nutrition Education Program, referred to Economic and Community Development and Environment Committee.
- 83-10** Communication from City Attorney re Suit Settlement with Colin Young, referred to Miscellaneous Matters Committee.

ITEMS FOR IMMEDIATE CONSIDERATION:

- 84-10** Communication from Mayor re Setting of the Mill Rate for Fiscal Year 2011-2012 **FOR IMMEDIATE CONSIDERATION.**
- 85-10** Communication from Central Grants and Community Development re Grant Submission: 2011 DPH Medical Reserve Corps Capability Building Grant **FOR IMMEDIATE CONSIDERATION.**

MATTERS TO BE ACTED UPON (CONSENT CALENDAR):

- *75-10** Contracts Committee Report re Parks Master Planning Services:
MNB124105 Professional Services Agreement with Sasaki Associates, Inc.

MATTERS TO BE ACTED UPON:

- 74-10** Contracts Committee Report re Sales and Leasing Agreement with AMS
Real Estate, LLC.

**ADDENDUM
TO
AGENDA**

CITY COUNCIL MEETING

MONDAY, MAY 16, 2011

7:00 p.m.

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

ADDED:

MATTERS TO BE ACTED UPON:

80-10

Budget and Appropriations Committee Report re Budget Modification to the Fiscal Year 2010-11 Nutrition Budget: Increase revenue line item 01900902 42617 Federal Breakfast Program to \$963,547 to include Increase appropriation line items 01900902 54595 Food to \$803,000 and 01900902 54600 Food Service Supplies to \$160,547 for funding to complete school year Breakfast Program.

**CITY COUNCIL PUBLIC SPEAKING SESSION
CITY of BRIDGEPORT**

**MAY 16, 2011
6:30 P.M.**

ATTENDANCE: Council President McCarthy

Council President McCarthy called the public speaking session to order at 6:30 pm.

**There weren't any speakers that previously signed up to address the city council, nor were there any persons present that requested to speak the night of the session.*

Council President McCarthy asked if there was anyone present to speak. Hearing none, the public speaking session was closed.

The public speaking session was closed at 6:31 pm.

CITY COUNCIL MEETING

Monday, May 16, 2011

7:00 p.m.

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

ATTENDANCE: Brannelly, A. Ayala, Taylor-Moye, Brantley, Walsh, Austin, Lyons
Vizzo-Paniccia, dePara, M. Ayala, Baker

ABSENT: Council members: M. McCarthy, Bonney, Blunt, Silva, Martinez,
Holloway

Council President called the meeting to order at 7:05 pm.

- Roll Call - the city clerk took the roll and she announced there was a quorum.
- Prayer - the prayer was offered by Council member Lyons.
- Pledge of Allegiance - the pledge was led by the new health director Kristin duBay Horton.

Council President announced Mayor Finch wasn't in attendance tonight, because he was invited by President Obama to the white house to celebrate the championship of the UConn Huskies Team.

He further announced that Council member Blunt was still rehabilitating at home and he is doing well. Council member Martinez wasn't in attendance, because she had a previous engagement and Council member Silva had a work commitment.

MINUTES FOR APPROVAL:

Approval of City Council Minutes: April 18, 2011

**** COUNCIL MEMBER BRANNELLY MOVED TO ACCEPT THE MINUTES
** COUNCIL MEMBER dePARA SECONDED
** MOTION PASSED UNANIMOUSLY**

**** COUNCIL MEMBER dePARA MOVED TO REFER COMMUNICATIONS TO BE REFERRED TO COMMITTEES
** COUNCIL MEMBER AUSTIN SECONDED**

COMMUNICATIONS TO BE REFERRED TO COMMITTEES:

- 81-10** Communication from Public Facilities re Application for Driveway Permit: # 1775 Reservoir Avenue – Wilber Cross School, referred to Public Safety and Transportation Committee.
- 82-10** Communication from Central Grants and Community Development re Grant Submission: 2011-2012 Preventive Health and Health Services Block Grant for Bridgeport Health and Nutrition Education Program, referred to Economic and Community Development and Environment Committee.
- 83-10** Communication from City Attorney re Suit Settlement with Colin Young, referred to Miscellaneous Matters Committee.
- **** **MOTION PASSED UNANIMOUSLY**

ITEMS FOR IMMEDIATE CONSIDERATION:

Council member dePara made a request to remove item 85-10 for immediate consideration. He explained that the immediate consideration wasn't required and the item needed to be referred back to committee.

- **** **COUNCIL MEMBER dePARA MOVED TO REFER THE ITEM TO THE ECONOMIC and COMMUNITY DEVELOPMENT COMMITTEE 85-10**
Communication from Central Grants and Community Development re Grant Submission: 2011 DPH Medical Reserve Corps Capability Building Grant
- **** **COUNCIL MEMBER VIZZO-PANICCIA SECONDED**
- **** **MOTION PASSED UNANIMOUSLY**

- 84-10** Communication from Mayor re Setting of the Mill Rate for Fiscal Year 2011-2012 **FOR IMMEDIATE CONSIDERATION.**

- **** **COUNCIL MEMBER dePARA MOVED TO APPROVE**
- **** **COUNCIL MEMBER A. AYALA SECONDED**
- **** **MOTION PASSED UNANIMOUSLY**

- 85-10** Communication from Central Grants and Community Development re Grant Submission: 2011 DPH Medical Reserve Corps Capability Building Grant **FOR IMMEDIATE CONSIDERATION.** - *item not taken up, referred back to committee.*

MATTERS TO BE ACTED UPON (CONSENT CALENDAR):

***75-10** Contracts Committee Report re Parks Master Planning Services: MNB124105 Professional Services Agreement with Sasaki Associates, Inc.

**** COUNCIL MEMBER LYONS MOVED TO APPROVE
** COUNCIL MEMBER BRANTLEY SECONDED**

Council member Walsh asked if there was anyone present to address the item. Council President McCarthy observed that there was no one present.

Council member Walsh stated that if they looked at the RFP, in regard to minority firms, he questioned if any of the twelve firms that responded were minority firms. There wasn't anyone present to answer the question.

Council member Walsh stated they have the ordinance to encourage and develop minority firms. He emphasized that no information was given to the committee to indicate whether or not any minority firms responded to the RFP. He recalled that there was a \$280k contract to help the city develop the master plan for parks. However, he questioned if the city should be investing such a large amount of money into the parks, noting that he didn't want to hear later that there is no way to implement the plan. He further mentioned the project that was planned for the Pequonnock River that never came to fruition. He stated that until he had more information about minority contracting, he would vote against the item.

Council member Baker questioned if the NRZ's were involved in the creation of the master plan. Council President McCarthy responded yes. He said there were discussion with the NRZ's and the neighbors to find out what they wanted for the parks.

Council member Brantley asked if it was possible to table the item, to address the issue Council member Walsh had about why minority firms didn't respond to the RFP.

Council member Taylor-Moye agreed that more information was needed about why there was a lack of minority firms that responded to the RFP. She said she wasn't comfortable voting on the item until there was more information.

Council member Lyons suggested that if further explanation was needed, Steve Laden of the Parks Department had the information. She recalled that Mr. Laden attended the committee meeting and he relayed information about the firm that was selected, who has expertise in the field. She stated that the item was approved in committee based on the information that was provided. However, she felt it would be okay to table the item to obtain more information.

**** COUNCIL MEMBER BRANTLEY MOVED TO TABLE THE ITEM FOR THE
PURPOSE OF OBTAINING ADDITIONAL INFORMATION 75-10 Contracts
Committee Report re Parks Master Planning Services: MNB124105
Professional Services Agreement with Sasaki Associates, Inc.**

**** COUNCIL MEMBER LYONS SECONDED
** MOTION PASSED UNANIMOUSLY**

MATTERS TO BE ACTED UPON:

74-10 Contracts Committee Report re Sales and Leasing Agreement with AMS Real Estate, LLC.

**** COUNCIL MEMBER A. AYALA MOVED TO APPROVE
** COUNCIL MEMBER AUSTIN SECONDED**

Council member Walsh stated there were two other firms that responded to the RFP. He questioned if those firms were minority enterprises. Mr. Lavernoich stated that none of the three firms that responded to the RFP were minority firms.

Council member Walsh stated that as a city council, they need to get their arms around the issue more; to at least identify the information when an item is referred. He thought that perhaps they should establish a policy that if there aren't any qualifying minority firms that bid, then the project should be put back out to bid. He stressed that there seemed to be enough minority firms in the city to pick up some of the work. He felt that if they didn't encourage minority firms to bid, then the process was futile.

Council member Walsh went on to say that as far as this item goes, he understood the attempt is to move the properties. He stated that although three firms responded, he researched the AMS website and he found eight properties that they are brokering for sale; three in the residential area and three in the industrial area. He said these weren't the kind of properties the city was looking to lease to. Overall, he felt there was a small pool of respondents that bid on the project.

Council member Baker agreed with Council member Walsh. He questioned whether or not the minority firms in the city were being contacted about contracts that are put out. He made a request to find out this information.

Council member Brantley questioned how much the Office of Small Minority Contractors was involved in getting the word out to minority businesses, so they can take part in the bidding. She further stressed that the Office of Small Minority Contractors should get more involved to alert minority businesses.

Mr. Lavernoich said he was aware that they have many minority contractors registered in Ms. Caviness's database, but he wasn't sure why those contractors didn't bid, noting there was an advertisement in the Connecticut Post about the contract.

Council President McCarthy said he reached out to Ms. Caviness to get an update of where the Office of Small Minority Contractors is. He expressed that it's important to get the word out that the office exists to reach more respondents.

Council member Lyons said she also investigated the AMS Real Estate website and she found that they are a well qualified company. However, she felt they could make more of an effort to advertise; by posting in the newspaper a couple of times. She mentioned that she talked to a couple of people about the contract and they indicated that they didn't see the advertisement. She felt that better advertising would help solicit more responses and be more successful. She also thought that realtors could be helpful in this area as well.

Council member Brantley suggested that they place the information with local minority run newspapers that target minority communities, as another means to reach out to prospective respondents.

Council member Vizzo-Paniccia stated that due to her previous dealings with AMS Real Estate, LLC and any future business she may conduct with them, she would abstain from the vote.

Council President McCarthy stated he also researched AMS Real Estate, LLC and he found them to be a top notch qualified firm.

**** MOTION PASSED WITH ELEVEN VOTES IN FAVOR AND ONE ABSTENTION (COUNCIL MEMBER VIZZO-PANICCIA)**

ADDED:

MATTERS TO BE ACTED UPON:

80-10 Budget and Appropriations Committee Report re Budget Modification to the Fiscal Year 2010-11 Nutrition Budget: Increase revenue line item 01900902 42617 Federal Breakfast Program to \$963,547 to include Increase appropriation line items 01900902 54595 Food to \$803,000 and 01900902 54600 Food Service Supplies to \$160,547 for funding to complete school year Breakfast Program.

**** COUNCIL MEMBER dePARA MOVED TO APPROVE
** COUNCIL MEMBER A. AYALA SECONDED**

Council President McCarthy noted that the purpose of the budget modification was to ensure that kids get milk for the remainder of the school year.

**** MOTION PASSED WITH ELEVEN VOTES IN FAVOR AND ONE ABSTENTION (COUNCIL MEMBER BRANNELLY)**

OTHER BUSINESS:

- Council member Brantley updated that there was a beautiful march for hunger at Seaside Park. She acknowledged the participation of several churches, Prophetess Claytor and everyone involved. She expressed that they should continue to support the soup kitchens and food pantries.

- ** COUNCIL MEMBER VIZZO-PANICCIA MOVED TO SUSPEND THE RULES FOR THE PURPOSE OF ADDING AN ITEM FOR REFERRAL (ITEM # 86-10)**
- ** COUNCIL MEMBER BRANTLEY SECONDED**
- ** MOTION PASSED UNANIMOUSLY**

- ** COUNCIL MEMBER VIZZO-PANICCIA MOVED TO REFER RE: PROPOSED SETTLEMENT OF CLAIM FOR ATTORNEY'S FEES IN THE MATTER OF THE BRIDGEPORT GUARDIANS, INC. et al v. Arthur J. Delmonte et al – U.S.D.C. No. 5:78 CV175 (JBA) TO THE MISCELLANEOUS MATTERS COMMITTEE**
- ** COUNCIL MEMBER LYONS SECONDED**
- ** MOTION PASSED UNANIMOUSLY**

- ** COUNCIL MEMBER WALSH MOVED TO SUSPEND THE RULES FOR THE PURPOSE OF REFERRING AN ITEM TO COMMITTEE (ITEM # 87-10)**
- ** COUNCIL MEMBER BRANTLEY SECONDED**
- ** MOTION PASSED UNANIMOUSLY**

- ** COUNCIL MEMBER WALSH MOVED TO REFER RE: ORDINANCE CONCERNING ADULT ENTERTAINMENT VENUES OR SEXUALLY ORIENTED BUSINESSES, PER THE PLANNING & ZONING PUBLIC HEARING ON THE REQUEST FOR A MORATORIUM**

Council member Walsh stated he was looking to get an ordinance on the books to monitor these types of businesses.

- ** COUNCIL MEMBER BRANTLEY SECONDED**

Council President McCarthy agreed with the proposed ordinance. He commented that a choice needs to be made by the city and the reality is that an ordinance will help tighten restrictions on these establishments.

- ** MOTION PASSED UNANIMOUSLY**

- Council member dePara reminded everyone that there was an ECDE Committee meeting scheduled on Tuesday, May 17. He noted that item 85-10 would be addressed during the meeting.

ADJOURNMENT

**** COUNCIL MEMBER VIZZO-PANICCIA MOVED TO ADJOURN
** COUNCIL MEMBER dePARA SECONDED
** MOTION PASSED UNANIMOUSLY**

The meeting adjourned at 7:45 pm.

Respectfully submitted,

Diane Graham
Telesco Secretarial Services



OFFICE OF THE
DEPARTMENT OF PUBLIC FACILITIES

999 BROAD STREET
BRIDGEPORT, CONNECTICUT 06604
TELEPHONE (203) 576-7130

CHARLES M. CARROLL
Director Public Facilities

BILL FINCH
Mayor

COMM. # 81-10 Referred to Public Safety & Transportation Committee (05/16/2011)

Date: April 29, 2010

To: Frances Wilson
Assist. City Clerk

From: Charles M. Carroll Director
Public Facilities

Re: **Application for Permit to Extend Driveway Width**

RECEIVED
CITY CLERK'S OFFICE
2011 MAY -4 A 11:09
ATTEST
CITY CLERK

Please place the attached application from 1775 Reservoir Avenue -- Wilber Cross School on the next City Council agenda for referral to the Public Safety Committee.

Attached is a letter from Jon Urquidi, Engineering Supervisor with his recommendation for permit City Ordinance 12.08/030.



CITY OF BRIDGEPORT
ENGINEERING DEPARTMENT

CITY HALL - 45 Lyon Terrace
Bridgeport, Connecticut 06604-4023
Telephone (203) 576-7211
Fax (203) 576-7154

April 12, 2011

Charles Carroll
Director Public Facilities
Bridgeport, Connecticut 06604

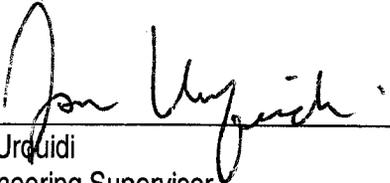
**Re: 1775 Reservoir Avenue – Wilber Cross School - Application for Permit to
Extend Driveway Width Site Layout Plan C100 Dated 6/28/10**

Dear Mr. Carroll:

Please be advised that we have reviewed the letter from Raymond Wiley dated 3/31/11 for the extension of driveway width on Reservoir Avenue for the Wilbur Cross School. The rationale for the driveway entrance extension is due to providing adequate turning movements for school buses and emergency vehicles that will be entering the site. Without sufficient width the vehicles would drive over the curbing and sidewalks on Reservoir Avenue and potentially damage them. We recommend that approval be granted for the driveways as depicted on the plans and stated in the letter based on the following additional comments:

1. The appropriate one way signage should be added to the plans on private property.
2. Provide stop bars and "stop" signs at all driveway exits on private property.
3. The petitioners request must be formally referred to City Council for any waiver requests to City Ordinances. The request should be accompanied by a recommendation by the Fire Marshal's office that wider driveways are required to facilitate emergency vehicle movements in and out of the subject property.

