

27TH BOARD OF REPRESENTATIVES CITY OF STAMFORD

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RESOLUTION NO. 3188 APPROVING AN AGREEMENT BETWEEN THE CITY OF STAMFORD AND THE MILL RIVER COLLABORATIVE REGARDING THE MILL RIVER PARK

**NOW THEREFORE BE IT RESOLVED BY THE 27TH BOARD OF
REPRESENTATIVES THAT:**

The Agreement ("Agreement") between the City of Stamford ("City") and the Mill River Collaborative ("Collaborative") for the oversight of the Mill River Park, in accordance with the terms and conditions set forth in the Agreement, which is incorporated by reference, is hereby approved; and

This ordinance shall take effect upon the effective date of such Agreement is entered into and executed by the Mayor.

This resolution was approved by a machine vote of 31-3-0 at the regular monthly meeting of the 27th Board of Representatives held on Wednesday, November 7, 2007.



David R. Martin, President



Annie M. Summerville, Clerk

cc: Mayor Dannel P. Malloy
Benjamin Barnes, Director of Operations
Thomas M. Cassone, Director of Legal Affairs
William Callion, Director of Public Safety, Health & Welfare
Sandy Dennies, Director of Administration
Donna Loglisci, City and Town Clerk
Board of Finance

THIS AGREEMENT, made as of the ____ day of _____, 2007,
between The City of Stamford (the “City”), a municipal corporation of the State of
Connecticut, and the Mill River Collaborative (“Collaborative”), a Connecticut not-for-
profit corporation located in Stamford, Connecticut.

WITNESSETH

WHEREAS, City is charged with the duty to manage, maintain and operate
City parks and recreation facilities, and

WHEREAS, pursuant to its Certificate of incorporation, Collaborative was
formed in 2002 for the purpose of promoting and assisting in the restoration,
maintenance and management of Mill River Park; and

WHEREAS, the City, working with Collaborative and others, has been
planning to enhance the existing park known as Mill River, expand its existing
boundaries and add “green ways” to Scalzi Park, Stamford Harbor and other areas
within the City of Stamford through acquisition of property rights and other agreements
with from third parties and the public pedestrian passageways leading into Mill River
Park (“Mill River Park”) all as more fully described in Exhibit “A” attached hereto and
made part hereof; and

WHEREAS, The City desires to encourage the participation of interested not-
for-profit corporations in providing supplemental services, including maintenance,
security, recreational capital improvements and educational programs, for the benefit of
the public; and

WHEREAS, Collaborative and City have developed an effective public/private partnership through which Collaborative has undertaken substantial responsibility for the maintenance, public assistance, repair, public programming, and capital improvements in Mill River Park, and has provided funds for the costs associated therewith; and

WHEREAS, Collaborative has raised through December 2007 over \$900,000 for Mill River Park from donations from the public, foundations, and other private sources has managed the construction of Mill River Playground, provided Public Safety Ambassadors and supplied supplemental maintenance to Mill River Park since June, 2006; and

WHEREAS, Collaborative is willing to continue to raise money for use in Mill River Park and to continue to perform responsibilities associated with maintaining, repairing and constructing improvements in Mill River Park for the benefit of the public, including programs and activities that will increase public interest in and awareness of Mill River Park; and

WHEREAS, the City desires to obligate Collaborative to perform the services hereinafter set forth; and

WHEREAS, the City and Collaborative executed an agreement to perform the services hereinafter set forth and the parties mutually agree to the agreement as set forth herein;

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties do hereby agree as follows:

1. SCOPE OF AGREEMENT

Collaborative shall provide, or cause to be provided, services specified for construction of improvements, programming, maintaining and repairing Mill River Park to the reasonable satisfaction of the City so as to create and maintain a first class urban park. Such services shall include keeping and maintaining Mill River Park in good condition and repair, all in accordance with the provisions of this agreement.

2. TERM

(a) The term of this agreement (“Term”) shall be 10 years, and shall commence on July 1, 2008, and terminate on June 30, 2018, unless sooner terminated by the City as provided in paragraph 21 hereof, or by Collaborative as provided in paragraph 22 hereof;

(b) This agreement shall be automatically extended for a renewal term of 5 years commencing the day before the expiration of the initial term or any renewal term unless the City or the Collaborative notifies the other, in writing, at least 180 days before the expiration of the initial term or any renewal term of the Agreement.

3. SERVICES

A. General Standards. Collaborative shall maintain and repair Mill River Park in accordance with the standards set forth in this paragraph.

