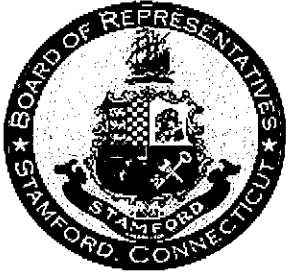


28TH BOARD OF REPRESENTATIVES CITY OF STAMFORD



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Clerk of the Board
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Minority Leader
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RESOLUTION NO. 3389 APPROVING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF STAMFORD AND THE SOUTH WESTERN REGIONAL PLANNING AGENCY (SWRPA)

NOW THEREFORE BE IT RESOLVED BY THE 28TH BOARD OF REPRESENTATIVES THAT:

Pursuant to Section C1-50-3 of the Stamford Charter and Section 9-7 of the Stamford Code of Ordinances, the lease agreement ("Lease") between the City of Stamford ("Lessor") and The South Western Regional Planning Agency ("SWRPA") for SWRPA's use of 2,500 square feet of office space on the 3rd Floor (or any other floor that the City may select), at 888 Washington Boulevard, Stamford, Connecticut in accordance with the terms and conditions set forth in the Lease Agreement, which is incorporated herein by reference, for the period commencing October 1, 2010 and terminating five years thereafter or as otherwise set forth in the Lease Agreement, is hereby approved; and

The Mayor is hereby authorized to execute such Lease and to execute any instrument he deems necessary or desirable in connection with the execution of such Lease.

This Resolution shall be effective as of the date of approval.

This resolution was approved on the Consent Agenda at the regular monthly meeting of the 28th Board of Representatives held on Monday, August 2, 2010.

Randall M. Skigen, President

Annie M. Summerville, Clerk

cc: Michael A. Pavia, Mayor
Ernie Orgera, Director of Operations
Michael Larobina, Esq., Director of Legal Affairs
Fred Flynn, Director of Administration
Donna Loglisci, Town & City Clerk
Sybil Richards, Esq.

LEASE

THIS LEASE is dated as of the ____ day of _____, 2010 by and between the **CITY OF STAMFORD**, a Connecticut municipal corporation with an address of 888 Washington Boulevard, Stamford, Connecticut 06901 ("Landlord") and **SOUTH WESTERN REGIONAL PLANNING AGENCY**, a public regional planning agency established pursuant to the laws of the State of Connecticut, with an address of 888 Washington Boulevard, Stamford, CT 06901 ("Tenant").

WITNESSETH:

1. **PREMISES.** Landlord hereby leases to Tenant and Tenant hereby hires from Landlord approximately 2,500 square feet of office space on the third floor of the Stamford Government Center or any other floor the Landlord may select. The aforementioned office space constitutes the leased premises (the "Premises"), which office space is more particularly reflected on the schematic floor plan in Exhibit A, which is attached hereto and made a part hereof.

2. **TERM; APPROVAL.**

(a) The term of this Lease shall commence on October 1, 2010 (the "Commencement Date") and shall terminate on September 30, 2015 (the "Expiration Date").

(b) This Lease is subject to the approval of the Landlord's Planning Board, Board of Finance, Board of Representatives and Mayor.

(c) Provided that Tenant is not in default under the Lease beyond the expiration of applicable notice and cure periods, Landlord may, at its sole discretion, extend the term of this Lease for one (1) successive five year term subject to the same terms and conditions as set forth herein except for the rent, which is subject to the mutual agreement of the parties.

3. **RENT.**

(a) The monthly base rent during the first year of the Term of the lease shall be in the amount of Three Thousand Seven Hundred Sixty One Dollars and Zero Cents (U.S. \$3,761.00) and shall be payable in equal installments without abatement, setoff or deduction on or before the 1st day of every month beginning on the Commencement Date and each successive month thereafter. Said base rent shall be increased by one percent (1%) compound interest each year beginning on October 1, 2011 and on October 1st of each year thereafter during the entire Term of this Lease and any extensions thereto (the base rent and annual increases thereto shall be referred hereinafter collectively as the "Rent") as follows:

Year 1 - \$3,761.00 (base year)
Year 2 - \$3,798.61
Year 3 - \$3,836.60
Year 4 - \$3,874.97
Year 5 - \$3,913.72

(b) Tenant covenants and agrees to pay to Landlord the Rent at Landlord's address as set forth above to the attention of the Landlord's Cashiering and Permitting Department or at such other place as Landlord may designate in writing.

- (c) The monthly Rent shall be made payable to the "City of Stamford".

4. USE AND CONDITION OF THE PREMISES.

(a) Tenant shall use the Premises for office space for general office purposes in relation to the business of the Southwestern Regional Planning Agency and for no other purpose whatsoever.