Very truly yours,



Jon Urquidi
Engineering Supervisor

JPU/p
Enclosure

c: Bobby Kennedy, Public Facilities
Mike Nidoh, OPED

Dave Cote, Engineering
Fire Chief Brian Rooney



City of Bridgeport
School Construction Program
O&G Industries, Inc., Program Managers
999 Broad Street, Bridgeport, Connecticut 06604
Phone: 203 576 7984 Fax: 203 576 3959

March 31, 2011

Bridgeport Depart. of Public Work
999 Broad St
Bridgeport, CT 06604

ATTN: Charles Carroll

Subject: Common Council Petition
Driveway at Wilbur Cross Elementary School

Dear Mr. Carroll:

Attached is the information that will be necessary to submit this request to City of Bridgeport City Council to request a waiver to the City Statue 12.08.030 and statue 12.08.070. We are requesting that your office submit this to the common council for approval.

We have attached a copy of the requested resolution, the proposed driveway layout, the complete site layout C100, and the existing site survey. Please attached these to the resolution for final submission.

We will be bidding this project in April 2011 with a start date in June 2011. Please submit this request as soon as possible.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Raymond Wiley'.

Raymond Wiley, Senior Program Manager
Bridgeport School Construciton Program

Attached: Resolution
Driveway Layout
Site Layout
Site Survey

RESOLUTION OF THE BRIDGEPORT CITY COUNCIL
Regarding the Width of the Driveways
For the Wilbur Cross Elementary School Project:

Whereas, the City of Bridgeport, acting through its School Building Committee, has undertaken a School Construction project resulting in reconfiguring the school's entrance drives; and;

Whereas, City ordinance Section 12.08.030 regarding "Restrictions as to Driveways:", effectively limits driveway openings widths to 20' at the property line; and;

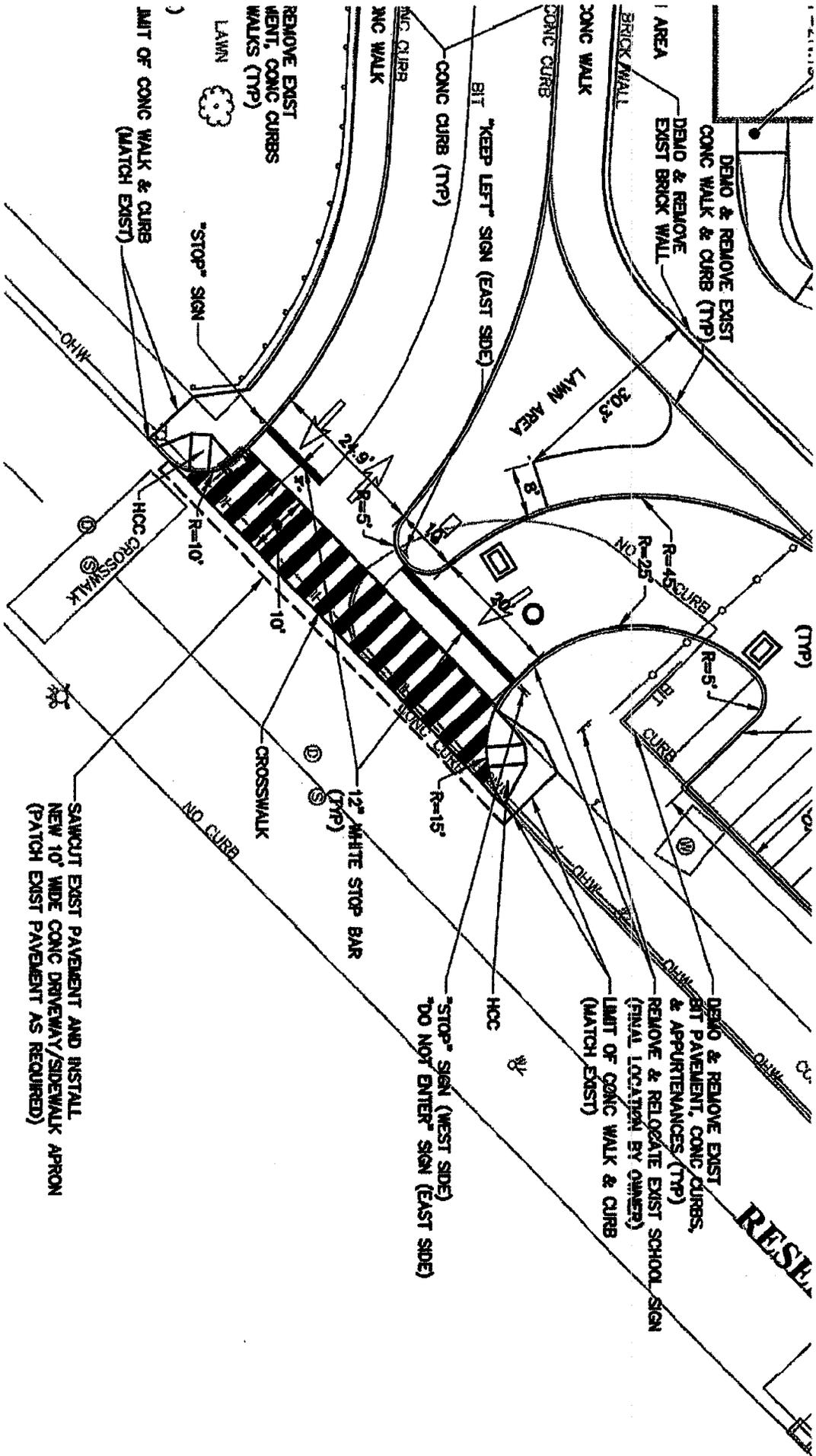
Whereas, the proposed school building's two driveways are designed to meet the requirements to accommodate cars, delivery vehicles, buses and city fire apparatus that have a turning radii that mandate turning widths to be wider than those permitted under this ordinance, and;

Whereas, the "southern driveway" needs a width of 54' 9" plus turning radius to accommodate one lane entering the property and on lane exiting the property.

Whereas, this driveway opening is necessary to accommodate the access requirements for the existing school,

Whereas, the City's Fire Department and national traffic circulations industrial standards with regards to point of egress to public sites are designed to protect the life, health and safety of the citizenry,

Therefore, Be it resolved, that the Bridgeport City Council hereby acknowledges the access issues described above associated with this site and therefore, waives section 12.08.030 and its associated restrictions on the proposed southern driveway for the Wilbur Cross Elementary School project located at 1775 Reservoir Ave, Bridgeport, Connecticut.



DEMO & REMOVE EXIST
CONC WALK & CURB (TYP)

DEMO & REMOVE
EXIST BRICK WALL

"KEEP LEFT" SIGN (EAST SIDE)
BIT

REMOVE EXIST
MENT, CONC CURBS
WALKS (TYP)

LIMIT OF CONC WALK & CURB
(MATCH EXIST)

SAWCUT EXIST PAVEMENT AND INSTALL
NEW 10' WIDE CONC DRIVEWAY/SIDEWALK APRON
(PATCH EXIST PAVEMENT AS REQUIRED)

DEMO & REMOVE EXIST
BIT PAVEMENT, CONC CURBS,
& APPURTENANCES (TYP)
REMOVE & RELOCATE EXIST SCHOOL SIGN
(FINAL LOCATION BY OWNER)
LIMIT OF CONC WALK & CURB
(MATCH EXIST)

"STOP" SIGN (WEST SIDE)
"DO NOT ENTER" SIGN (EAST SIDE)

12" WHITE STOP BAR
(TYP)

RESERVED



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

ALEXANDRA B. McGOLDRICK
Acting Director
Office of Central Grants

BILL FINCH
Mayor

COMM.#82-10 Referred to ECD&E Committee on 05/16/2011

May 3, 2011

To: Fleeta Hudson

From: Renu Gupta

Re: **2011 – 2012 Preventive Health and Health Services Block Grant
Bridgeport Health and Nutrition Education Grant**

RECEIVED
CITY CLERK'S OFFICE
2011 MAY 10 A 11:45
ATTEST
CITY CLERK

The Central Grants Department seeks authorization for Mayor Finch to enter into contract with the State Department of Public Health for a Preventive Health and Health Services Block Grant and to sign all related documents, contracts and resolutions.

The grant, @ \$26,981 will fund a Health and Nutrition Education Program that will create a community nutrition and physical activity program to address obesity in Bridgeport, Connecticut. The program will have two major components: Nutrition and Physical Activity.

Thank you for your attention to this matter and please feel free to call me at 576-7732 with any questions.



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

PROJECT TITLE: Bridgeport Health and Nutrition Education Grant

RENEWAL X NEW _____

DEPARTMENT SUBMITTING INFORMATION: Central Grants

CONTACT NAME: Renu Gupta

PHONE NUMBER: 576-7732

PROJECT SUMMARY/DESCRIPTION:

The program will create a community nutrition and physical activity program that will address the problem of obesity in Bridgeport, Connecticut. The program will have two major components: Nutrition and Physical Activity.

Nutrition

Working with the Wholesome Wave Foundation and Ceccarelli Farms, a farm stand will be located at the Health Department, 752 East Main Street in the east side of Bridgeport. Fresh produce will be made available to low income residents who have limited access to fresh fruits and vegetables. The program will be geared to senior citizens, WIC and SNAP recipients, veterans and people with disabilities who utilize the food pantry. Nutrition classes will be held through a partnership with the UCONN Cooperative Extension Program.

Physical Activity

The program will promote physical activity by creating and advertising a list of parks and neighborhood walking routes in Bridgeport. Maps will be distributed throughout the community and on the website. Special events such as community walks will be planned during the summer months.

CONTRACT DATES:

July 1, 2011 – June 30, 2012

PROJECT GOALS AND PROCEDURES:

- Provide access to fresh fruits and vegetables through an onsite farm stand located at the Health Department.

- Accept WIC, SNAP and SFMNP vouchers at the farm stand and offer incentives and double- value coupons to encourage the purchase of fresh fruits and vegetables.
- Provide nutrition classes and cooking demonstrations to introduce new vegetables and teach people to shop and cook healthy.
- Promote physical activity through established and publicized neighborhood walking routes.

IF APPLICABLE

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

Federal:
 State: \$26,981
 City:
 Other:

FUNDS REQUESTED

Salaries/Benefits:
 Supplies: \$2,906
 Transportation/Travel: \$4,875
 Other (explain): \$19,200 *
 Subcontracts: Yes ___ No X
 If yes, supply listing and dollar amount (please attach

- * College interns @ \$16,200 to staff farm stand; distribute flyers and marketing materials; develop neighborhood walking routes; operate EBT machines.
- * Advertising @ \$1,000 to print and distribute marketing materials.
- * Incentive coupons @ \$1,000 (\$5 x 200) will be given to recipients of the food pantry who participate in nutrition classes.
- * Equipment @ \$500 to purchase a gas grill for cooking demonstrations.
- * Food @ \$500 for nutrition classes and cooking demonstrations

WHEREAS, the State Department of Public Health 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 Bridgeport Health and Nutrition Education Program and,

WHEREAS, funds under this grant will be used to support a community nutrition and physical activity program and,

WHEREAS, it is desirable and in the public interest that the City of Bridgeport, Department of Human Services, submit an application to the State Department of Public Health in an amount not to exceed \$26,981 for the purpose of supporting a community nutrition and physical activity program, 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 Public Health to support the community nutrition and physical activity program, and

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 for a Bridgeport Health and Nutrition Education Program and 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

Michael G. Caldwell
Gregory M. Conte
Betsy A. Edwards
Richard G. Kascak, Jr.
Russell D. Liskov
John R. Mitola
Ronald J. Pacacha
Lisa R. Trachtenburg



COMM.#83-10 Referred to Miscellaneous Matters
Committee on 5/16/2011

ASSISTANT CITY ATTORNEYS

Salvatore C. DePiano
R. Christopher Meyer
Edmund F. Schmidt
Eroll V. Skyers

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

ATTEST
CITY CLERK

RECEIVED
CITY CLERK'S OFFICE
2011 MAY 11 P 2:20

May 10, 2011

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

Re: Proposed Settlement of Pending Litigation in the Matter of Colin Young

Dear Councilpersons:

The Office of the City Attorney respectfully recommends the following pending lawsuit be settled as set forth below. It is our professional opinion that resolving this matter for the consideration agreed to between the parties is in the best interests of the City of Bridgeport.

<u>Plaintiff</u>	<u>Nature of Claim</u>	<u>Plaintiff's Attorney</u>	<u>Consideration</u>
Colin Young	Use of Force	Tina Sypek D'Amato	\$50,000.00

Kindly place this matter on the agenda for the City Council meeting on May 16, 2011 for referral to the Miscellaneous Matters Committee only. Thank you for your assistance in this matter.

Very truly yours,

Mark T. Anastasi
City Attorney

cc: Bill Finch, Mayor
Fleeta C. Hudson, City Clerk
Kim Laue

84-10

Referrals:

COMMUNICATION

FROM: Bill Finch
Mayor

RE: SETTING OF THE MILL RATE
FOR FISCAL YEAR 2011-2012

REFERRED FOR IMMEDIATE CONSIDERATION

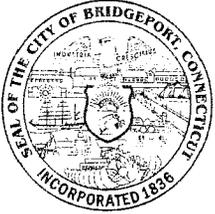
CITY COUNCIL: May 16, 2011

ADOPTED: _____

ATTEST: 

APPROVED: _____

Mayor



OFFICE OF THE MAYOR
CITY OF BRIDGEPORT, CONNECTICUT

999 BROAD STREET
BRIDGEPORT, CONNECTICUT 06604
TELEPHONE (203) 576-7201
FAX (203) 576-3913

BILL FINCH
Mayor

COMM. # 84-10 Referred for Immediate Consideration on 05/16/2011

May 11, 2011

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

Dear Fleeta:

I am respectfully requesting that the following be made part of the Agenda for adoption as **IMMEDIATE CONSIDERATION** at the next City Council meeting scheduled for Monday, June 4, 2011.

CITY COUNCIL RESOLUTION for:

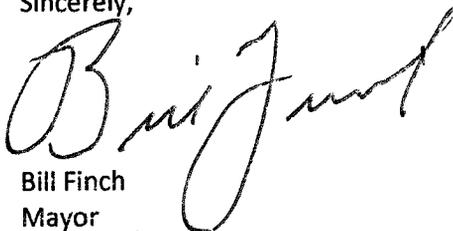
Tax Rate Determination and Budget Summary

Mill Rate to be established at 39.64

(This includes the Voter Mandated Library Tax of 1 mill dedicated to the Library, which is equivalent to \$6,723,000.)

Should you have any questions, please do not hesitate to contact my office.

Sincerely,



Bill Finch
Mayor

CC: Andrew Nunn, CAO
Dawn Norton, CFO
Thomas Sherwood, OPM Director

RECEIVED
CITY CLERK'S OFFICE
2011 MAY 11 P 3:49
ATTEST
CITY CLERK



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

ALEXANDRA B. McGOLDRICK
Acting Director
Office of Central Grants

Ref'd to ECD&E Committee changed on the floor
COMM. # 85-10 ~~for IMMEDIATE CONSIDERATION~~ on 05/16/2011

May 9, 2011

To: City Clerk Fleeta Hudson
From: Renu Gupta
Re: 2011 DPH Medical Reserve Corps Capacity Building Grant

ATTEST
CITY CLERK

RECEIVED
CITY CLERK'S OFFICE
2011 MAY 10 A 11:45

The Central Grants Department seeks immediate consideration and authorization for Mayor Finch or his designee to enter into contract with the State of Connecticut Department of Public Health for a Medical Reserve Corps Capacity Building Grant and to sign all related documents, contracts and resolutions.

The grant, in the amount of \$15,000, will allow the Health Department to recruit and train volunteers for the MRC and participate in local and regional meetings and trainings. The MRC is a team of trained volunteers who, when called upon during a disaster, will support and enhance a local, regional or statewide community response.