1) Cleaning

a) Dirt, litter and obstructions shall be removed as needed, and trash and leaves collected and removed as needed so as to maintain Mill River Park in a clean, neat and good condition.

b) All walkways, sidewalks and all other improvements and facilities in Mill River Park, including comfort stations and playgrounds, shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.

- c) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface.
- d) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.
- e) Branches and trees damaged or felled by excessive winds, ice, vandalism, or by any other reasons whatsoever, shall be promptly removed.

2) Snow Removal

Snow and ice shall be removed from all walkways and paved surfaces within a reasonable period of time after each snowfall or accumulation of ice, so as not to interfere with safe passage. Sand and/or salt shall be spread as needed to the extent such activities do not adversely affect the Mill River.

3) Landscape Maintenance

Collaborative shall perform the following landscape maintenance work:

- a) Prune and trim trees and shrubs that are overextended, dead or are otherwise unsafe or unsightly, to maintain their natural form.
- b) Remove or destroy any weeds from paving blocks, pavement, cobbled and concrete areas.
- c) Apply fertilizer to trees, shrubs, plants and other lawn areas, as appropriate.
- d) Replace any plants or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size, where appropriate.
- e) Reseed and/or resod grass-covered areas and ball fields as needed.
- f) Rake and collect leaves.
- g) Water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition.

- h) Mow and edge grass-covered areas as needed.
- i) Weed as needed.

4) Repairs

Repairs shall include, but not be limited to, the following:

- a) Benches or Other Seating: Collaborative shall replace any broken or missing bench slats and paint benches, as needed.
- b) Walls, Barriers and/or Fencing: Any broken or materially cracked walls, barriers and/or fencing shall be repaired or removed and replaced. To the extent feasible, replacement materials and designs shall match the materials and designs of existing walls, barriers and/or fencing.
- c) Pavements: All paved surfaces shall be maintained in a safe and attractive condition. To the extent feasible, replacement materials shall match existing materials.
- d) Signs: All graphics shall be maintained in a first class condition, and all vandalized or damaged signs shall be promptly cleaned or replaced with new signs that match other installed signs.
- e) Facilities: All recreation facilities and equipment and any other facilities and equipment that are located in Mill River Park and are operated pursuant to concession agreements, shall be maintained in good condition and good working order at all times.
- f) Painting: All items with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.
- g) Monument Maintenance: All monuments shall be maintained in good condition and repair and Collaborative shall be responsible for bronze restoration, cleaning, repointing and stone work.

5) Public Assistance

Security shall include, but not be limited to the following:

- a) Providing personnel to assist patrons at the park;
- b) To patrol Mill River Park and report to City Police any damage, destruction, vandalism; or undesirable behavior;
- c) Any public assistance provided by the Collaborative hereunder shall be subject to the terms and conditions of paragraph 3C.

B. Financial Limitations. Collaborative agrees that before the commencement of each fiscal year, it shall submit its budget for repair, replacement, maintenance and security (“Maintenance Budget”) and any Capital Budget requests to the City for review and comment in accordance with Schedule “B” attached hereof. The Maintenance Budget shall set forth in reasonable detail the amounts proposed to be allocated to each of the categories of services enumerated in paragraph 3 hereof and to the extent that the Collaborative will be seeking to use the City and its employees to perform some of the tasks outlined in said Maintenance Budget. The Maintenance Budget shall not be final until written approval is given by the City. Collaborative further agrees that the aggregate amount of the operating Maintenance Budget allocable to the services described in paragraph 3 shall be available for such services (without regard to the specific amount allocated to any category) and to the extent amounts in excess of such aggregate amount are necessary to perform the services described in paragraph 3 for maintenance and repair in any fiscal year, Collaborative agrees to use reasonable commercial efforts to make said amounts available; provided, however, that in no event shall Collaborative be obligated to expend funds that are restricted for a designated purpose for any other purpose.

C. Security. The City shall retain the responsibility for maintaining security and law enforcement at Mill River Park.

D. Use of City Employees. Subject to applicable laws, rules, regulations, and contractual provisions, City employees may be assigned to Mill River Park for purpose

of performing services customarily performed by City Employees required to be performed under this agreement.

E. Use of City Equipment. Collaborative agrees to exercise reasonable care in the use, operation and custody of City personal property, including property and equipment leased by the City, used in the performance of this agreement.

F. Payments to Collaborative. All monies paid to Collaborative pursuant to this agreement according to the formulae described in paragraph 10 herein shall be used by Collaborative for the purposes set forth in this paragraph 3 in the fiscal year.