(b) Tenant shall not at any time use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises, in any manner which constitutes a violation of federal, state or local laws, rules, regulations, codes, statutes, policies and procedures.

(c) Tenant agrees, warrants and represents that it has examined and is familiar with the Premises and further agrees to accept the Premises in its "as-is" condition.

5. REPAIRS AND MAINTENANCE. Landlord shall be responsible for the repair and maintenance of the Stamford Government Center s and the common areas, including the foundation, floors, roof, windows, exterior walls and all structural, electrical, mechanical and plumbing systems, equipment and fixtures servicing the Premises and common areas. As used herein, the term "repairs" shall include replacements and other improvements that are necessary to the maintenance of the Premises and common areas in good order and condition. All repairs inside and maintenance to the Premises, except those that are caused by the Landlord's negligence, shall be the sole responsibility of the Tenant. The Landlord shall keep the Premises free from all dirt and other refuse and deposit the same in areas designated by the Landlord. The Tenant shall not be required to perform any repair or maintenance work other than as set forth herein but may install and remove its furniture, telephone and electrical equipment at its sole cost. The Landlord shall provide and pay for the following services and utilities at no cost to the Tenant:

- (a) Heat and air conditioning.
- (b) All utilities, including fuel, water and sewer, electricity and garbage removal.
- (c) Common use of restrooms.
- (d) Cleaning of the Demised Premises and security of the Government Center as may be determined by the Landlord.
- (e) Parking for Tenant's staff in the Landlord's Government Center Parking Garage on a first-come basis on a floor or on floors designated by the Landlord's Director of Operations.
- (f) Any services or other charges not stated above shall be paid by the Lessee.

6. QUIET ENJOYMENT. The Tenant, provided it is not in default hereunder, shall peaceably hold, occupy and enjoy the Premises during the lease term and any extensions thereto without hindrance, molestation, ejection or interference except as otherwise provided in the Lease or as permitted by law.

7. YIELD UP. Tenant shall at the expiration or earlier termination of this Lease peaceably yield up the Premises in reasonably good condition, normal wear and tear excepted. Tenant shall before the expiration or earlier termination of this Lease remove or cause the removal of its personal property from the Premises at Tenant's sole cost and expense. Notwithstanding the foregoing, Tenant shall have no right or obligation to remove any improvements to the Premises without the advance written consent of the Landlord's Director of Operations.

8. CHANGES AND ALTERATIONS.

(a) Tenant shall not construct any improvements nor make any changes or alterations in or to the Premises without the prior written approval of the Landlord's Director of Operations.

9. **INDEMNITY.** Tenant shall indemnify, defend and hold harmless Landlord, its employees, officers and agents from and against any and all claims, suits, liabilities, losses, damages, injuries, costs and expenses, including reasonable attorneys' fees and disbursements (collectively "Claims") caused by or resulting from (a) Tenant's and/or any of its staff's, agents', contractors', invitees' and guests' use and/or presence upon or condition caused by the Tenant and/or any of its staff, agents, contractors, invitees and guests during the Lease Term or during any holdover by Tenant after the expiration or earlier termination of this Lease; (b) any act, omission, willful misconduct or negligence of Tenant and/or any of its staff, agents, contractors, invitees and guests and (c) any accident, injury or damage occurring at the Premises during the Tenant's and/or its staff, agents', contractors', invitees' and guests' use of the Premises. Notwithstanding the foregoing, Tenant shall be not indemnify, defend and hold harmless the Landlord, its employees, officers and agents in connection with the Landlord's, its employees', officers' and agents' use of Premises' conference room to hold meetings and conferences related to the official business of the City of Stamford. This indemnification provision shall survive the termination of this Lease without duration as to time.

10. **INSURANCE.**

(a) Tenant shall obtain and keep in full force and effect during the Term, at its own cost and expense and in the following amounts:

(i) Commercial General Liability Insurance, such insurance to afford protection in an amount not less than \$2,000,000.00 combined single limit for bodily injury and property damage per occurrence, protecting Tenant and Landlord as insureds against any and all claims for personal injury, death or property damage occurring in, upon, adjacent to, or connected with the Premises or any part thereof; and (ii) contractual liability insurance in the amounts specified above. The limit of said insurance shall not, however, limit the liability of Tenant hereunder. Tenant may carry said insurance under a blanket policy provided an endorsement naming Landlord as an additional insured is attached thereto.

(ii) Worker's Compensation insurance, which complies with all statutes and regulations in the state of Connecticut.

(iii) Employer's Liability insurance, which contains minimum limits of liability of \$100,000 for each accident, disease claim per employee and disease policy limit.