Thank you for your attention to this matter. Please feel free to call me at 576-7732 if you have any questions.

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

PROJECT TITLE : Medical Reserve Corps (DPH)

RENEWAL NEW

DEPARTMENT SUBMITTING INFORMATION: Central Grants

CONTACT NAME: Renu Gupta

PHONE NUMBER: 576-7732

PROJECT SUMMARY/DESCRIPTION:

The Medical Reserve Corps (MRC) is a team of trained volunteers who supports and enhances local, regional or statewide community response during disaster when activated. The Bridgeport MRC will be under Health Department.

CONTRACT DATES:

May 15, 2011 – June 30, 2011

PROJECT GOALS AND PROCEDURES:

- 1) Actively attend and participate in Emergency Preparedness meetings.
- 2) Recruit screen and train volunteers.
- 3) Collaborate with community partners such as local hospitals, non-profits, churches and volunteer organizations for recruitment and retention of volunteers.
- 4) Coordinate regional initiatives and projects that support capacity building.
- 5) Support ongoing pandemic influenza planning and response.

IF APPLICABLE

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

Federal:
State: \$15,000
City:
Other:

FUNDS REQUESTED

Salaries/Benefits:
Office Supplies:
Advertising: \$6,000
Travel:
Mileage reimbursement

Subcontracts: Yes No
If yes, supply listing and dollar amount

\$9,000 for MRC coordination- contractor

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

WHEREAS, this funding has been made possible through the MRC Capacity Building Grant and,

WHEREAS, funds under this grant will be used to build the capacity of the Medical Reserve Corps in Bridgeport; 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 Department of Public Health in an amount not to exceed \$15,000 for the purpose of building the capacity of the Medical Reserve Corps in Bridgeport; 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 Department of Public Health to build the capacity of the Medical Reserve Corps.

2. That it hereby authorizes, directs and empowers the mayor or his designee to execute and file such application with the Department of Public Health for an MRC Capacity Building Grant, to provide such additional information and to execute such other contracts, amendments and documents as maybe necessary under this program.



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:

***75-10 Consent Calendar**

RESOLUTION

WHEREAS, The City of Bridgeport Parks and Recreation Department provides well maintained, enjoyable park grounds and facilities to enhance the quality of life for City residents and visitors; preserves and protects open spaces, provides opportunities for active and passive recreation, and maintains the landscapes, environment, structures, and woodlands that exist within these areas; and

WHEREAS, the City of Bridgeport conducted a Request for Proposal for Parks Master Planning Services City of Bridgeport, CT: MNB124105 which named the following three primary goals:

1. Enhance existing resources of the Park City.
2. Expand the city's open space inventory.
3. Ensure that all residents live within a 15-minute walk from a park or open space by 2020.

WHEREAS, the City of Bridgeport identified the following objectives in the aforementioned request for proposals:

- a. Recreation opportunities for all age groups and underserved communities and neighborhoods;
- b. Parks and land preserves for passive recreation, protection of threatened natural habitats, and stormwater management;
- c. Neighborhood community centers and playgrounds;
- d. School playgrounds available for public use;
- e. Optimization of existing parks and open spaces;
- f. Enhancement of and improved access to the city's waterfront;
- g. Interconnections among the City's major parks and open space areas.
- h. Coordinate with similar planning efforts on-going at Pleasure Beach including restored public access; and

WHEREAS, the City of Bridgeport reviewed all submittals and conducted interviews of all forms with a selection committee which process was approved by the City's Board of Public Purchases and under which Sasaki Associates, has been selected to perform these professional services; and



Report of Committee on Contracts Committee
*75-10 Consent Calendar

-2-

WHEREAS, the Parks & Recreation Department is requesting approval to execute a contract agreement with Sasaki Associates, Inc. in the amount of \$278,000 to prepare the requisite Parks Master Plan; and

WHEREAS, the Department of Public Facilities and Parks and Recreation are ready to manage this extensive effort that focuses on implementation as much as for the planning, architectural design, construction and development of public projects that improve the City and expand the park and recreational services the City provides to its residents; and

WHEREAS, the City of Bridgeport has 45 parks and over 1300 acres of park land under its jurisdiction by the City of Bridgeport, Parks and Recreation Department, and the Board of Park Commissioners; and

WHEREAS, these parks and connective roadways would benefit greatly by the creation and completion of a detailed city wide Park System Master Plan to provide improvements such as park amenities, playgrounds, picnic areas, greenways and other recreational offerings in order to improve services to City residents; Now, therefore be it

RESOLVED, that the Mayor may and be hereby authorized to execute a contract for a City Park's Master Plan, substantially in the form attached hereto and made a part hereof as Exhibit A, upon final approval of the Office of the City Attorney.

RESPECTFULLY SUBMITTED,
THE COMMITTEE ON CONTRACTS

Richard M. Paoletto, Jr., Co-chair

Carlos Silva, Co-chair

Michelle A. Lyons

Martin C. McCarthy

Howard Austin, Sr.

Robert P. Curwen, Sr.

James Holloway

Thomas McCarthy, President
(Added to Make Quorum)

City Council: May 16, 2011

Tabled on 5/16/2011

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT between the parties dated the ___ day of _____, 2011 (the "Agreement") is hereby entered into between Sasaki Associates, Inc., a corporation organized and existing under the laws of the State of _____ with offices at 64 Pleasant Street, Watertown, MA 02472 (the "Consultant") and the City of Bridgeport, with offices at 45 Lyon Terrace, Bridgeport, Connecticut 06604 (the "City") on the following terms and conditions:

WHEREAS the City requires the master planning services of the Consultant for the purpose of assisting the City in obtaining and implementing a master plan for its parks through variety of tasks including conceptual designs and feasibility studies; and

WHEREAS the Consultant agrees to commence its Services and perform the same in accordance with this Agreement and as specifically directed by the City;

NOW, THEREFORE, for good and valuable consideration, the parties mutually agree as follows:

1. General Undertaking. The parties are entering into this Agreement for the purposing of engaging the Consultant to facilitate master planning and implementation of a master plan for its parks as more fully set forth and described in the statement of work attached hereto and made a part hereof as Exhibit 1 and such other tasks as the City may direct the Consultant to perform within the general scope of activities for which the Consultant is being engaged (the "Services" or "Project").

2. Term of Engagement. This Agreement shall commence within five (5) business days of the date last below written and shall continue in full force and effect until the Services are completed according to this Agreement and the schedule attached hereto and made a part hereof as Exhibit 2, or until the earlier termination of this Agreement as provided herein, whichever occurs first ("Term"). Termination shall have no effect on the City's obligation to pay for Services rendered through such earlier termination for work that has been completed in accordance with the terms of this Agreement and which has been accepted in due course by the City. Notwithstanding the foregoing, the Services shall be completed within six (6) months of the date last below written.

3. Record of Activities. The Consultant shall maintain contemporaneous records of time devoted and tasks performed in sufficient detail requested by the City, which records shall be submitted to the City monthly during the Term.

Unless otherwise stated, all work schedules and assigned team members as set forth herein shall be considered a material part of this Agreement. Assigned team members shall not be substituted or replaced absent the prior consent of the City, which consent shall not be unreasonably withheld.

4. Payment.

(a) **Source of Funds.** The Consultant's activities under this Agreement will be funded from predominantly City funds. Such funding shall be paid to the City to compensate the Consultant for the Services performed in accordance with this Agreement; provided, however, that the parties may agree in the future to continue the services of the Consultant in accordance with the terms of the City's purchasing ordinance. The parties understand that the Consultant will provide its Services with a maximum capped sum of Two Hundred Seventy Eight Thousand (\$278,000.00) Dollars inclusive of costs and materials. Consultant will invoice the City monthly for its actual, reasonable costs related to the percentage of completion as relates to each phase of the project as set forth in Exhibit 1.

(b) **Payment.** The City shall pay within 45 days of receipt of a complete invoice.

5. Acceptability of Information and Reports Supplied by the Consultant. Any and all information and reports, whether supplied orally or in writing by the Consultant, shall be based upon consistent and reliable data-gathering methods and may be relied upon by the City.

6. Proprietary Rights. It is not anticipated that the Consultant will develop or deliver to the City anything other than Services and certain written reports or recommendations. Nevertheless, the City shall own all right, title and interest in such the Consultant's work under this Agreement to the extent such work provides analyses, findings, or recommendations uniquely related to the Services to be rendered. The Consultant expressly acknowledges and agrees that its work constitutes "work made for hire" under Federal copyright laws (17 U.S.C. Sec. 101) and is owned exclusively by the City and, alternatively, the Consultant hereby irrevocably assigns to the City all right, title and interest in and irrevocably waives all other rights (including moral rights) it might have in its work under this Agreement. The Consultant shall, at any time upon request, execute any documentation required by the City to vest exclusive ownership of such work in the City (or its designee). The Consultant retains full ownership of any underlying techniques, methods, processes, skills or know-how used in developing its Services under this Agreement and is free to use such knowledge in future projects.

7. Confidential Information.

(a) Acknowledgment of Confidentiality. Each party hereby acknowledges that it may be exposed to confidential and proprietary information belonging to the other party or relating to its affairs, including 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 or (iv) information required to be disclosed under the Connecticut Freedom of Information Act.

(b) Covenant Not to Disclose. Each party hereby agrees that during the Term 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 other party 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 reasonable care and due diligence. 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.

8. Noncircumvention. [INTENTIONALLY OMITTED]

9. Injunctive Relief. The parties acknowledge that violation by one party of the provisions of this Agreement relating to violation of the other party's Proprietary Rights or Confidential Information rights would cause irreparable harm to the other party not adequately compensable by monetary damages. In addition to other relief, it is agreed that preliminary and permanent injunctive relief may be sought without the necessity of the moving party posting bond to prevent any actual or threatened violation of such provisions.

10. Representations and Warranties.

The Consultant represents and warrants, as of the date hereof and throughout the Term of this Agreement, as follows:

(a) The Consultant represents that it has the requisite experience to undertake and complete the Services pursuant to the requirements of this Agreement and has in its employ or will hire qualified and trained personnel to perform the Services required.

(b) The Consultant represents that it can commence the Services promptly within five (5) days of the receipt of a notice to proceed and will complete the Services in a timely manner on a schedule to be approved by the City.

(c) The Consultant represents that it is financially stable and has adequate resources and personnel to commence and complete the Services required in a timely fashion.

(d) The Consultant's performance of the Services described herein, and its representation of the City, will not result in a conflict of interest, will not violate any treaties, laws, codes, rules, regulations, or contractual obligations with third parties, and is an enforceable obligation of the Consultant.

(e) The Consultant will not subcontract any of the work to third parties without prior written notice to the City and receipt of the City's prior written consent.

(f) The Consultant represents that neither it, nor any of its officers, directors, owners, employees or permitted subcontractors, have committed a criminal violation of or are under indictment of a federal or state law arising directly or indirectly from its business operations or reflects on its business integrity or honesty that resulted or may result in the imposition of a monetary fine, injunction, criminal conviction or other penal sanction, and further represents that the Consultant, its officers, directors, owners, employees, agents and subcontractors shall comply with the requirements of all laws, rules and regulations applicable to the conduct of its business or the performance of the Services under this Agreement.

(g) The Consultant represents that it will perform the Services in a good and workmanlike manner and will diligently pursue the completion of same in accordance with the terms of this Agreement.

(h) The Consultant represents that it possesses all licenses and permits that may be required to perform the Services required by this Agreement.

(i) The Consultant represents and warrants that the performance of the Services will not infringe upon or misappropriate any United States copyright, trademark, patent, or the trade secrets or other proprietary material of any third persons. Upon being notified of such a claim, the Consultant shall (i) defend through litigation or obtain through negotiation the right of the City to continue using the Services of the Consultant; (ii) rework the Services to be rendered so as to make them non-infringing while preserving the original functionality, or (iii) replace the Services with the functional equivalent. If the City determines that none of the foregoing alternatives provide an adequate remedy, the City may

terminate all or any part of this Agreement and, in addition to other relief, recover the amounts previously paid to the Consultant hereunder.

(j) The Consultant represents and warrants that any computer program included as a deliverable Service hereunder operates substantially in accordance with the specifications for such work and in compliance with Year 2000 Standards. For these purposes, "Year 2000 Standards" means the deliverable Services and the 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.

11. Remedies & Liabilities.

- (a) Remedies. In addition to other remedies expressly acknowledged hereunder and except as expressly limited herein, the City shall have the full benefit of all remedies generally available in law or equity and to a purchaser of goods under the Uniform Commercial Code.
- (b) Liquidated Damages. In addition to any other available remedies, delays in the timely completion of the Services by the current Grant deadline will result in Grant implications and timing implications on the implementation of the master plan. Both parties agree that damages for delay and that delays in completion of the Services, for activities that are the responsibility of and within the control of the Consultant, shall entitle the City to liquidated damages in the amount of \$100 per day for each day the Services are not completed. The parties represent, acknowledge and agree that the actual damages for failure to complete the Services in the time required herein would be uncertain, as well as difficult, if not impossible, to ascertain or prove and that the liquidated damages as set forth herein bears a reasonable relationship to the presumable loss or injury for delays.
- (c) Liabilities. THE CITY SHALL NOT BE LIABLE TO THE CONSULTANT FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT IN AN AMOUNT EXCEEDING THE TOTAL CONTRACT PRICE FOR THE DELIVERABLE AT ISSUE. EXCEPT FOR VIOLATIONS BY THE CONSULTANT OF SECTION 6 ("PROPRIETARY RIGHTS") OR SECTION 7 ("CONFIDENTIAL INFORMATION"), NEITHER PARTY SHALL BE LIABLE HEREUNDER FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS OR PROFIT) SUSTAINED

BY THE OTHER PARTY OR ANY OTHER INDIVIDUAL OR ENTITY FOR ANY MATTER ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT. THE PARTIES HEREBY EXPRESSLY ACKNOWLEDGE THAT THE FOREGOING LIMITATION HAS BEEN NEGOTIATED BY THE PARTIES AND REFLECTS A FAIR ALLOCATION OF RISK.

12. Notices. Notices sent to either party shall be effective on the date delivered in person by hand or by overnight mail service or on the date received when sent by certified mail, return receipt requested, to the other party or such other address as a party may give notice of in a similar fashion. The addresses of the parties are as follows:

If to the City:

Director of Parks & Recreation
City of Bridgeport
City Hall Annex
999 Broad Street, Second Floor
Bridgeport, Connecticut 06604

with a copy to:

Office of the City Attorney
999 Broad Street, Second Floor
Bridgeport, Connecticut 06604

If to the Consultant, at the address first written above:

13. Termination For Default; Termination For Convenience.

(a) This Agreement shall terminate upon expiration of the Term or upon the earlier termination by one of the parties in accordance with the terms hereof. In addition to other relief, either party may terminate this Agreement if the other party breaches any material provision hereof and fails after receipt of written notice of default to advise the other party in writing within five (5) business days of its intentions with respect to such default and in any event corrects or cures such default within ten (10) business days of the receipt of notice of default. If such default cannot be cured or corrected within such 10-day period and the defaulting party details in writing to the other the reasons why such default cannot be so corrected or cured, the other party shall give an additional thirty (30) day period to correct or cure such default and the defaulting party shall with

best efforts and due diligence promptly commence and consistently pursue corrective or curative action reasonably acceptable to the aggrieved party to completion. Either party shall be in default hereof if it becomes insolvent, makes an assignment for the benefit of its creditors, or if a receiver is appointed or a petition in bankruptcy is filed with respect to the party and is not dismissed within thirty (30) days. Termination shall have no effect on the parties' respective rights or obligations under Section 7 ("Confidential Information"), Section 9 ("Injunctive Relief") or Section 10 ("Warranties").

(b) The Consultant may not terminate for convenience. The City may terminate for convenience upon giving written notice of termination.