G. Programming. 1) During the term of this agreement Collaborative shall have the right to schedule and conduct special events and programs on behalf of the Community subject to existing laws and ordinance pertaining to health and safety, including, but not limited to concerts, fairs, festivals and educational programs; 2) Collaborative shall be responsible for the scheduling and content of all such programs. Any and all fees collected for any program shall be retained by the Collaborative so long as any income received after the deduction of expenses shall be used by the Collaborative for the benefit of Mill River Park; 3) Collaborative shall be responsible for all costs and all expenses arising from any special program or event including permit fees and reimbursement for City's direct expense, but not including the regular maintenance and cleaning of Mill River Park which shall be incorporated in the Maintenance Budget; 4) Collaborative shall send a schedule of desired special events and programs at the beginning of each fiscal year and quarterly thereafter detailing the date and content and cost of each event. The City shall provide a list of costs and expenses related to such events to Collaborative based on such schedule.

H. Construction of Improvements and Development.

I. Construction

(a) Collaborative shall have the right to construct new improvements and to replace existing improvements at Mill River Park so long as the minor improvements are constructed in accordance with all building, health and other state and local requirements and does not exceed the sum of \$25,000.

b) For any construction in excess of \$25,000, the Collaborative shall obtain prior written approval from the City and shall a) include all requisite approval from the Boards and Agencies of the City, State of Connecticut and Federal Government; b) Complete plans and specifications describing the proposed construction in such detail as the City may reasonably require; c) include such assurances as the City may reasonably require to demonstrate that the Collaborative has acquired all of the necessary funding or commitments for funding to complete proposed construction; and to the extent possible, describe the contractor and subcontractors that will be retained for the construction.

(c) All construction and expenditures shall be in accordance with all requirements and prohibitions that would apply to construction by the City.

II. Master Plan

The Collaborative and City agree that the general scope and outline for planned improvements in Mill River Park are described in the Mill River Corridor Project Plan and the Mill River Park and Greenway Master Design Plan ("Corridor and Design Plans"). It is the intention of the City and Collaborative to use the Corridor and Design Plans as a guide to the future development of Mill River Park subject to availability of funding and subsequent review by the parties hereto.

III. Naming Rights

The City understands that in order to obtain the funds to construct many of the improvements outlined in the Corridor and Design Plans that the Collaborative may find it necessary to offer a program of "naming" and "signing" certain improvements

with name designated by the donor such as a carousel, summer fountain, ice skating rink, park pathways and kayak rentals. Subject to the right of the Board of Representatives to reject (within the notice period hereinafter defined) a specific “name” for good and significant cause, the City agrees to grant to the Collaborative such “naming” rights. Collaborative shall give the City at least sixty (60) days written notice of the Collaborative’s intention to “name” a facility with appropriate information and detail.

IV. Development

(a) The Collaborative shall be responsible for completing the planning and other work towards the completion of the “Master Plans” referred to in subparagraph H.II above.

(b) In the event that additional work needs to be completed on the “Master Plan” in subsequent fiscal years, the Collaborative shall submit to the City at the same time and in the same manner requests for Maintenance Funds.

4. MAINTENANCE EXCLUSIONS

Except as expressly set forth in paragraph 3 herein, Collaborative shall have no duties, responsibilities or obligations with respect to the maintenance and repair of Mill River Park. Collaborative shall not be responsible for repairing, maintaining or replacing any public roads or bridges used for motor vehicles that may be within or adjacent to Mill River Park.

5. DESIGN AND CONSTRUCTION APPROVALS

Collaborative shall comply with all required procedures for review of landscape redesign, renovation, construction and rehabilitation projects in Mill River Park.

6. MAINTENANCE AND REPAIR

Collaborative shall perform maintenance and repair activities to the reasonable satisfaction of the City, using its commercially reasonable best efforts to discharge Collaborative's obligation described herein.

7. MAINTENANCE COSTS

A. Maintenance Budget

City acknowledges that its current level of funding for the park known as Mill River is inadequate to fund a Maintenance Budget for an expanded and enhanced Mill River Park. Throughout the term of this Agreement, City agrees to use reasonable efforts to increase its funding of Mill River Park in order to keep pace with the expanded and enhanced Mill River Park including, but not limited to new facilities, added park space and inflation. City shall use reasonable efforts to increase the level of funding allocated to City personnel working in Mill River Park in the event City budget for Park Maintenance is increased during the term of this agreement, but in no event less than the amount of funds that the City will initially contribute to the Maintenance Budget as described in Section 10.