14. 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, are subject to the following dispute resolution procedure:

- (a) **Initiation of Dispute Resolution Process.** In the event that a dispute is not resolved after good faith effort to arrive at a mutual agreement, either party may send written notice to the other, in the manner specified for giving notice in this agreement, that a dispute continues to exist. In addition, a copy shall be sent to the City's Chief Administrative Officer ("CAO"), City Hall Annex, 999 Broad Street, Bridgeport, CT 06604. The notice shall set forth the nature of the dispute, the notifying party's position statement, and copies of documents supporting its position regarding the dispute. The Within seven (7) calendar days after the date such notice is given, the other party shall file its position statement and supporting documents to the CAO. Within fifteen (15) working days after receipt of such reply, the CAO shall review the matter, issue a written determination ("**Determination**"), and mail a copy thereof to the parties. The CAO may reach a Determination with or without a face-to-face meeting with the parties and with or without testimony of witnesses, in his/her sole and absolute discretion.
- (b) **Mediation.** If either party objects to the Determination, such party shall commence non-binding mediation before the American Arbitration Association ("AAA"), or similar mediation organization selected by the City in the City's sole discretion within thirty (30) days after the date of the Determination. The City shall determine whether such mediation will be conducted in accordance with AAA mediation rules then in effect or another entity's mediation rules. Such mediation will be held in Bridgeport, Connecticut. Each party shall bear the cost of its respective counsel and one-half of the administrative costs of such mediation, including but not limited to the mediator's fees and expenses. Failure by either party to file for

mediation within such 30-day period shall be deemed a waiver by both parties of their respective right to appeal such Determination, in which event such Determination shall be final and enforceable in any court having jurisdiction over the parties.

- (c) **Arbitration, or Litigation at City's Option.** If mediation does not resolve the dispute, either party may submit such dispute to the AAA, or similar alternate dispute resolution entity selected by the City in the City's sole discretion. The City shall determine whether such arbitration will be conducted pursuant to the AAA construction rules of arbitration then in effect or by the rules of another entity. Notwithstanding the parties' respective rights to seek arbitration of the dispute, the City shall have the independent right, exercisable within sixty (60) days after any arbitration is commenced, in its sole and absolute discretion, to seek resolution of the dispute in a court of law having jurisdiction over the parties, in which event, resolution of the dispute by arbitration shall be deemed waived by the parties, any pending arbitration shall be deemed stayed, and the decision of the court having jurisdiction over the parties to which the dispute is submitted by the City shall be final and binding upon the parties. If the City either (a) initiates arbitration or (b) does not move to stay an arbitration initiated by the other party within such 60-day period, the dispute shall be resolved by arbitration.
- (d) **Arbitration Process.** Arbitration shall be held before a 3-member panel of arbitrators, unless the parties mutually agree to a single arbitrator, all of whom shall be residents of, or permanently employed in, the State of Connecticut. All arbitrators must have a minimum of ten (10) years' current experience in their profession or occupation, a minimum of ten (10) years' of relevant demonstrated experience, and a level of dispute resolution training commensurate with the nature and value of the dispute. The dispute resolution organization shall submit one or more lists containing a minimum of fifteen (15) potential panelists who are duly-qualified. If the parties cannot agree to a panel after three (3) lists have been provided, the selection of arbitrators shall be submitted to the chief administrative judge of the State Superior Court located in Bridgeport, Connecticut for resolution. The arbitration shall be held in the City of Bridgeport and any award rendered shall be final and binding upon the parties and enforceable in a court of competent jurisdiction. Upon the request of either party, the dispute may be determined by any expedited procedure of the AAA then in effect or expedited procedure of another alternate dispute resolution entity then in effect, if the nature and amount of such dispute warrants resolution by an expedited procedure under the AAA's or such entity's rules. The parties shall be entitled to full and fair discovery of documents and information necessary for the

defense or prosecution of their respective claims, provided that such discovery is not unduly burdensome, unduly costly, prejudicial or violative of a party's right to withhold confidential information such as attorney/client privileged communications and work product. In the conduct of the proceedings, the parties may vary the selected rules of administration by mutual agreement, but will give due consideration of the panel's suggestions of varying the procedure in the interests of expedited resolution of the dispute. The parties shall specify the manner and breakdown of the panel's award. The panel shall have authority, in its sole discretion, to award reasonable attorneys' fees and costs to the prevailing party. If the award does not contain an award of attorneys' fees and/or costs, each party shall bear the cost of its respective counsel, and one-half of the administrative costs of such arbitration, including but not limited to the arbitrators' fees and expenses (except filing fees for demands and counterclaims, which shall be borne by the party initiating such demand or counterclaim). THIS AGREEMENT SHALL BE DEEMED TO MODIFY THE ARBITRATION RULES OF THE ORGANIZATION SELECTED BY THE CITY, WHOSE RULES SHALL BE DEEMED SUBORDINATE TO THIS AGREEMENT, AND THE ARBITRATION OF THE DISPUTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF CONNECTICUT. ANY AWARD THAT IS NOT RENDERED IN COMPLIANCE WITH PREVAILING CONNECTICUT LAW AT THE TIME THE AWARD IS RENDERED SHALL BE DEEMED VIOLATIVE OF PUBLIC POLICY AND MAY BE APPEALED TO A COURT OF COMPETENT JURISDICTION OVER THE PARTIES AS AN INDEPENDENT GROUND FOR APPEAL.

- (e) **Joinder in Other Proceedings.** The City reserves the right to require the joinder and participation of the other party to this agreement in any other arbitration or litigation involving a claim by another party that relates to the subject matter set forth in this agreement and, reserves the additional right, if necessary or desirable in the City's sole determination, to join or implead the other party to this agreement into such arbitration or litigation when doing so is deemed by the City to be in its best interests.

15. **Independent Consultant Status.** The Consultant and its approved subcontractors are independent contractors in relation to the City with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties. The Consultant shall remain responsible, and shall indemnify and hold harmless the City, 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 their respective employees. THE CONSULTANT REPRESENTS THAT IT RETAINS WIDE DISCRETION IN THE TIME, MANNER AND DETAILS OF PERFORMANCE, IS NOT UNDER THE CITY'S DIRECT SUPERVISION OR CONTROL, HAS THE SKILLS AND TOOLS TO PERFORM THE WORK, HOLDS ITSELF OUT GENERALLY AS AN INDEPENDENT CONSULTANT AND HAS OTHER SUBSTANTIAL SOURCES OF INCOME.

16. Security, No Conflicts. Each party agrees to inform the other of any information made available to the other party that is classified or restricted data, agrees to comply with the security requirements imposed by any state or local government, or by the United States Government, and shall return all such material upon request. Each party warrants that its participation in this Agreement does not conflict with any contractual or other obligation of the party or create any conflict of interest prohibited by the U.S. Government or any other government and shall promptly notify the other party if any such conflict arises during the Term.

17. Indemnification; Insurance.

(a) Indemnification. The Consultant agrees to defend, indemnify and hold harmless the City, its elected officials, officers, department heads, employees and agents from and against any and all claims, liabilities, obligations, causes of action for damages arising out of the negligence or misconduct of the Consultant, including direct damage to the City's property, and costs of every kind and description arising from work or activities under this agreement and alleging bodily injury, personal injury, property damage regardless of cause, except that the Consultant shall not be responsible or obligated for claims arising out of the sole proximate cause of the City, its elected officials, officers, department heads, employees or agents.

B. Insurance requirements: (1) The following insurance coverage is required of the Consultant and it is understood that the Consultant will require other coverage from every contractor and subcontractor in any tier according to the work being performed and shall ensure that the City is named as additional insured with notice of cancellation in the same manner as required for insurance coverages required of the Consultant. The Consultant shall procure, present to the City, and maintain in effect for the Term 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 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 \$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 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 as fully endorsed 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 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 minimum Best's A + 15 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
ATIMA
Attention: Purchasing Agent
45 Lyon Terrace
Bridgeport, Connecticut 06604"

18. Nondiscrimination. The Consultant agrees not to discriminate, nor permit discrimination, against any person in its employment practices, in any of its contractual arrangements, in all services and accommodations it offers the public, and in any of its other business operations on the grounds of race, color, national origin, religion, sex, disability or veteran status, marital status, civil union status, mental retardation or physical disability, unless it can be shown 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 Commissioner of Human Rights and Opportunities with information which may be requested from time to time by the Commission concerning the employment practices and procedures of both parties as they relate to the provisions of Section 4-114a of the Connecticut General Statutes and any amendments thereto. This agreement is subject to the provisions of the Governor's Executive Order No. 3 promulgated June 16, 1971, and, as such, this Agreement may be canceled, terminated, or suspended by the State Labor Commission for violation of, or noncompliance with, Executive Order No. 3, or any State or Federal law concerning nondiscrimination, notwithstanding that the Labor Commissioner is not a party to this agreement. The parties to this agreement, as part of the consideration hereof, agree that Executive Order No. 3 is incorporated herein and made a part hereof. The parties agree to abide by Executive Order No. 3 and agree that the State Labor Commissioner shall have continuing jurisdiction in respect to performance in regard to nondiscrimination, until the agreement is completed or terminated prior to completion. The parties agree as part of the consideration hereof that this agreement is subject to the Guidelines and Rules issued by the State Labor Commissioner to implement Executive Order No. 3 and that they will not discriminate in employment practices or policies, will file reports as required, and will fully cooperate with the State of Connecticut and the State Labor Commissioner.

19. Communications. All communications shall be made orally or in writing with Charles Carroll, Director of Public Facilities, or his respective designee. Any written report requested from the Consultant shall be sent in draft form for review prior to finalization.

20. Miscellaneous.

(a) Entire Agreement. This document and the identified exhibits, schedules and attachments made a part hereof or incorporated herein, constitute the entire and exclusive agreement between the parties with respect to the subject matter hereof and supersede all other communications, whether written or oral.

(b) Modifications. This Agreement may be modified or amended only by a writing signed by both parties.

(c) Prohibition Against Assignment. Except as specifically permitted herein, neither this Agreement nor any rights or obligations hereunder may be transferred, assigned or subcontracted by the Consultant without the City's prior written consent and any attempt to the contrary shall be void.

(d) 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 respective 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 weather conditions, natural disasters, catastrophic events, casualties to persons or properties, 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 or timing of service, and may result in the need to adjust the contract price or contract time in accordance with the terms of this Agreement.

(e) **Partial Invalidity.** Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be deleted and the balance of the Agreement shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect.

(f) **Partial Waiver.** The waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions.

(g) **Headings.** Headings are for reference purposes only and have no substantive effect.

(h) **Survival.** All representations, warranties and indemnifications contained herein shall survive the performance of this Agreement or its earlier termination.

(i) **Property Access.** The parties understand that it is the City's obligation to obtain legal access to City property where the Consultant's Services are to be performed. The Consultant shall not be held liable for any unlawful entry onto any property where such entry has been ordered, requested or directed by the City in writing.

(k) **Choice of Law.** This Agreement shall be governed and construed under the laws of the State of Connecticut. Consultant expressly consents to the jurisdiction of the State and Federal Court's located in the State of Connecticut.

IN WITNESS WHEREOF, for adequate consideration and intending to be legally bound, the parties hereto have caused this agreement to be executed by their duly-authorized representatives.

CITY OF BRIDGEPORT

By: _____
Bill Finch
Mayor
duly-authorized

CONSULTANT

By: _____
Name:
Title:
duly-authorized

April 15, 2011

Mr. Stephen T. Hladun
Special Projects Coordinator
City of Bridgeport
Parks and Recreation Department

re: Bridgeport Parks Master Plan
SA #06364.96

Dear Steve:

Thank you very much for providing Sasaki Associates, Inc. (Sasaki) the opportunity to submit this proposal for professional services to the City of Bridgeport, Connecticut for the Parks Master Plan. The study area will include the forty-five (45) parks within the City of Bridgeport (see table at end). The study will seek to understand the role of the parks within the City context, with consideration of neighborhoods and districts, park identities, transportation connections and corridors, overall circulation, design of open space, wayfinding, compatible uses and activities, and other key relationships to the study area. Working with Sasaki will be Barbara Heller, who will provide her expertise in strategic park planning, parks assessment, and parks operations. Collectively, we share the City's enthusiasm for this exciting project, and are excited by the opportunity to work with the City in shaping this vision for the future.

PROJECT APPROACH

Bridgeport residents benefit from the City's exceptional open space legacy. The parks are a profound gift from visionary leaders that have withstood many changes over the years. As Bridgeport strives to reinvigorate its ecosystem, economy, and community, our team will urge the city to think big about the lasting contribution that parklands make toward a prosperous future. The Parks Vision will provide a new legacy for Bridgeport: an interconnected network of historic and community parks that respects and sustains the Park City tradition while endowing future generations with healthier ecological, social and economic environments.

First, the Vision will address the immediate priorities of cleanliness, safety and amenity in the city's parks. We will develop sustainable design and maintenance standards to address these concerns. The Vision will respect and celebrate the historical significance of Bridgeport's two Olmsted-designed parks while layering in amenities that speak to the City's current and future population. At the same time, it will also provide innovative ways of securing ownership and amenity in underserved neighborhoods such as creating community gardens and greenhouses, utilizing rooftops, vacant parking lots, and school property, and accessing unused structures for indoor program.

Second, the Vision will create a healthier city – ecologically, socially and economically – for future generations. We understand the challenges, but also the great power, of BGreen 2020; the park system is a critical layer of Bridgeport's sustainable future. We will identify projects that create combined solutions to multiple concerns. In order to make this vision possible, we will challenge, engage and inspire the community – helping to build organizational capacity through better, more sustainable maintenance practices.

Lastly, the Vision will generate a resilient plan –driven, owned and implemented by the Bridgeport Community. We will capitalize on residents' aspirations to be engaged while openly

communicating to them how the changes they desire fit into larger issues such as budgeting, operations and capacity. This will allow the public to participate in a shared evaluation of alternatives. We will combine our best ideas and professional expertise with the community's needs and aspirations in an inspired teaching and learning process that will build community governance of the outcomes.

SCOPE OF SERVICES

PHASE 1 PROJECT FRAMEWORK, GOAL SETTING, INVENTORY AND ANALYSIS

(Phase Total: \$70,900)

The initial phase of work establishes the criteria for moving forward including data gathering; inventory and review of existing conditions in the parks and immediate surroundings including analysis of land use, topography and natural systems, open space, and water use; review of historic, cultural, and geological resources; development of a park classification system that defines the park character and attributes; evaluation of circulation and transportation systems; understanding of relevant plans and regulations; and knowledge of the existing park maintenance practices (sustainability, standards, resources, vehicles, and equipment).

Task 1.1 Project Initiation

1. Work with the Project Team to refine the project approach, work plan, and schedule.
2. Define the roles and responsibilities of the City and client stakeholder group, the Consultant Team, and other public and private entities.
3. Review project boundaries, parks to be studied geographical sectors, and context areas.
4. Review and confirm our understanding of the project vision, goals, and principles.
5. Meet with the Project Steering Committee in a kick-off to review process and timeline, and review and refine project scope, vision, goals, objectives, and direction.
6. Meet with the key stakeholders to ensure that key constituencies are included in the planning process. At this time, conduct stakeholder interviews and small group meetings. These interviews/ meetings should include representatives from the City parks and planning departments, DPW, engineering, purchasing, and representatives from NRZs and other neighborhood leaders (church leaders, etc.).

Task 1.2: Document Review

Gather documents and conduct a literature review of existing city or county plans related to the park system, including POCD, BGreen, NRZ Plans, 1982 Plan, and the Stormwater Management Plan.