B. City's Existing Allocation

City shall supply to the Collaborative a costs analysis of the existing maintenance and security which the City is currently supplying to Mill River Park at the time of the execution of this Agreement.

8. CONCESSIONS

1) Collaborative shall manage and collect fees from all concessions in operation in Mill River Park, and reserves the right to develop additional concession opportunities in Mill River Park; 2) Collaborative shall be permitted to use locations throughout Mill River Park for its own fundraising events; 3) Any net proceeds from concessions will be used solely to support Collaborative's obligations under this agreement to maintain and improve Mill River Park.

9. ALTERATIONS BY CITY

City will not make any major improvement or repair to Mill River Park without first providing a minimum of sixty days advance written notice to Collaborative, except in cases of emergency, in which case City will notify Collaborative as promptly as practicable thereafter. City agrees that it will use its reasonable efforts to ensure that work on any improvements will cause no more than minimal interference with Collaborative's operations pursuant to this agreement.

10. FUNDING COMMITMENT/PAYMENTS TO COLLABORATIVE

Beginning with its fiscal year starting July 1, 2008, and for the term of this agreement, Collaborative agrees to raise and expend annually a minimum of \$200,000 with respect to maintenance, repairs, landscaping, and the renovation and rehabilitation of existing facilities in Mill River Park, including the services described in paragraph 3 hereof. For these purposes, all costs and expenses of performing these services shall be included in the Maintenance Budget. In consideration of the services rendered pursuant to this agreement, in the fiscal year beginning July 1, 2008, and in all subsequent years during the term of this agreement, City shall use reasonable efforts to pay Collaborative a minimum amount of \$200,000 per fiscal year ("Funding Commitment"). Amounts to be allocated to the City under the terms of this paragraph 10 shall be in addition to and exclusion of any funds that may be available to the Collaborative from TIF revenue.

Collaborative and City understand and agree that it is impossible for the City to determine the amount and allocation of both operational and capital budgets in future years. As a public/private partnership the parties also understand that the obligations of the Collaborative to maintain Mill River Park as a "first class urban park" are predicated on the City continuing to meet or exceed the Funding Commitment. In the event that in any one year the City fails to meet the Funding Commitment, it is understood that the Collaborative may not be able to supply the services and materials necessary to maintain a "first class urban park." The City and the Collaborative shall

meet and determine the level of services and maintenance that can be delivered under the circumstances. Subject to the provisions in this paragraph, in the event Collaborative fails to perform services at the required standards, as set forth in paragraphs 3, 6 and 8 of this agreement, City reserves the right to withhold payment pursuant to this paragraph 10 pending Collaborative's cure of said deficiency.

Collaborative shall, no later than July 31 of each fiscal year during the term of this agreement, provide the City with a statement by its Chairman or President indicating whether the Collaborative has met its funding commitment for the most recently completed fiscal year. In the event that in any fiscal year (July 1 to June 30) Collaborative fails to raise and expend a minimum of \$150,000 as set forth above, City shall not be liable to Collaborative for any payments under this paragraph in the following fiscal year.

All monies paid to Collaborative pursuant to this agreement pursuant to the formulae described above shall be used by Collaborative for the purposes set forth in paragraph 3 of this agreement in the fiscal year in which such payments are received or in the following fiscal year.

All payments to Collaborative under this agreement shall be contingent on annual appropriations by the City and shall be subject to all other applicable City, State and federal laws, regulations, requirements and practices; provided, however, that City agrees to include this specific budget item.

11. PAYMENT PROCEDURES

City shall make payments to Collaborative based on the formula set forth in paragraph 10 of this agreement. Such payments shall be remitted to Collaborative on August 1 of each year during the term of this agreement, provided that Collaborative has performed its obligations under this agreement to the satisfaction of the City.

12. INSURANCE

A. Collaborative, at its own cost and expense, shall procure and maintain such insurance through the term of this agreement as will protect Collaborative from claims

under the applicable Worker's Compensation Law. Collaborative shall also procure and maintain Commercial General Liability Insurance with limits of \$3,000,000 per accident and fire and other casualty policies in amounts reasonably satisfactory to City. Failure of Collaborative to procure or maintain any insurance required under this agreement (the "Insurance Requirements") shall not relieve Collaborative of any liability under this agreement.

B. City shall maintain fire and casualty insurance on all completed improvements and buildings in an amount that would be reasonably necessary to replace the said improvement. Collaborative shall provide City with written documentation of the "insurable" value of any completed improvement or building.