Task 1.3: Existing Conditions Site and Design Analysis

1. Participate in a guided tour of the parks system from City representatives (agenda and framework to be developed/determined) that is assumed to be conducted over two-days, and will include a kick-off with the City Client team (assume the Mayor, T. Grabarz, S. Hladun, and C. Carroll), and broader stakeholder team.
2. Conduct a field reconnaissance of the project park area and surrounding context, as appropriate. Analyze and document the parks and park character; circulation network; pedestrian character; adjacent neighborhoods, park users, and community character; natural systems, such as topography and flood plain limits; general land use patterns;

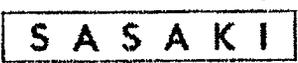
- underutilized parcels; visual and civic landmarks; important view corridors; gateway locations.
3. Understand current projects or initiatives, such as transportation improvements or future development that may impact the parks.
 4. Evaluate the character of the individual parks and overall system from an environmental perspective to identify opportunities to protect, restore, and promote the natural and cultural resources for long-term ecological sustainability.
 5. Note nearby destinations and activities and their relationship to the park system. Identify and evaluate the connections and the relationship between the park system and surrounding neighborhoods and destinations.
 6. Assess the current circulation patterns, including the relationship between park access and pedestrian circulation patterns, parking, vehicular and bicycle corridors and circulation patterns, transit, and activity points.
 7. Using GIS or other resources, create planning-level maps of each park in system to document: location, type of park, active/passive, environmental constraints (i.e., steep slopes, wetlands, flood plains, contamination, etc.) and natural resources, major playing fields, architectural and historical features, play areas, water features, bathrooms and other significant, permanent structures). Parks are to include brownfields, potential future sites, school yards, leased parks, temporary parks. The existing conditions maps will also reflect qualitative observations and analysis. It is assumed the Consultant team will have access to all necessary GIS data including the following layers: land use; zoning; topography/contours; hydrology; schematic tree/plant survey; admin boundaries; land cover; roads; public water/sewer lines; utilities, aerial photographs; site photographs; tax parcel boundaries; local and regional parks; trails and greenways-existing and proposed; brownfields; scheduled demolitions • Team has access to all relevant previous plans (BGreen, POCD, NRZ plans, etc.)

Task 1.4 Community Survey

Working with the Steering Committee, launch a simple online survey (such as survey monkey), that can be distributed throughout the community. The purpose will be to collect statistically valid feedback from a wide cross section of the community on the perceived strengths, weaknesses, opportunities, and threats to the Park system

Task 1.5 Steering Committee Workshop #1

1. Workshop #1 will include a review of the Existing Conditions analysis from the document review, project kick-off, parks tour and visits, parks analysis (SWOT), and stakeholder interviews. The workshop will include a facilitated discussion with the Steering Committee to develop a set of draft goals and objectives for the project.
2. Concurrent with Workshop #1, City staff will conduct outreach with the community, as necessary, meeting with NRZs or other neighborhood groups, as well as organize potential focus groups, park surveys, etc. The consultant team will support City staff for this effort with draft inventory materials and survey information for the community, as necessary.



Mr. Stephen T. Hladun
Bridgeport Parks Master Plan – Scope of Services
4 | 15 April 2011

Meetings and Work Sessions

Kick-Off Meeting with Steering Committee

Stakeholder Interviews

Internal Workshop #1

- Present Existing Conditions analysis based on initial analysis from existing documents, mapping, field visits, analysis, stakeholder interviews, as well as the ideas, expertise and knowledge of the Steering Committee and consultant team. Workshop #1

Independent Follow-Up Site Visit

Additional site visit by consultant team to collect data

Products

- Technical memoranda or powerpoint summarizing analysis including Park System Analysis maps (GIS), Map inventories of each park (GIS), goals and objectives, survey findings, and existing conditions analysis.
- Project Website - Work with the City webmaster to develop a project website to present the draft alternatives to members of the community, as well as to receive their feedback on the Parks Master Plan process.

PHASE 2 ALTERNATIVE SCENARIOS AND VISION PLAN FORMULATION

(Phase Total: \$96,500)

Develop preliminary parks system scenarios related to the overall vision and goals for the park system, and analyze their impacts both on independent parks and the overall system through identification of site and system-wide opportunities and constraints and use of Sasaki's SmartPlan software. Consider preliminary action items for implementation of the vision.

Task 2.1 Scenarios and Evaluation Criteria

Utilize Sasaki's SmartPlan software to efficiently and consistently test park system alternatives and narrow down choices to 2-3 scenarios for the park system. A draft assessment of city Parks will be developed as a baseline condition. Evaluation criteria and metrics will be established to measure and evaluate the impacts of each, and further analyze these 2-3 scenarios both at the site and system level for issues. Scenarios will be evaluated to measure how well they meet community and project goals, park needs, environmental impacts, implementation costs, and project schedule. Scenarios will evaluate implementation impacts, such as ability to implement in 5-year increments for the next 15 years. The plan will be illustrated by system-wide diagrams as well as prototypical street sections, trails and bike paths, or other greenways as well as illustrative recommendations of proposed park improvements. Scenarios will explore potential catalytic projects and partnership opportunities, as well as potential policy modifications.

Task 2.2 Draft Plan Refinement

Consultant team will review initial alternatives for the parks system vision in a meeting with the City Client team to narrow the alternatives and select a preferred vision for development and refinement.

Following review and approval from the City Client team, the Consultant team will review the preferred alternatives for the Parks System Vision with the larger Steering Committee team.

Task 2.3: City-Wide Public Forum #1

1. The Consultant team will conduct an Open House for the public and interested residents to review the site analysis findings and the alternative vision strategies for Parks System. During this Open House, the team will reaffirm goals and discuss issues and review parks and open space needs. The Open House will present the alternative scenarios for parks and open space, trails and connectivity opportunities; character of the parks and open spaces; and test concepts and relative priorities that relate to public and private initiatives and projects.
2. At the conclusion of the Open House, the team will review results and feedback with the Client team and Steering Committee to evaluate stakeholder and community input and weigh the various alternative strategies to develop a preferred direction.

Work sessions and Meetings

Meeting with City Client

- Review initial alternatives for the Parks system Vision

Work Session with Steering Committee

- Prepare for first city-wide forum and review alternatives

City-wide Public Forum #1:

- Present draft alternatives and recommendations to the community to gather feedback and direction.

Meeting with Steering Committee (phone or In person)

- Review feedback of community on alternatives and identify a preferred direction.

Products

- Written summary of evaluation criteria
- Technical memoranda or powerpoint summarizing alternatives presentation to community, as well graphic materials mounted on boards for review meetings and the Public Forum

PHASE 3: THE PARKS MASTER PLAN

(Phase Total: \$110,800)

Task 3.1 Draft Parks Master Plan Vision

Following the Public Forum #1 and review with the Steering Committee, the team will develop a preferred Vision which will become the foundation for the Draft Parks Master Plan. The Draft Master Plan will:

1. Define the preferred Vision for the Parks system and convey relationships, connections, amenities, park character and use, and the potential for new open space and connections. Identify key catalyst projects and development opportunities.

2. Develop a parks master plan illustrating public parks and open spaces, multi-use pathways for bicyclists and pedestrians, water access opportunities, and redevelopment opportunities for brownfields as open space or development. Identify improvements necessary to make the pedestrian environment safe, pleasant, attractive, and supportive of the City's development objectives. The draft master plan will include an illustrative plan, narrative description, supporting diagrams, and park concepts for improvements proposed in the parks. The master plan improvements will be supported by the parks inventory, classification, and assessment of park needs.
3. Park concept schematic plans will be developed to include citywide park guidelines for park elements, which may include lighting, parks system signage, site materials (such as paving materials or site walls), site furnishings, shelters, and landscaping. Level of detail for the park concept schematic plans will be illustrative (using aerial photography and GIS), but provide enough detail to communicate improvements, design character and quality, and support concept level estimates that can be used for future budgeting, and to develop an implementation plan.
4. Develop a draft action plan and implementation schedule, including recommendations for short-term and long-term implementation projects, parks operations recommendations, an outline of potential permitting requirements, funding sources based on the existing system financial conditions, and identification of potential revenue generating opportunities

Task 3.2 Draft Parks Master Plan Vision Refinements

The consultant team will review the Draft Parks Master Plan in a meeting with the City Client team to review the preferred master plan.

Following review and approval from the City Client team, the Consultant team will review the preferred master plan with the larger Steering Committee team.

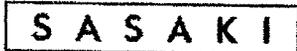
Task 3.3: City-Wide Public Forum #2

Following review and approval from the City Client team and Steering Committee, the Consultant team will conduct an Open House for the public and interested residents to review the Draft Parks Master Plan Vision. The Open House will present the Vision for parks and open space system; concept plans, diagrams, and visuals to communicate the character of improvements to parks, open space, and trails; information on the Master Plan implementation, funding, and operations; and recommended policy changes to the City affecting the Parks system.

Task 3.4: Final Parks Master Plan Vision

Following Public Forum #2 and after review by the Client, the draft Master Plan will be revised and documented as the final plan. The final report will incorporate the implementation strategies developed for the Parks Master Plan Vision. The Final Parks Master Plan Vision will document recommendations in an executive summary report and technical appendix, addressing the Parks Master Plan, methodology, vision, operational and policy recommendations and improvements, action plan for implementation (phasing, roles and responsibilities), funding opportunities, and implementation incentives.

Mr. Stephen T. Hladun
Bridgeport Parks Master Plan – Scope of Services
7 | 15 April 2011



Work sessions and Meetings

Meeting with City Client

- Review Draft Parks Master Plan

Work Session with Steering Committee

- Review Draft Parks Master Plan and prepare for the second city-wide forum

City-wide Public Forum #2:

- Review the Preferred Parks Master Plan and receive final comments and feedback from the community.

Products

- Technical memoranda and powerpoint presentation summarizing Preferred Master Plan, as well graphic materials mounted on boards for review meetings and the Public Forum
- Draft brochure-report summarizing the Master Plan recommendations in narrative text, photos, and illustrative plans and diagrams.
- Technical Notebook including technical memoranda, and other information relating to the development of the Master Plan, including project budgets and phasing plans.
- Final Master Plan brochure-report (one camera-ready digital copy on CD; one screen-resolution digital copy for web site posting)

SCHEDULE

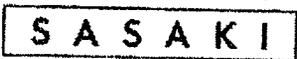
Due to the expedited schedule to regain momentum on the project, Sasaki will begin work immediately. We anticipate the following approximate time periods for each phase and a 5-1/2 month process.

<u>Phase</u>	<u>Date</u>
Phase 1 Project Framework	late April – early June
Phase 2 Scenarios and Vision	early June – early August
Phase 3 Parks Master Plan	early August – early October

FEES

Sasaki shall provide the services specified herein under Scope of Services for a lump sum amount of Two Hundred Seventy-eight Thousand Dollars (\$278,000.00), in accordance with the attached Schedule of Terms and Conditions (Revised 4/01/07). The Client shall be invoiced monthly and shall be billed based on percentage of completion by phase as described below. Within the overall budget, the fee for each phase may be adjusted according to the flow of work. Reimbursable expenses are included in the fee.

Mr. Stephen T. Hladun
Bridgeport Parks Master Plan - Scope of Services
8 | 15 April 2011



SCHEDULE OF TERMS AND CONDITIONS

This proposal is governed by Sasaki's Schedule of Terms and Conditions (Revised 4/01/07) attached and incorporated herein by reference. Upon acceptance of this proposal, the two documents together shall constitute our contract for the provision of services specified herein.

Steve, thank you again for the opportunity to provide this proposal to the City of Bridgeport. Our team of planners and designers understand the big issues facing Bridgeport, as well as the details that are critical for implementation. We will listen to your needs and constraints and will deliver a spectacular and achievable vision for Bridgeport.

Sincerely,

Jason S. Hellendrung
Principal

CC: Gina Ford, Brie Hensold, Eamonn Hutton, Steve Roscoe, Sasaki

Attachment: Sasaki's Schedule of Terms and Conditions (revised 4/01/07)

AGREED AND ACCEPTED

If you are in agreement with this proposal, please sign both copies of the proposal, initial Sasaki's Terms and Conditions, and return one signed original to Sasaki, our receipt of which will be our notice to proceed.

Authorized signature for:
City of Bridgeport

Date

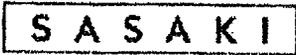
Authorized signature for:
Sasaki Associates Inc.

Date

PARKS LIST

PROPERTY	ACREAGE	GIS ACRES	LOCATION
ALICE STREET LOT	1.4	1.23	ALICE STREET
BALDWIN PLAZA	1	0.30	BROAD STREET
BEARDSLEY PARK/ZOO	181.4	80.00	NOBLE AVENUE
LEROY BROWN JR. "BJ" MEMORIAL PARK	20.7	37.36	MADISON AVE / CENTER STREET EXTENSION
BULLS HEAD PARK	0.25	0.46	WASHINGTON AVENUE
BROAD STREET STEPS	0.5	0.41	GOLDEN HILL STREET
CLINTON PARK	1	1.15	CLINTON AVENUE - INTERSECTION BROOKLAWN AVE. / NORTH AVE.
ELLSWORTH PARK	6	4.45	ELLSWORTH STREET / BREWSTER STREET
FAIRCHILD MEMORIAL PARK	89.2	n/a	TRUMBULL ROAD - ACROSS PARKS/REC DEPT
FAIRCHILD WHEELER GOLF COURSE	320	n/a	PARK AVENUE - ACROSS VETERAN'S MEMORIAL PARK
GLENWOOD PARK	9.5	13.22	GLENWOOD AVENUE / BOSTON AVENUE
GOOSE TOWN PARK (WADE PARK)	0.1		WADE STREET
JOHNSON OAK PARK	2	0.40	LOGAN STREET
KENNEDY STADIUM	0	included above	LINCOLN BOULEVARD / CENTRAL HIGH SCHOOL
LAFAYETTE PARK (NANNY GOAT)	2	1.02	OAK STREET
LONGFELLOW PARK	3	2.66	ST. STEPHENS ROAD
LONGFELLOW PLAYGROUND	0.7	n/a	WORDIN AVENUE
LUIS MUNOZ MARIN OPEN SPACE	4.5	9.41	HELEN STREET / BOSTON AVENUE
MAJESTIC PARK	2.5	3.17	MAIN STREET
MANILA STREET PLAYGROUND	2.2	2.18	MANILA STREET
MCGOVERN PARK	0.4	0.67	BEECHWOOD AVENUE
MCLEVY PARK	0.7	1.25	MAIN STREET
NEWFIELD/JESSUP PARK	7.5	8.07	NEWFIELD AVENUE
OLD MILL GREEN	9.4	n/a	BOSTON AVENUE
PLEASURE BEACH	63	37.00	SEAVIEW AVENUE
PUGLIO PARK	18	(w/Veteran's Park)	Playground on MADISON AVENUE / NORTH END PUBLIC LIBRARY
ROGERS ELTON PARK	73	73.86	FRENCHTOWN ROAD
ST. MARY'S BY-THE-SEA	9	2.50	GROVERS AVENUE
SEABRIGHT PARK	0.4	2.08	SEABRIGHT AVENUE
SEASIDE PARK/BARNUM FIELD	370	32.64	PARK AVENUE / WALDEMERE AVENUE / BARNUM BOULEVARD

Mr. Stephen T. Hladun
 Bridgeport Parks Master Plan - Scope of Services
 10 | 15 April 2011



STRATFIELD BURIAL GROUNDS	6.5	1.68	North
STRATFIELD PARK	0.5	0.49	Clinton
SUCCESS PARK	7.6	7.68	GRANFIELD AVENUE
SVIHRA PARK	2.5	59.98	HAWLEY AVENUE
UPCHURCH PARK	2	2.13	HALLETT STREET
VETERAN'S MEMORIAL PARK	90	17.88999082*	PARK AVENUE - ACROSS FAIRCHILD WHEELER GOLF COURSE
WASHINGTON PARK	4.7	5.07	WASHINGTON AVENUE
WATERFRONT PARK	1	n/a	WATER STREET
JAMES BROWN PARK (WATERVIEW PARK)	2.3	n/a	WATERVIEW AVENUE
WENT FIELD	6	9.36	WORDIN AVENUE
WEST END PARK	2	0.78	FAIRFIELD AVENUE
WEST SIDE II PARK	4.5	4.72	BOSTWICK AVENUE
WHEELER PARK	1	2.00	GOLDEN HILL STREET
WOOD PARK	0.1	n/a	WOOD AVENUE
WORDIN PARK	14.3	14.32	ST. STEPHENS ROAD
Total Parks = 45	1330.05	433.69	
Future Park			
KNOWLTON PARK		3.21	405 & 459 KNOWLTON ST

Schedule

	Apr	May	June	July	Aug	Sept	Oct
1.1 PROJECT KICK-OFF / INITIATION							
1.2 DOCUMENT REVIEW							
1.3 EXISTING CONDITIONS SITE & DESIGN ANALYSIS							
1.4 COMMUNITY SURVEY							
1.5 STEERING COMMITTEE WORKSHOP #1							
2.1 SCENARIOS & EVALUATION CRITERIA							
2.2 DRAFT PLAN REFINEMENT							
2.3 CITY-WIDE PUBLIC FORUM #1							
3.1 DRAFT PARKS MASTER PLAN VISION							
3.2 DRAFT PARKS MASTER PLAN VISION REFINEMENTS							
3.3 CITY-WIDE PUBLIC FORUM #2							
3.4 FINAL PARKS MASTER PLAN VISION							
	PHASE 1		PHASE 2		PHASE 3		

Sales and Leasing Agreement with AMS Real Estate, LLC.