C. In addition to the above, Collaborative shall have the following terms and conditions written into the policies of insurance as riders:

1) The policies shall not be canceled, terminated or modified unless 30 days prior written notice is sent by certified mail to Collaborative and to the City addressed to Risk Manager, City of Stamford, City Hall, Stamford, Connecticut.

2) Notices of accidents occurring in Mill River Park, sent by Collaborative to its insurance company, shall be deemed notice by both Collaborative and City to the insurance company.

3) The City of Stamford, its employees, agents and officers shall be named as additional insured under any and all general liability policies.

D. 1) Collaborative shall require its subcontractors and vendors who perform work for Collaborative pursuant to this agreement and in connection with Collaborative's responsibilities in Mill River Park to procure and maintain a policy of commercial general liability insurance with such limits as may be requested by City from time to time, but not less than \$3,000,000 in respect to bodily injury or death arising out of any one occurrence, and \$1,000,000 for property damage. Any policy or policies evidencing such insurance shall include the City, Collaborative and their officers, trustees, employees, volunteers, and agents as additional insured parties, and Collaborative shall require its subcontractor(s) to provide Collaborative with a

certificate of insurance naming such additionally insured parties prior to the execution of any agreement with Collaborative. All policies to be maintained pursuant to this agreement shall be issued by an insurance company or companies authorized to do business in the State of Connecticut having a Best's rating of at least A-(7) or a Standard & Poors rating of at least AA.

2) Collaborative shall require the following terms and conditions to be written into all of subcontractors' and vendors' policies of insurance as riders:

a) The policies shall not be canceled, terminated or modified unless 30 days' prior written notice is sent by certified mail to Collaborative;

b) Notices of claim shall be given by such subcontractor to its insurance company within 120 days after such claim is filed;

c) Notices of accidents occurring in Mill River Park, sent by such subcontractor to its insurance company shall be deemed notice by both Collaborative and the City to the insurance company;

d) The insurance company shall defend, indemnify and hold harmless the City, Collaborative, their officers, trustees, employees, volunteers, and agents from any and all claims, suits, demands or judgments by reason of property damage or personal injuries, including death, arising out of or as a result of subcontracts under this agreement;

e) The insurer waives all rights of subrogation against the City, Collaborative, their officers, trustees, agents, volunteers, and employees.

E. The City and Collaborative shall meet each year prior to Collaborative renewing its existing insurance policies (currently policies are renewed in the month of March) to discuss the appropriateness of the existing insurance coverage based on current circumstances and conditions and to implement change in coverage as may be mutually agreed upon.

13. INDEMNIFICATION - Intentionally deleted.

14. INSPECTION AND AUDIT REPORTS

A. Records, Accounts and Audits.

Collaborative will establish and maintain accurate records and accounts which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this agreement. Such records and accounts shall conform to generally accepted accounting principles (“GAAP”) and shall be auditable by the City upon reasonable notice to the Collaborative.

B. Inspection and Audit Rights.

Collaborative will provide notice to the City of all meetings, hearings, and proceedings of Collaborative’s Board of Directors, and will make available for consultation any of its officers and employees whose work related to the performance of this agreement. Collaborative also will make available, at its principal place of business, for audit, inspection, or removal of copies by City, or by a City-authorized independent auditor, Collaborative’s books and records relating to the performance of this agreement, including, but not limited to: (1) all fiscal records, including books, accounts, and canceled checks; (2) internal and external audits completed within the last three years; (3) minutes of meetings of the Board of Directors; (4) programs, research, and other reports and publications in connection with Collaborative’s responsibilities in Mill River Park pursuant to this agreement; (5) registration and attendance records of Collaborative sponsored programs, and any other matters relating to the performance of and compliance with this agreement, or with any laws or regulations governing the conduct of Collaborative under this agreement.

15. NO REMOVAL OF RECORDS FROM PREMISES

Where performance of this agreement involves use by Collaborative of City’s papers, files, data or records at City facilities or offices, Collaborative shall not remove any such papers, files, data or records, therefrom without the prior approval of City.

16. INSPECTION AT SITE

City shall have the right to have representatives of the City, the State or Federal governments present at Mill River Park to observe the work being performed pursuant to this agreement.

17. RETENTION OF RECORDS

Collaborative agrees to retain all books, records, and other documents relevant to this agreement for six years after the audit of the final year of City payments. City, State and Federal auditors shall have full access to and the right to examine and make copies of any of said materials during this period.

18. PERSONNEL

A. Selection of Mill River Park Administrator.

The Collaborative shall select the individual who shall serve as the Administrator of Mill River Park subject to reasonable review by the City. The Administrator may be removed by the Collaborative and for cause by the City.