**Report
of
Committee
on
Contracts**

Submitted: May 16, 2011

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:

74-10

A Resolution by the Bridgeport City Council Regarding
A Sales and Leasing Agreement with AMS Real Estate, LLC

WHEREAS, the City of Bridgeport has ownership of certain real estate property assets that it has no or limited use for in its operations; and

WHEREAS, it is in the best interest of the City to market these real estate property assets to investors, so that some or all of the following goals may be achieved: increased property taxes, sales proceeds, reduced maintenance and other carrying expenses, and new investment resulting in economic development; and

WHEREAS, in October 2010, the City issued a REQUEST FOR QUALIFICATIONS FOR MARKETING/ASSET MANAGEMENT SERVICES OF EXCESS COMMERCIAL MUNICIPAL PROPERTY, for the purpose of identifying a qualified and accomplished real estate brokerage firm to market City-owned properties; and

WHEREAS, the responses to the aforementioned RFQ process were subjected to a formal evaluation and selection process, which was subsequently approved by the Board of Public Purchases on February 9th, 2011; and

WHEREAS, AMS Real Estate, LLC (AMS), a Bridgeport based company, was chosen through the selection process; and

WHEREAS, the City and AMS have agreed to the general terms of engagement for a Sales and Leasing Agreement, such agreement to include the following at a minimum:

1. A list of City-owned properties to be covered by the engagement;
2. A 6% seller's commission on all consummated sales, on the list with a minimum commission of \$2,000 for any single property transaction;
3. A 12 month engagement, which may be extended via mutual agreement for up to two (2) additional 12 month periods; and



Report of Committee on Contracts Committee
74-10

-2-

WHEREAS, all real estate transactions the City may ultimately participate in pursuant to the engagement of AMS will be evaluated on their own merits and subject to the case by case approval of the City Council; Now, therefore be it

RESOLVED, that the Bridgeport City Council authorizes the Mayor to negotiate the specific provisions of a Sales and Leasing Agreement with AMS in accordance with the general terms herein, and to enter into Sales and Leasing Agreement, and such other incidental and related documents as may necessary and approved by the Office of the City Attorney, on behalf of the City of Bridgeport.

RESPECTFULLY SUBMITTED,
THE COMMITTEE ON CONTRACTS

Richard M. Paoletto, Jr., Co-chair

Carlos Silva, Co-chair

Michelle A. Lyons

Michelle A. Lyons

Martin C. McCarthy

Howard Austin, Sr.

Howard Austin, Sr.

Robert P. Curwen, Sr.

James Holloway

Thomas McCarthy

Thomas McCarthy, President
(Added to Make Quorum)

Budget Modification to the Fiscal Year 2010-11 Nutrition Budget: Increase revenue line item 01900902, 42617 Federal Breakfast Program to \$963,547 to include Increase appropriation line items 01900902 54595 Food to \$803,000 and 01900902 54600 Food Service Supplies to \$160,547 for funding to complete school year Breakfast Program

**Report
of
Committee
on**

Budget & Appropriations

Submitted: May 16, 2011

Adopted: _____



Attest: _____

City Clerk

Approved _____

Mayor



City of Bridgeport, Connecticut

To the City Council of the City of Bridgeport.

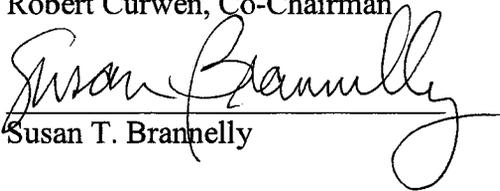
The Committee on **Budget and Appropriations** begs leave to report; and recommends for adoption the following resolution:

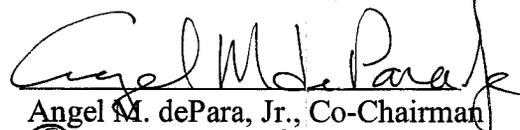
80-10

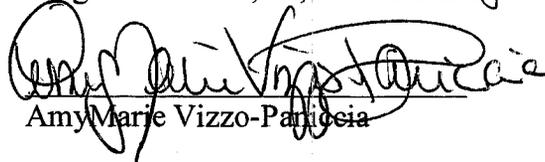
Resolved, That the attached Justification Document regarding a Budget Modification to the Fiscal Year 2010-11 Nutrition Budget: Increase revenue line item 01900902 42617 Federal Breakfast Program to \$963,547 to include Increase appropriation line items 01900902 54595 Food to \$803,000 and 01900902 54600 Food Service Supplies to \$160,547 for funding to complete school year Breakfast Program be, and hereby is APPROVED.

RESPECTFULLY SUBMITTED,
THE COMMITTEE ON
BUDGET AND APPROPRIATIONS

Robert Curwen, Co-Chairman

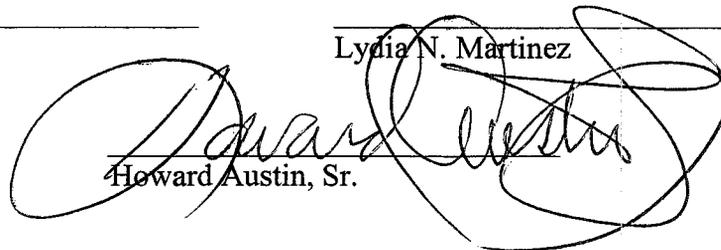

Susan T. Brannelly


Angel M. dePara, Jr., Co-Chairman


Amy Marie Vizzo-Paniceia

Carlos Silva

Lydia N. Martinez


Howard Austin, Sr.

Council Date: May 16, 2011

CITY OF BRIDGEPORT
OFFICE OF THE CITY ATTORNEY

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Bridgeport, Connecticut 06604-4328

CITY ATTORNEY
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Facsimile (203) 576- 8252

COMM.#86-10 Referred to Miscellaneous Matters Committee
on 05/16/2011 (OFF THE FLOOR)

May 10, 2011

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

RECEIVED
CITY CLERK'S OFFICE
2011 MAY 17 A 9:41
ATTEST
CITY CLERK

Re: Proposed Settlement of Claim for Attorney's Fees in the matter of The Bridgeport Guardians, Inc., et. al. v. Arthur J. Delmonte, et. al. U.S.D.C. No. 5:78cv175 (JBA)

Dear Councilpersons:

The Office of the City Attorney respectfully recommends that the above-referenced claim by the law firm of Koskoff, Koskoff & Bieder, P.C. ("KK&B"), legal counsel for the plaintiff The Bridgeport Guardians, Inc., et. al., be settled as set forth hereinafter. It is our professional opinion that resolving this matter for the consideration agreed to between the parties is in the best interests of the City of Bridgeport. The settlement amount represents a substantial reduction of plaintiffs' original demand for attorney's fees in excess of \$1 million.

Plaintiff	Nature of Claim	Plaintiff's Attorney	Consideration
KK&B, counsel for The Bridgeport Guardians, Inc., et. al.	Payment of attorney's	Koskoff, Koskoff & Bieder, P.C.	\$300,000 presently held in escrow.

Kindly place this matter on the agenda for the City Council meeting of May 16, 2011 for referral to the Miscellaneous Matters Committee. The Committee's next regular monthly meeting is scheduled to occur on Monday, May 23rd. Action by the committee on this matter that evening would enable the full Council to take final action on Monday, June 8th.

Anastasi to City Council
Re: KK&B Claim
Dated: May 10, 2011
Page 2 of 2

Representatives of this office will be in attendance at the committee meeting on May 23rd and at the full Council meeting on June 8th to discuss this proposed settlement in executive session. Thank you for your assistance in this matter.

Very truly yours,



Mark T. Anastasi
City Attorney

Cc: Bill Finch, Mayor
Fleeta C. Hudson, City Clerk
Andrew Nunn, CAO
Adam Wood, COS
Arthur C. Laske, III, Deputy City Attorney
Betsy A. Edwards, Assoc. City Attorney
John P. Bohannon, Jr., Esq.

RESOLUTION 87-10

City Council Member(s): Andre Baker 139 District (D)
Robert Walsh 132 District (D)

Whereas, the city of Bridgeport continues to struggle with the placement and control over Adult Entertainment Venues; and

Whereas, the lack of adequate controls over the placement and operations has a serious negative impact on the quality of life of many of our residents and

Whereas, a comprehensive ordinance can provide the citizens with the protection and control that they desire; and

Whereas, the town of Berlin has crafted such an ordinance the has withstood legal challenges,

Be it ordained that the City of Bridgeport adopted a Sexually Orientated Business ordinance constructed in a manner similar to the town of Berlin, as attached

RE: Resolution concerning the establishment of an ordinance to provide better protection to city residents against Adult entertainment Venues or Sexually Orientated Businesses.

Introduced at a meeting of the City Council, held:

May 16, 2011

From the floor

Referred to: Ordinance Committee

RECEIVED
CITY CLERK'S OFFICE
2011 MAY 17 A 8:55
ATTEST _____
CITY CLERK

Attest: _____
City Clerk

Chapter 8.81

SEXUALLY ORIENTED BUSINESSES ORDINANCE

8.81.010 Short Title

This chapter shall be known and may be cited as the "Bridgeport Sexually Orientated Business ordinance."

8.81.020 Purpose of chapter

The city of Bridgeport City Council finds:

- (1) The operation of sexually oriented businesses in the city requires special regulation and supervision by the city to protect, preserve and promote the health, safety and welfare of the patrons of such businesses, as well as the health, safety and welfare of the city's residents. Further, protecting order and morality, preserving the character and preventing the deterioration of the city's neighborhoods, promoting retail trade, maintaining property values, and ensuring sanitary and safe public places are desirable objectives of the community and its leaders.
- (2) Statistics and studies performed by a substantial number of cities and cities in the United States indicate that:
 - a. Large numbers of persons, primarily male, frequent such sexually oriented businesses, especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called "adult" motion pictures, videotapes or live entertainment.
 - b. Such closed booths, cubicles, studios and rooms have been used by patrons, clients or customers of such sexually oriented businesses for the purpose of engaging in specified sexual activities.
 - c. Male and female prostitutes have been known to frequent such businesses in order to provide sex for hire to the patrons, clients or customers of such businesses within such booths, cubicles, studios and rooms.
 - d. Doors, curtains, blinds and other closures installed in or on the entrances and exits of such booths, cubicles, studios and rooms which are closed while such booths, cubicles, studios and rooms are in use encourage patrons using such booths, cubicles, studios and rooms to engage in specified sexual activities therein with prostitutes, other persons or by themselves, thereby promoting and encouraging prostitution and the commission of specified sexual activities which cause blood, semen, urine or other bodily secretion to be deposited on the floors and walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits.
 - e. Booths, cubicles, studios and rooms that are closed while they are in use often contain holes that have been cut or smashed out of the walls or other partitioning material. These holes permit the inhabitant of one booth, cubicle, studio or room to engage in specified sexual activities with the inhabitant of the adjoining booth, cubicle

studio or room. These holes promote and encourage specified sexual acts to occur between persons anonymously. Anonymous sexual contact poses a higher risk of spread of communicable diseases, including the AIDS virus, Hepatitis B and other sexually transmitted diseases. Further, the existence of such holes in booths, cubicles, studios and rooms at sexually oriented businesses provides an increased risk that blood, semen, urine or other bodily secretion will be deposited on the floors and walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits.

f. Specified sexual activities often occur at unregulated sexually oriented businesses that provide live adult entertainment. Specified sexual activities include sexual physical contact between employees and patrons of sexually oriented businesses and specifically include "lap dancing" or manual or oral touching or fondling of specified anatomical areas, whether clothed or unclothed. Such casual sexual physical contact between strangers may result in the transmission of communicable diseases, which would be detrimental to the health of the patrons and employees of such sexually oriented businesses.

g. The unregulated operation of sexually oriented businesses, *including off-site adult businesses like adult bookstores, adult video stores and adult novelty stores*, is associated with an increase in the incidence of sex-related crimes and other crimes and also has a disruptive effect on the surrounding neighborhood by causing excessive noise, parking problems, the presence of discarded sexually oriented material on residential lawns, and the performance of sexual acts in public places, as well as causing a deleterious effect on surrounding businesses *and decrease in the value of surrounding property*.

h. Sexually oriented businesses that operate in close proximity to each other further contribute to an increase in crime, lower property values, blight and the downgrading of the quality of life *and value of property* in the adjacent area, and sexually oriented businesses that operate within a short distance of schools, churches, parks, libraries and other public facilities negatively impact such places and have an adverse effect upon persons, particularly children, walking to and from such places.

i. The reasonable regulation and supervision of such sexually oriented businesses tends to discourage prostitution, other sex-related crimes, anonymous and high-risk sexual contact and unsanitary sexual activity, excessive noise and property devaluation, thereby decreasing the incidences of communicable diseases and sex-related crimes, all thereby promoting and protecting the health, safety and welfare of the employees and the members of the public who patronize such businesses and protecting the health, safety and property interests of a city and its residents.

j. Location and zoning regulations alone do not adequately protect the public health, safety and welfare and thus certain requirements with respect to the ownership, employees, facility, operation, advertising, hours of business and other aspects of the sexually oriented business are in the public interest.

(3) The continued unregulated operation of such sexually oriented businesses is and would be detrimental to the health, safety and general welfare of the residents of the city.

(4) The constitution and laws of the state grant to the city powers, especially the police power, to enact reasonable legislation and measures to regulate and supervise sexually oriented businesses in order to protect the public health, safety and welfare.

(5) It is the purpose and intent of the city council, in enacting this article, to regulate sexually oriented businesses to promote the health, safety and general welfare of the residents of the city and to establish reasonable and uniform regulations of such businesses in order to reduce or eliminate the adverse secondary effects of such sexually oriented businesses, protect residents from increased crime, preserve the quality of life, preserve the property values and the character of surrounding neighborhoods and businesses, deter the spread of blight, and protect against the threat to public health from the spread of communicable and social diseases.

(6) It is not the intent of the city council, in enacting this article, to deny to any person rights to speech protected by the United States or state constitutions, nor is it the intent of the council to impose any additional limitations or restrictions on the content of any communicative materials including sexually oriented films, videotapes, books or other materials. Further, by enacting this article, the council does not intend to deny or restrict the constitutionally protected rights of any adult to obtain or view any sexually oriented materials under the United States or state constitutions, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of such sexually oriented materials may have to sell, distribute or exhibit such materials.

8.81.030 Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade means any establishment where one or more still or motion picture projectors, slide projectors or similar machines, or other image producing machines, for viewing by five or fewer persons each, are regularly used to show films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities.

Adult cabaret means any nightclub, bar, restaurant or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

- (1) Persons who appear nude or seminude;
- (2) Live performances that are characterized by the exposure of specified anatomical areas; or
- (3) Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities.

Adult Books means any books, magazines, periodicals, pamphlets, or other printed materials that depict, display or describe specified anatomical areas or specified sexual activities.

Adult entertainment means:

- (1) Any exhibition of any adult-oriented motion picture, live performance, display or dance of any type that has as a significant or substantial portion of such performance any performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal services offered customers, when such adult entertainment is held, conducted, operated or maintained for profit, direct or indirect; and
- (2) Any amusement machine that is regularly used for presenting material that is characterized by the depiction or description of specified anatomical areas or specified sexual activities, for observation by patrons thereof.

Adult minimotion picture theater means any enclosed building with a capacity of 50 or less persons regularly used for showing films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities, for observation by patrons therein.

Adult motion picture theater means any enclosed building with a capacity of more than 50 persons regularly used for showing films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities, for observation by patrons therein.

Adult Novelties means: (a) instruments, devices, toys or paraphernalia that are designed for or marketed primarily for stimulating human genital organs, sexual arousal or sadomasochistic use; (b) instruments, devices, gag gifts, toys or paraphernalia that depict, display or are shaped in the form of specified anatomical areas; and (c) oils, lotions, gels or creams that are designed for or marketed primarily for use upon specified anatomical areas and intended for stimulating human genital organs, sexual arousal or as an aid to enhance or promote specified sexual activities.

Adult Oriented Store means any establishment having:

- (1) a substantial or significant portion of its stock in trade in *Adult Books*, *Adult Videos* or *Adult Novelties* or any combination thereof;
- (2) any portion of its stock in trade in *Adult Books*, *Adult Videos* or *Adult Novelties* and in conjunction therewith has rooms, designated areas or facilities for the presentation, observation or use by patrons of any item sold or rented in such establishment.

Adult theater means any theater, concert hall, auditorium or similar commercial establishment that regularly features persons who appear nude or seminude or who appear in live performances that are characterized by the depiction or description of

specified anatomical areas or specified sexual activities, for observation by patrons therein.

Adult Videos means films, motion pictures, videocassettes, DVDs, software, slides or other photographic reproductions that depict, display or describe specified anatomical areas or specified sexual activities.

Church means any church, synagogue, mosque, temple or building that is used primarily for religious worship and related religious activities.

Employee means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of a sexually oriented business.

Entertainer means any person who provides adult entertainment within a sexually oriented business, whether or not a fee is charged or accepted for such entertainment and whether or not such entertainment is provided as an employee or independent contractor. *Escort* means any person who, for any form of consideration, agrees or offers to act as a social companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort agency means any person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Inspector means the mayor, chief of police, fire marshal, chief building official, director of health, zoning enforcement officer, their agent or representative, or any city or state employee designated to make inspections for public safety, fire code, building code, public health, zoning purposes, violations of this article, or for violations of other laws and ordinances of the city or state.

Licensed premises means any premises that requires a sexually oriented business license pursuant to this article, including any buildings, parking areas and all other portions of the property of which the licensee has control.

Licensee means any person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on an application for a license.

Live adult entertainment means any live performance by a person who appears nude or seminude or any live performance that is characterized by the exposure of specified anatomical areas.

Massage parlor means any establishment having a fixed business where any person engages in or carries on, or permits to be engaged in or carried on, any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the body with the hands or with the

aid of any mechanical or electric apparatus or appliance with or without any supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice. The definition of massage parlor shall not include the practice of massage:

- (1) In any state-licensed hospital, nursing home, clinic, medical office or rehabilitation facility;
- (2) By a state-licensed physician, surgeon, chiropractor, osteopath, physical therapist, or massage therapist;
- (3) By any registered nurse, licensed practical nurse or technician working under the supervision of a state-licensed physician, surgeon, chiropractor, osteopath, physical therapist, or certified massage therapist who shall be present on the licensed premises during the time the service is rendered;
- (4) By trainers for any amateur or professional athlete or athletic team or school athletic program; or
- (5) By any state-licensed barber or beautician with regard to the massaging of the neck, face, scalp and hair for cosmetic or beautifying purposes.

Masseur means any person who, for any form of consideration, performs massage activities as described in the previous definition of this section.

Minor means any person under the age of 18 years.

Nude model studio means any place where a person, for any form of consideration, regularly appears nude or seminude or displays specified anatomical areas to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. A nude model studio shall not include a modeling class operated by an accredited public or private school or college.

Nudity means:

- (1) The appearance of human bare buttocks, anus, genitals, pubic region or the areola or nipple of the female breast; or
- (2) A state of dress that fails to opaquely and fully cover human buttocks, anus, genitals, pubic region or areola or nipple of the female breast.

Operator means any person operating, owning, managing, conducting or maintaining a sexually oriented business.

Public building means any building owned, leased or otherwise held by the United States, the state, the city, any other city, any fire district, any school district, or any other agency or political subdivision of the United States or the state, which building is used for governmental purposes.

Public park and recreation area means public land that has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, golf course, basketball or tennis courts, pedestrian or bicycle paths, open space, wilderness areas, or similar public land within the city that is under the control, operation, or management of the city, any other city, or the state.

School means any public, private or parochial educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, middle schools, junior high schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, alternative schools, junior colleges, colleges and universities. School includes the school grounds, but does not include any facility used primarily for another purpose and only incidentally as a school.

Seminude means a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual activities is not intended to include any medical publications or films or bona fide educational publication or films, nor does it include any art or photography publications that devote at least 25 percent of the lineage of each issue to articles and advertisements dealing with subjects of art or photography. Nor does this definition apply to any news periodical that reports or describes current events and which, from time to time, publishes photographs of nude or seminude persons in connection with the dissemination of the news. Nor does this definition apply to publications or films that describe and report different cultures and which, from time to time, publish or show photographs or depictions of nude or seminude persons when describing cultures in which nudity or seminudity is indigenous to the population.

Sexual encounter establishment means a business or commercial establishment that, for any form of consideration, offers a place where two or more persons may congregate, associate or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas. A sexual encounter establishment shall not include an establishment where a state-licensed medical practitioner, psychologist, psychiatrist, or similar professional person engages in medically approved and recognized sexual therapy.

Sexually oriented business means:

- (1) An adult arcade, adult oriented store, adult cabaret, adult minimotion picture theater, adult motion picture theatre, adult theatre, escort agency, massage parlor, nude model studio or sexual encounter establishment;
- (2) Any premises to which the public, patrons, or members are invited or admitted and wherein an entertainer provides adult entertainment, or which premises are so physically arranged as to provide booths, cubicles, studios, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or wherein an entertainer provides adult entertainment, when such adult entertainment is held, conducted, operated or maintained for profit, direct or indirect;
- (3) Any adult entertainment studio or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

Specified anatomical areas means:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly turgid state, even if completely opaquely covered.

Specified sexual activities means:

- (1) Showing of human genitals in a state of sexual stimulation or arousal;
- (2) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus;
- (3) Fondling or touching of another person's genitals, pubic region, buttocks or female breasts;
- (4) Lap dancing; or
- (5) Excretory functions as part of or in connection with any of such activities.

8.81.040 Penalties for violation of article

- (a) Any licensee, operator, employee or other person who violates any of the provisions of this article shall be subject to a fine of \$500 for each such violation.
- (b) Each violation of this article shall be considered a separate offense, and any violation continuing more than one hour of time shall be considered a separate offense for each hour of violation.
- (c) In addition to any fines or penalties imposed in this section, this article may be enforced by injunctive procedure in the superior court. The city may further recover from any violator any and all costs and fees, including reasonable attorney's fees, expended by the city in enforcing the provisions of this article.
- (d) This article shall not preclude any additional enforcement action taken by any appropriate city, state or federal official conducted pursuant to any applicable ordinance, regulation or law of the city or state or the United States of America.
- (e) All remedies and penalties provided for in this section shall be cumulative and independently available to the city, and the city shall be authorized to pursue any and all remedies set forth in this section to the fullest extent allowed by law.

8.81.050 LICENSE

Required.

- (a) After the effective date of the ordinance from which this article is derived it shall be unlawful for any person to engage in, conduct or carry on or permit to be engaged in, conducted or carried on, in or upon any premises in the city, the operation of a sexually oriented business without first obtaining a license to operate from the city.
- (b) A license may be issued for only one sexually oriented business located at a fixed and certain place. Any person who desires to operate more than one sexually oriented business must have a license for each such business.

(c) It shall be a violation of this article for any owner, operator, entertainer or employee to knowingly work in or about, or to knowingly perform any service directly related to, the operation of any unlicensed sexually oriented business.

(d) Each license shall be specific to a licensee and to a location and may not be sold, assigned or transferred to any other person or location in any way, including, but not limited to:

- (1) The sale, lease or sublease of the business;
- (2) The transfer of shares, securities or interests that constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- (3) The establishment of a trust, gift or other similar legal devise that transfers ownership or control of the business, except for a transfer by bequest or other operation of law upon the death of the licensee or a person possessing the ownership or control of the licensee.

8.81.051 Application

(a) The operator of each sexually oriented business shall submit an application to the town clerk together with an application fee as listed in appendix to this Code prior to the commencement of business or within 60 days of the effective date of the ordinance from which this article is derived for any establishment already open for business. The town clerk shall date stamp the application and shall promptly deliver the application to the mayor or his / her designee. The application shall be made upon a form prepared by the mayor or his / her designee and disseminated by the town clerk.

(b) The application shall be signed and filed by a person having direct control or management of the proposed sexually oriented business. In instances where the applicant is a partnership, limited liability company or corporation, the application shall be signed and filed by a duly authorized partner, member, manager, officer, director, or majority shareholder of such entity, as the case may be. The application shall be sworn to be true and correct by the applicant.

(c) The applicant for a license shall furnish the following information:

- (1) Name and business and residence address of the applicant, owner, operator, manager and any other person having direct control or management of the sexually oriented business, including all fictitious names. If the applicant is a partnership, the names of all general partners. If the applicant is a limited liability company, the names of all members and managers of such company. If the applicant is a corporation, the names of all officers, directors and shareholders holding a ten percent or greater interest in the total number of shares of such corporation;
- (2) Name and business and residence address of the spouse of each individual named in subsection (c)(1) of this section;
- (3) Name and address of all employees and any other persons directly involved in the operation of the sexually oriented business, including all fictitious names;
- (4) Written proof that the applicant is at least 18 years of age;
- (5) A recent photograph of the applicant;
- (6) The applicant's driver's license number and social security number or federal employer identification number;
- (7) If the applicant is:

- a. A partnership, the application shall be accompanied by the partnership agreement, if any;
 - b. A limited partnership, the application shall specify the name of the partnership, the date and state of the filing of its certificate of limited partnership, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of the partnership agreement, if any, and by evidence that such partnership is in good standing under the laws of the state;
 - c. A limited liability company, the application shall specify the name of the company, the date and state of the filing of its articles of organization, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of the operating agreement, if any, and by evidence that such company is in good standing under the laws of the state;
 - d. A corporation, the application shall specify the name of the corporation, the date and state of incorporation, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of its bylaws, if any, and by evidence that such corporation is in good standing under the laws of the state;
 - e. Operating under a fictitious name, the application shall be accompanied by a copy of the applicant's recorded trade name certificate.
- (8) The applicant's sexually oriented business or adult entertainment license or permit history, which shall include, but not be limited to whether such person is currently licensed or has previously operated in this or another municipality or state under license; the names and locations of such businesses; whether the applicant has had such license suspended or revoked; the dates of and reasons for such suspension or revocation; and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation. Such history shall include any entity of which the applicant was a partner, member, officer, director or shareholder;
- (9) Any criminal convictions of the applicant, operator, employees and other persons directly involved in the management or control of the sexually oriented business, to any crime involving moral turpitude, prostitution, obscenity or other sex-related crimes in any jurisdiction within three years of the date of the filing of the application. Such crimes include, but are not limited to, obscenity, child pornography, prostitution, patronizing a prostitute, promoting or permitting prostitution and sexual assault, in the state, being G.S. §§ 53a-194, 53a-196, 53a-196a, and 53a-196b (obscenity); G.S. §§ 53a-196c and 53a-196d (child pornography); G.S. §§ 53a-82, 53a-83 and 53a-83a (prostitution, patronizing a prostitute, and patronizing a prostitute from a motor vehicle); G.S. §§ 53a-86, 53a-87, 53a-88 and 53a-89 (promoting or permitting prostitution); and G.S. §§ 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b and 53a-73a (sexual assault);
- (10) The location of the sexually oriented business to be operated by the applicant, including the street address, legal description of the property, and telephone number, if any;
- (11) The exact nature of the entertainment to be conducted at the sexually oriented business;
- (12) A sketch or diagram showing the configuration of the premises drawn to a designated scale and with marked dimensions of the interior of the premises, including a statement of total floor space occupied by the business. Such sketch or diagram shall include, without limitation, all doors, windows, bars, stages, manager's stations,

restrooms, dressing rooms, booths, cubicles, rooms, studios, compartments, stalls, overhead lighting fixtures and any areas where patrons are not permitted; and

(13) A statement by the applicant that he is familiar with the provisions of this article, is in compliance with them, and consents to the authority of the city in licensing and regulating the proposed sexually oriented business.

(d) The mayor shall have the right to request additional information and documentation of the applicant and the proposed business to support or clarify any information previously provided.

(e) If a license to operate a sexually oriented business is granted, the information furnished in the application, including employee information, shall be updated within 30 days of any material changes. Such update shall be filed at the office of the city clerk, who shall promptly forward such update to the city manager.

8.81.052 Licensing procedure

(a) The mayor or his / her designee shall be responsible for investigating, granting, denying, renewing, suspending and revoking all sexually oriented business applications and licenses pursuant to this article. Upon receipt of a properly completed application with all required attachments, the mayor or his / her designee shall immediately forward copies of such application to the following city officials for their investigation:

(1) The chief of police shall investigate the criminal convictions, qualifications and suitability of the applicant to be licensed and shall inspect the premises for compliance with all laws and regulations.

(2) The fire marshal shall investigate the compliance of the proposed premises with all applicable fire codes and laws.

(3) The chief building official shall investigate the compliance of the proposed premises with all applicable building codes and laws.

(4) The director of health shall investigate the compliance of the proposed premises with all applicable public health codes and laws.

(5) The zoning enforcement officer shall investigate the compliance of the proposed premises with all applicable zoning regulations and laws and also compliance with all distance requirements set forth in section 8.81.060.

(b) Within 30 days of the date the application was filed, all such investigations to be performed pursuant to subsection (a) of this section shall be completed. At the conclusion of each investigation, each city official shall indicate on the photocopy of the application his approval or disapproval of the application, state the reasons for any disapproval, date it, sign it, and return it immediately to the city manager. A city official shall disapprove an application if he finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, article, regulation or other law in effect in the city, including this article.

(c) Within 45 days of the date the application was filed, the mayor or his / her designee shall render a decision approving or denying such application and shall file such decision with the city clerk and mail such decision to the applicant by certified mail, return receipt requested. If the city manager denies the application, he shall state in writing the reasons for such denial. All copies of the investigations performed pursuant to subsection (b) of this section shall be attached to the mayor's decision.

(d) The mayor or his / her designee shall issue to the applicant a license to operate a sexually oriented business within 45 days of the date the application was filed if all requirements for a sexually oriented business described in this article are met, unless he finds that:

(1) The applicant is under 18 years of age.

(2) The applicant or any other person who will be directly engaged in the management and operation of the business has been convicted in this or any other state of any of the crimes specified in section 8.81.051 (c) (9), regardless of the pendency of any appeal, within three years of the date the application was filed.

(3) Within five years of the date the application was filed, the applicant or his spouse has been denied a license by the city to operate a sexually oriented business, has had a license revoked by the city, or has failed to correct any material violation of this article for more than 30 days, of which the licensee has received written notice.

(4) Within three years of the date the application was filed, the applicant or his spouse has had a license to operate a sexually oriented business denied or revoked by another municipality or state.

(5) The applicant or his spouse is overdue on payment to the city of any taxes, fees, fines or other penalties relating to the sexually oriented business or the licensed premises.

(6) The business as proposed by the applicant, if permitted, would not have complied with all applicable statutes, codes, ordinances, laws and regulations including, but not limited to, the fire, building, health, and zoning codes of the city, and this article. If the premises are not in compliance, the applicant shall be advised of the reasons in writing and what, if any measures the applicant can take to bring the premises into compliance for a license to issue.

(7) The premises are not in compliance with all distance requirements set forth in section 8.81.060.

(8) The applicant has failed to complete the license application as specified in section 8.81.051(c), has failed to provide any supporting or clarifying documentation when requested by the mayor or his / her designee, or has provided materially false or misleading information in the application.

(9) The application fee has not been paid.