B. Notification of Appointment of Key Personnel.

Collaborative will notify City in writing within 5 days of appointments to or resignations from the position of President and Chief Financial Officer. In addition, Collaborative will notify City, in writing, within 10 days of the occurrence, of any change in the individuals who serve as trustees and officers of Collaborative.

C. Background Checks.

For purposes of this section, the word "personnel" means each employee and volunteer whose duties and responsibilities relate primarily to working with children or in close proximity to children. Collaborative will be responsible for the recruitment and screening of appropriate personnel and verification of credentials, references, and suitability in accordance with all applicable laws for working with children. Collaborative agrees to comply with all guidelines and procedures of City concerning

the screening and employment of personnel provided in writing to Collaborative, including, but not limited to the following:

1) Collaborative will be responsible for screening of all personnel, including: (a) substantiating credentials; (b) reference checks; (c) background checks.

2) Collaborative agrees not to hire or retain any personnel who refuse to: (a) provide the names of references; (b) provide documentation of credentials; (c) provide information on criminal conviction records; (d) provide other requested information which may bear on the applicant's fitness to work with or in close proximity with children.

3) Collaborative agrees not to hire or retain any personnel: (a) who have not completely and truthfully reported information concerning their criminal convictions; (b) whose criminal convictions record directly bears on their fitness to work with or in close proximity with children, or whose employment would involve an unreasonable risk to the safety or welfare of children; or (c) who have been the subject of an indicated child abuse and maltreatment report on file with the State Central Registry, or are the subject of an ongoing investigation pursuant to a child abuse and maltreatment report on file with this Registry.

D. Collaborative and City Agree that Collaborative is an Independent Contractor.

It is understood and agreed that all personnel employed by Collaborative are employees of Collaborative and are not employees of the City, and that Collaborative alone is responsible for their work, direction, compensation and personal conduct while engaged pursuant to this agreement. Collaborative agrees that neither it nor its personnel or agents will hold themselves out as, or claim to be, officers or employees of the City of Stamford, or of any department, agency, or unit thereof, and that they will not, by reason hereof, make any claim, demand, or application for any right or privilege applicable to an officer or employee of the City of Stamford, including but not limited to worker's compensation coverage, unemployment insurance benefits, social security coverage, or employee retirement membership or credit. Nothing included in this paragraph or in any other provision of this agreement shall be construed to impose

any liability or duty upon the City to the persons, firms or corporations employed or engaged by Collaborative as employees, servants, agents, consultants, experts or independent contractors or in any other capacity whatsoever or to render The City liable to any persons, firms, corporations, associations or any government for the acts, omissions, liabilities, obligations and/or taxes of any nature, including, but not limited to, unemployment insurance of Collaborative or its consultants, experts, employees, servants, agents or independent contractors.

E. Collaborative shall not discriminate against any employee or applicant for employment because of race, creed, religion, color, sex, age, national origin, disability, marital status, gender identity or sexual orientation. In addition, the Collaborative agrees to adopt and be bound by any and all anti-discrimination rules, regulations of the City as may be now existing or hereafter enacted or adopted.

19. INVESTIGATIONS CLAUSE

The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of Connecticut ("State"), City governmental agency, Federal Agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, or license that is the subject of the investigation, audit or inquiry.

20. NOTICE

Collaborative shall prepare and provide to City operational status reports as reasonably requested by the City, and reports of major accidents or unusual incidents occurring in Mill River Park within forty-eight (48) hours of said accident or incident and in a format reasonably acceptable to the City. Collaborative shall promptly notify City, in writing, of any claim for injury, death, property damage or theft which may be asserted against Collaborative with respect to Mill River Park. Collaborative shall

designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the maintenance and repair of Mill River Park, and Collaborative shall notify City, in writing, as to said person's name and address and other important particulars.

All notices from Collaborative to City shall be in writing and delivered to the attention of the Director of Operations with a copy to the Director of Legal Affairs, or such other address as City may designate. All notices from City to Collaborative shall be dispatched in the same manner, and delivered to Collaborative at 888 Washington Blvd., c/o Land Use Bureau, City of Stamford, Stamford, Connecticut 06904, with a copy to Michael L. Widland, Shipman & Goodwin, LLP, 300 Atlantic Street, Stamford, Connecticut 06901.

21. CITY'S RIGHT TO TERMINATE

- A. The City shall have the right to terminate this agreement in whole or in part:
- (i) Under any right to terminate as specified in any section of this agreement
 - (ii) If the City determines that Collaborative failed to comply with any of the terms and conditions of this agreement, including Collaborative's failure to perform services at the required standards set forth in paragraphs 3, 6 and 8 of this agreement.
 - (iii) Upon Collaborative dissolving or becoming insolvent.
 - (iv) Upon the commencement of any proceeding under the Bankruptcy Act against Collaborative, either voluntary or involuntary.
- B. City shall give Collaborative written notice of any termination of the agreement specifying therein the applicable provisions of subsection A of this paragraph and the effective date thereof.
- C. In the case of (ii) above, the City shall first give written notice to Collaborative outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by Collaborative within a reasonable time (if no time is specified, but not

less than 30 days, the failure to cure the deficiencies shall result in immediate termination of this agreement.

D. Upon termination of this agreement, Collaborative shall comply with City closeout procedures, including but not limited to:

(i) Furnishing within thirty days an inventory to the City of all equipment, appurtenances and property purchased through or provided under this agreement, and carrying out any City directive concerning the disposition thereof.

(ii) Not incurring or paying any further obligation pursuant to this agreement beyond the termination date. Any obligation necessarily incurred by Collaborative on account of this agreement prior to receipt of notice of termination and falling due after such date shall be paid by the City in accordance with the terms of this agreement.

(iii) Make available to City or its designees all books, records, documents and materials specifically relating to this agreement.

(iv) Submit, within ninety days, a final statement and report relating to the agreement.

(v) Return to City any unused funds allocated to Collaborative for expenditures not already made.

E. Notwithstanding any other provisions of this agreement, Collaborative shall not be relieved of liability to the City for damages sustained by the City by virtue of Collaborative's breach of the agreement, and City may withhold payments to Collaborative for the purposes of set-off until such time as the exact amount of damages due to the City from Collaborative is determined. It is further agreed that the City shall not be relieved of liability to Collaborative for damages sustained by Collaborative by virtue of the City's breach of the agreement.

F. The rights and remedies of the City or Collaborative provided in this paragraph shall not be exclusive and are in addition to all other rights and remedies provided by law or under this agreement.

22. COLLABORATIVE'S RIGHT TO TERMINATE

A. Collaborative will have the right to terminate this agreement under the following conditions:

(i) Imposition by City of additional material conditions to or change in the scope of this agreement which Collaborative reasonably finds unacceptable;

(ii) Failure of City to make payments to Collaborative as provided in paragraph 10 and 11 hereof;

(iii) Failure by the City to make the appropriations necessary to enable City to make payments to Collaborative as provided in paragraph 12 hereof;

(iv) Material breach by City of any of its obligations hereunder.

B. Collaborative will provide City not less than 30 days' written notice of termination which specifies the reason(s) therefore, and, in the case of (ii), (iii) and (iv) above, the City shall have 30 days to cure the basis for Collaborative's termination.

23. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

Collaborative agrees to comply with all applicable laws, rules, regulations, requirements, guidelines, policies, directives, instructions and orders which are issued or enacted by duly authorized officials of agencies of the United States, State or City. This provision includes, but is not limited to, the Connecticut State Not-for-Profit Corporation Law, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

24. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. Collaborative makes the following representations and warranties:

(i) Collaborative is a not-for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of Connecticut, and has all requisite power and authority to execute, deliver and perform this agreement.

(ii) This agreement has been duly authorized by all necessary corporate action on the part of Collaborative, has been duly executed and delivered by Collaborative, and assuming due execution and delivery by the City, constitutes a legal, valid, binding and enforceable obligation of Collaborative.

(iii) The execution and delivery of this agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under Collaborative's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which Collaborative is bound, or, to the knowledge of Collaborative, any order, rule or regulation of any court, governmental agency or body having jurisdiction over Collaborative or any of its activities or properties.

(iv) Collaborative has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with the procurement of this agreement.

(v) Collaborative has not employed any person to solicit or procure this agreement, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of the agreement.

B. Collaborative covenants and agrees that it shall maintain its corporate existence under the laws of the State of Connecticut as a not-for-profit corporation, and shall maintain its tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

C. City hereby represents and warrants that this agreement has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by Collaborative, and constitutes a legal, valid, binding and enforceable obligation of the City.

D. The Collaborative shall maintain, as a duly constituted and elected member thereof, one currently serving member of the Board of Representatives. If such Representative for any reason ceases to serve as a member of the Collaborative,

then the Collaborative shall fill the vacated seat with another Representative as soon as practicable.

E. Whenever it is necessary in the performance of this Agreement, the Collaborative shall coordinate its activities with all appropriate City of Stamford boards, commissions and agencies.