(10) The granting of the application would violate a statute, ordinance or court order.

(11) The applicant, if a limited partnership, limited liability company or corporation, is not in good standing under the laws of the state.

(e) Any failure of the license to issue within 45 days of the date the application was filed shall constitute a denial subject to appeal.

(f) If the sexually oriented business application is denied, the city shall retain one-half of the permit fee for expenses incurred in the investigation of the application and shall return the remainder to the applicant.

(g) When an application is denied solely for reasons stated in subsection (d)(6) of this section and such violation is correctable, the applicant shall be given an additional 30 days from the date of such notification of denial to bring the premises into compliance. Upon verification by inspection that the correction has been made, which shall be determined no later than 48 hours after receipt by the mayor or his / her designee of written notice of such correction, a license shall be issued to the applicant so long as no new violations or other disqualifying factors have occurred within such 30 days.

(h) As a condition of the license, the entire licensed premises shall be open to random physical inspections for compliance with this article by any inspector during all hours when the premises are open for business. Any refusal to allow such an inspection shall constitute a violation of this article.

(i) The license, if granted, shall state on its face the name and residence address of the person to whom it is granted, the expiration date, the address of the sexually oriented business, and the department or public official and telephone number to report any violation of this article. The license shall also include a notice that the subject premises are subject to random inspections by inspectors of the city for compliance with this article.

(j) The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at all times.

8.81.052 Expiration and renewal

(a) Each license issued to a licensee shall expire one year from the date it is issued, unless it is renewed upon application of the licensee accompanied by payment of a renewal fee as listed in appendix D to this Code. Such application and application fee shall be submitted by the licensee to the town clerk at least 30 days before the expiration date of the license, but not more than 90 days before. Provided the application is filed within such time and the renewal fee paid, the mayor or his / her designee shall, prior to the expiration of the previous license, renew the license for the same licensee at the same location for an additional one year, unless the random inspection reports in the licensee's file reveal uncorrected violations of this article or uncorrected violations of any fire, building, health or zoning codes or regulations, of which the licensee has received written notice, or any condition under section 14-263(d) that could have been grounds for denial of the original application has since become true. If renewed, the mayor or his / her designee shall mail the renewed license to the licensee prior to the expiration date of the previous license. If not renewed, the mayor or his / her designee shall mail a notice of nonrenewal to the licensee by certified mail, return receipt requested, prior to the expiration date of the previous license, stating the reasons for such nonrenewal. No sexually oriented business shall continue operations without a renewed license.

(b) If there are uncorrected violations of this article or uncorrected violations of any fire, building, health or zoning codes or regulations, of which the licensee has received written notice, the license renewal shall be delayed for a maximum of 30 days beyond the original expiration date in order for all corrections to be completed and inspections done to determine compliance. If the licensee does not make such corrections of violations within such 30 days, no license renewal shall be issued. The mayor or his / her designee shall mail a notice of nonrenewal to the licensee by certified mail, return receipt requested, within five days after the extended 30-day period, stating the reasons for such nonrenewal.

(c) Notwithstanding the provisions in subsection (b) of this section, in no instance shall a renewal be issued to a licensee who, within the one-year period of the previous license has had two or more material violations of this article, to which the licensee has received written notice, or has had one or more uncorrected material violations of this article pending for over 30 days.

(d) Should a license not be renewed for any violation of this article, no license shall issue for the same licensee for five years from the expiration of the previous license.

8.81.053 Suspension and revocation

(a) The mayor or his / her designee may suspend a sexually oriented business license for a period not to exceed 30 days upon his determination that a licensee, operator or employee has materially violated any part of this article. The mayor or his / her designee shall issue such suspension in writing stating the reasons therefore and shall notify the licensee by certified mail, return receipt requested, addressed to the licensee at his business or residence address, or by service by any process server at the usual place of abode of the licensee or at the licensed premises. If a suspension is issued for a correctable violation, the mayor or his / her designee, within 48 hours of his receipt of written notice that the correction has been made, shall terminate such suspension upon verification by inspection. No sexually oriented business shall continue operations while under suspension.

(b) The mayor or his / her designee shall revoke any license where any of the following occur:

(1) It is discovered that materially false or misleading information or data was given on, or material facts were omitted from, any application for a sexually oriented business license.

(2) Any taxes, fees, fines or other penalties relating to the licensed premises or required to be paid by this article become more than 30 days delinquent.

(3) A licensee, operator, employee or other person directly involved in the management or control of the sexually oriented business has been convicted of any crime specified in section 8.81.051(c)(9).

(4) A licensee has had within a one year period two or more material violations of this article, to which the licensee has received written notice.

(5) A licensee has one or more uncorrected material violations of this article pending for over 30 days, to which the licensee has received written notice.

(6) A licensee has failed to correct within 30 days any violation for which his license was suspended pursuant to subsection (a) of this section.

(7) The license or any interest therein is transferred in any way.

(8) A licensee, operator or employee has knowingly allowed any live performance or conduct featuring any specified sexual activities to occur on the licensed premises.

(9) A licensee, operator or employee has knowingly allowed any illegal activity to occur on the licensed premises including, but not limited to, prostitution, gambling, or the possession, use or sale of controlled substances.

(10) A licensee, operator or employee has knowingly operated the sexually oriented business while the business's license was under suspension.

(c) At least ten days prior to the revocation of any license, the mayor or his / her designee shall issue such revocation in writing stating the reasons therefore and shall notify the licensee by certified mail, return receipt requested, addressed to the licensee at his business or residence address, or by service by any process server at the usual place of abode of the licensee or at the licensed premises.

(d) Subject to section 8.81.054 (f), no sexually oriented business shall continue operations after its license has been revoked, and no new license shall be issued for the same licensee for five years from the date of revocation.

8.81.054 Appeal

(a) Within five days of receipt of notification of a denial, nonrenewal, suspension or revocation of a license, the licensee may contest such decision by submitting a written application to the town clerk requesting a public hearing before the city council.

(b) The public hearing shall be scheduled to take place no later than 20 days from the date of the application for such hearing. Not less than ten days before the date of such hearing, a notice of hearing shall be sent to the licensee by certified mail, return receipt requested, and posted in a conspicuous place on the proposed or licensed premises.

(c) In such application the licensee may request that the mayor or his / her designee or any other city official who investigated the application or inspected the premises shall be present at the public hearing. At such hearing, the licensee shall have the opportunity to present evidence on his behalf and shall have the right to cross examine all city officials and witnesses. The city council shall conduct the hearing in the order and form and with such methods of proof as it deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation.

(d) Immediately following such hearing, the city council shall enter its vote to either sustain or overrule the denial, nonrenewal, suspension or revocation. Within five days after such hearing, the city council shall issue written notice of its final decision, stating the reasons therefore, and shall forward such decision to the licensee by certified mail, return receipt requested. If the denial, nonrenewal, suspension or revocation is overruled, the mayor or his / her designee shall immediately issue such license or renewal of license, or revoke the suspension or revocation, as the case may be.

(e) The decision of the city council may be appealed to the superior court within 20 days of such written notice of such decision.

(f) During the pendency of any appeal of a nonrenewal, suspension or revocation, the operations of the sexually oriented business may be maintained by the licensee, unless otherwise ordered by the superior court.

8.81.060 Location

(a) No sexually oriented business shall be permitted on a site that is less than 1,500 feet from any other site containing a sexually oriented business.

(b) No sexually oriented business shall be permitted on a site that is less than 1,000 feet from any site containing a church, school, public building, public park or recreation area.

(c) No sexually oriented business shall be permitted on a site that is less than 750 feet from any residentially zoned land as defined in the city zoning regulations.

(d) No sexually oriented business shall be permitted within the same building, structure or portion thereof that is used for residential purposes or that contains another sexually oriented business.

- (e) All distances contained in this section shall be measured by taking the nearest straight line between the respective lot boundaries of each site.
- (f) The city zoning regulations, as may be amended from time to time, are hereby incorporated by reference as a part of this article, and any violation of such regulations shall be deemed a violation of this article.

8.81.070 Existing businesses

- (a) Any sexually oriented business lawfully operating on the effective date of the ordinance from which this article is derived but in violation of section 14-291 shall be deemed a nonconforming use. No nonconforming use shall be increased, enlarged, extended or altered except to make it a conforming use.
- (b) Any sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of any church, school, public building, public park or recreation area within 1,000 feet of such business, or of any residentially zoned land within 750 feet of such business. However, this subsection applies only to the renewal of a valid license and does not apply to a license application submitted after a license has expired or has been revoked.
- (c) Any existing sexually oriented business on the effective date of the ordinance from which this article is derived shall submit an application for a license pursuant to section 14-261 and shall comply with all regulations herein within 60 days of the effective date of the ordinance from which this article is derived. Otherwise, such existing sexually oriented business shall cease operations.

8.81.080 Operating requirements

The following requirements shall apply to all sexually oriented businesses within the city:

- (1) *Generally.*
 - a. No licensee, operator or employee of a sexually oriented business shall perform or permit to be performed, offer to perform, or allow patrons to perform any live performance or conduct featuring any specified sexual activities on the licensed premises.
 - b. Every sexually oriented business shall comply with all applicable statutes, codes, ordinances, laws and regulations including, but not limited to, the fire, building, health, and zoning codes of the city and state.
 - c. Every sexually oriented business shall be physically arranged in such a manner that the entire interior portion of any room or other area used for the purpose of viewing Adult Books, Adult Videos or Adult Novelties or other types of adult entertainment shall be clearly visible from the common areas of the premises. Visibility into such areas shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever. Such areas shall be readily accessible at all times to employees and shall be continuously open to view in their entirety. It shall be a violation of this article to install enclosed booths, cubicles, rooms or stalls within sexually oriented businesses, for whatever purpose, but especially for the purpose of providing for the secluded viewing of adult-oriented motion pictures or other types of adult entertainment.
 - d. Every sexually oriented business, including common areas, entryways, parking areas, restrooms, and any room or other area used for the purpose of viewing adult-

oriented motion pictures or other types of adult entertainment, shall be well-lighted. The entire premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle as measured at the floor or ground level. It shall be the duty of the operator and his agents to ensure that such illumination is maintained at all times that any patron is present on the premises.

e. No booths, cubicles, rooms or stalls used for the purpose of viewing adult-oriented motion pictures or other types of adult entertainment shall be occupied by more than one person at any one time. No holes shall be allowed in the walls or partitions that separate each such room from any adjoining room.

f. No sexually oriented business shall be conducted in such a manner that permits the observation of any material depicting specified anatomical areas or specified sexual activities from outside of the building that houses the sexually oriented business.

g. No sexually oriented business shall advertise the availability at such business of any activity that would be in violation of this article or any state or federal law. Nor shall any exterior sign, display, decoration, show window or other advertising of such business contain any material depicting, describing or relating to specified anatomical areas or specified sexual activities.

h. No alcoholic beverage or other intoxicant shall be displayed, served, ingested or sold on the premises of any sexually oriented business unless permitted by the state. No licensee, operator or employee shall be under the influence of any alcoholic beverage or other intoxicant while working at a sexually oriented business. No patron who is under the influence of any alcoholic beverage or other intoxicant shall be allowed to enter any sexually oriented business.

i. No gambling shall be permitted by any person in any sexually oriented business.

(2) *Employees.*

a. The licensee and operator shall be responsible for the conduct of all employees while on the licensed premises. Any act or omission of any employee constituting a violation of the provisions of this article shall be deemed the act or omission of the licensee and operator, when such licensee or operator knew or should have known of such act or omission, for purposes of determining whether the operating license shall be renewed, suspended or revoked and whether the licensee and operator shall be subject to the penalties imposed by this article.

b. No licensee or operator shall knowingly employ in any sexually oriented business any person who, within three years of the commencement of such employment, has been convicted in this or any other state of any of the crimes specified in section 14-262(c)(9), regardless of the pendency of any appeal.

(3) *Minors.*

a. No licensee, operator or employee of a sexually oriented business shall allow or permit any minor to enter into or in any way loiter in or on any part of the licensed premises, purchase goods or services at the licensed premises, or work at the licensed premises as an employee.

b. Every sexually oriented business shall display a sign outside each entrance of such business bearing the words "Sexually Oriented Business. Persons Under 18 Not Admitted" in legible letters between two and six inches tall.

(4) *Hours of business.* No sexually oriented business shall open to do business before 10:00 a.m., Monday through Saturday, nor shall it remain open after 1:00 a.m. Tuesday through Friday, nor after 2:00 a.m. on Saturday, Sunday or any legal holiday as designated in G.S. § 1-4.

8.81.081 Operating requirements - Live adult entertainment

In addition to the requirements contained in section 8.81.080, the following requirements shall apply to all sexually oriented businesses within the city containing live adult entertainment:

- (1) No person shall perform live adult entertainment for patrons of a sexually oriented business except upon a stage at least 18 inches above floor level and separated from any and all such patrons by a minimum distance of four feet or as approved by the liquor division of the state department of consumer protection.
- (2) Separate dressing room facilities for male and female entertainers shall be provided that shall not be occupied or used in any way by any one other than such entertainers.
- (3) No entertainer shall expose any specified anatomical areas to any patron of a sexually oriented business either before or after a performance including, but not limited to, when such entertainer is entering or exiting the stage.
- (4) No entertainer, either before, during or after a performance, shall have physical contact with any patron of a sexually oriented business while on the licensed premises.
- (5) No employee of any sexually oriented business shall engage in any live adult entertainment while acting as a waiter, host or bartender for such business.

8.81.082 Operating requirements - Massage parlors

In addition to the requirements contained in section 8.81.080, the following requirements shall apply to all massage parlors within the city:

- (1) *Facility requirements.*
 - a. Construction of rooms used for toilets, tubs, steam baths and showers shall be waterproofed with approved waterproof materials.
 - b. Toilet facilities shall be provided in convenient locations. When five or more persons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Toilets shall be designated as to the sex accommodated therein.
 - c. Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.
- (2) *Operating requirements.*
 - a. Every portion of the massage parlor, including appliances and apparatus, shall be kept clean and operated in a sanitary condition. Adequate lighting shall be provided, and each room or enclosure where a massage is administered shall have an illumination of not less than one footcandle as measured at the floor level while such room or enclosure is occupied.
 - b. All employees of the massage parlor shall be clean and wear clean outer garments, which use is restricted to the massage parlor. Provisions for a separate dressing room for each sex must be available on the licensed premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

- c. All employees and masseurs shall be modestly attired. Diaphanous, flimsy, transparent, form-fitting, or tight clothing is prohibited. Clothing must cover the employee's or masseur's chest at all times. Hemlines of skirts, dresses or other attire may be no higher than three inches above the top of the knee.
- d. All specified anatomical areas of patrons must be covered by towels, cloth or undergarments when in the presence of any employee or masseur. It shall be unlawful for any person in a massage parlor to expose his specified anatomical areas to any other person or for any person to expose the specified anatomical areas of another person.
- e. It shall be unlawful for any person in a massage parlor to engage in any specified sexual activities or to place his hand upon, to touch with any part of his body, to fondle in any manner, or to massage any specified anatomical areas of any other person.
- f. All massage parlors shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in an approved sanitary manner.
- g. Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day business is in operation. Bathtubs shall be thoroughly cleaned after each use.
- h. No massage parlor shall place, publish, or distribute or cause to be placed, published, or distributed any advertising material that depicts any portion of the human body or contains any written text that would reasonably suggest to prospective patrons that any services are available other than those services allowed in this ordinance, or that employees or masseurs are dressed in any manner other than described in subsection (2)c of this section.
- i. All services enumerated in this section shall be performed in a cubicle, room, booth or area within the massage parlor, which cubicle, room, booth or area shall have transparent doors or walls so that all activity therein shall be visible from outside the same.
- j. No massage parlor shall carry on, engage in, or conduct business on Sunday nor on any other day before 8:00 a.m. or after 9:00 p.m.
- k. A full schedule of service rates shall be posted in a prominent place within the massage parlor in such a manner as to come to the attention of all patrons. No charges other than the specified rates for specified services shall be allowed and all patrons shall be notified of the full cost of services prior to the rendering of any service.