25. CONFLICT OF INTEREST

Collaborative represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest, nor shall they acquire any interest directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Collaborative further represents and warrants that in the performance of this agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City, shall participate in any decision relating to this agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this agreement or in the proceeds thereof.

26. NO ASSIGNMENT

No assignment of this agreement by Collaborative, in whole or in part, will be effective unless it is agreed to, in writing, by City and signed by a duly authorized Mayor of the City.

27. FEDERAL EMPLOYER IDENTIFICATION NUMBER

Collaborative represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of Collaborative to receive public contracts. The Federal Employer Identification Number of Collaborative is 06-1507648.

28. CITY'S RESERVATION OF RIGHTS AND INTERESTS

A. Public Events. The parties to this agreement will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this agreement.

B. Public Communications. In any statement or release made to the public relating to the subject of this agreement, Collaborative will conspicuously acknowledge the involvement of City. If the City finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in Mill River Park is incorrect or unacceptable, Collaborative and the City agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

C. Publications. If Collaborative publishes a work discussing any aspect of performance of any service covered by this agreement, Collaborative will acknowledge therein the involvement, if any, of City.

D. Special Events. City expressly reserves the right to schedule and conduct special events, alone or in conjunction with co-sponsors, including but not limited to concerts, fairs, and festivals, in Mill River Park; provided that (i) the said special event is scheduled with the Collaborative so that it does not conflict with existing events, (ii) the City is responsible for all costs, charges, expenses from the Special Event. Any monies collected by Parks or City for special events shall be included in the calculations of the annual revenue from concessions described in

paragraph 11 and all proceeds that the City may receive after the deduction of all direct costs and expenses shall be used in the operation of Mill River Park.

29. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

This agreement shall be deemed to be executed in the City of Stamford, State of Connecticut, regardless of the domicile of Collaborative and shall be governed by and construed in accordance with the internal laws of the State of Connecticut.

All disputes arising out of this agreement shall be interpreted and decided in accordance with the laws of the State of Connecticut.

30. CLAIM AGAINST OFFICERS OR EMPLOYEES – Intentionally deleted

31. SEVERABILITY

If any provision(s) of this agreement is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

32. ALL LEGAL PROVISIONS DEEMED INCLUDED

It is the intent and understanding of the parties to this agreement that each and every provision of law required to be inserted in the agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

33. CONTRACTING PARTIES

The City and Collaborative have agreed that the City and the Collaborative are the sole parties to this contract. The Urban Redevelopment Commission is not a party to this contract and that the said Urban Redevelopment Commission has no rights or obligations arising under this contract. To the extent that Collaborative activities within

property described in Exhibit "A" are subject to urban redevelopment, the Collaborative shall comply with all rules and regulations of the Urban Redevelopment Commission.

34. CONDITIONS PRECEDENT

A. This contract shall neither be binding nor effective unless it has been approved by all necessary City Boards as required by the City Charter and Code of Ordinances.

B. The requirements of this section of the contract shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this contract to be effective and for the expenditure of City funds.

35. MODIFICATION

No waiver or modification of any provision of this agreement will be effective unless it is in writing and signed by duly authorized representatives of City and Collaborative.

Agreed to the _____ day of _____, 200

MILL RIVER COLLABORATIVE

By: _____
Its Chairman

CITY OF STAMFORD

By: _____

Approved as to form:

Sybil V. Richards
Deputy Corporation Counsel

Approved as to insurance:

Ann Marie Mones
Risk Manager

139634 v.12

EXHIBIT "A"

Initial area of maintenance responsibility is shown on a colored version of attached map in dark blue. The City and Collaborative may agree to vary said area of responsibility by written agreement executed by all parties hereto.

EXHIBIT "A"

Initial area of maintenance responsibility is shown on attached map as _____
_____. The City and Collaborative may agree to vary said area of responsibility by
written agreement executed by all parties hereto.

In addition to the area of the Collaborative's development, operations and maintenance responsibilities under this Agreement, the Collaborative shall also have certain design consultation and approval rights in areas of proposed open space development on adjacent private property and along future greenway connections.

Exhibit "B"

The Collaborative shall submit to City funding requests on the following schedule relative to a July 1, fiscal year:

Preliminary Capital Request – September 15 of preceding year

Preliminary Operating Request – October 15 of preceding year

Capital Request – November 15 of preceding year

Operating Request – December 15 of preceding year such other dates requested in writing, by the Budget Director of the City upon reasonable notice.

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