(iv) All Risk Property insurance, which covers the contents of the demised premises, including Tenant's property. The All Risk Property insurance shall be written on a replacement cost basis and shall also include rental value insurance.

(b) Insurance required hereunder shall be in companies licensed in the State of Connecticut and reasonably approved by Landlord. No policy shall be cancelable or subject to reduction of coverage except after thirty (30) days' written notice to Landlord. All policies of insurance maintained by Tenant shall be in form acceptable to Landlord and Tenant shall provide Landlord with satisfactory evidence (ACORD Form 27 or equivalent) of same. Tenant agrees not to knowingly violate or permit to be violated any of the conditions or provisions of the insurance policies required to be furnished hereunder, and Tenant and Landlord agree to promptly notify the other of any claim.

(c) The Commercial General Liability and Commercial Automobile Liability insurance shall designate Landlord and its employees, agents and officers as additional insureds. The All Risk Property insurance policy shall designate Landlord and Tenant as joint Loss Payees with respect to any losses and damages under this insurance.

(d) All insurance required hereunder shall be primary insurance, not excess, concurrent or contributory, with respect to any insurance maintained by or on behalf of Landlord.

(e) Landlord and Tenant shall from time to time review the amounts of insurance required to be maintained under this Section and, upon mutual agreement of the parties (not to be unreasonably withheld) the required amounts shall be increased to limits that are customary and commercially reasonable for property of similar size, use and location.

11. **SUBLEASING AND ASSIGNMENT.** Tenant may not assign, transfer sublease, hypothecate or otherwise encumber this Lease or any portion thereof without Landlord's prior written consent.

12. **COMPLIANCE WITH LAWS.** Tenant shall, at its own cost and expense, comply with all applicable federal, state and local laws, rules, regulations, statutes, codes, ordinances, policies and procedures now in force or which hereinafter may be in force regarding the use of the Premises as described herein.

13. **EMINENT DOMAIN AND CONDEMNATION.** In the event the whole or any part of the Demised Premises shall be taken under any power of eminent domain or condemnation; the Lessee hereby waives any claim to compensation for the Lessee's loss of the fair market value of the Premises.

14. **ACCESS.** Landlord's employees, officers, agents, prospective purchasers and prospective tenants shall have the right to enter the Premises at reasonable hours upon notice to Tenant (provided that no notice shall be required in the event of emergency) by the Landlord for the purpose of inspecting the same and Landlord, its employees, officers and agents and contractors shall have the right to enter the Premises at any time for the purpose of making repairs thereto and for the purpose of performing the services to be performed by Landlord pursuant to the terms hereof and for the purpose of curing any violations of laws, rules or regulations or defaults under this Lease created by or suffered by Tenant. Landlord shall also be given access, upon twenty four (24) hours advanced notice to the Tenant, to the Premises for the purpose of allowing third party prospective purchasers, renters or tenants to inspect the Premises.

15. **DEFAULT.**

(a) In the event of any failure of Tenant to pay the rent due hereunder within thirty (30) days after written notice of such default, or any failure to commence and diligently pursue the performance of any of the other terms, covenants, and conditions of this Lease to be observed and performed by Tenant for more than thirty (30) days after written notice of such default or such longer period necessary to cure such default, so long as Tenant commences to cure such default within said thirty days and diligently pursues such cure, Landlord, at its option, may terminate this Lease without further notice to Tenant and upon such termination Tenant shall quit and surrender the Premises to Landlord, but such termination shall not affect Landlord's right to recover damages or exercise any other right hereinafter provided; however, in lieu of terminating this Lease, Landlord may elect to recover possession of the Premises without terminating this Lease and Landlord shall have the right to re-enter the Premises and to remove all persons or property therefrom and store any property in a public warehouse or elsewhere at the cost and for the

account of Tenant, all without service of notice, except as notice as in this Section required, or resort to legal process, and Landlord shall not be liable for any loss or damage resulting from such re-entry nor shall Landlord be deemed guilty of trespass therefor. In the event of termination of this Lease or a re-entry of the Premises pursuant to this Section, Landlord may re-let the whole or any part of the Premises on behalf of Tenant for a period equal to, greater or less than the remainder of the then term of this Lease, at such rental and upon such terms and conditions as Landlord shall deem reasonable. Landlord shall not be liable in any respect for the failure to relet the Premises or in the event of such reletting, for failure to collect the rent thereunder and any sums received by Landlord on a reletting shall belong to Landlord. In the event of a termination of this Lease, Landlord shall forthwith be entitled to recover from Tenant, as liquidated damages, the amount by which the sum of (i) rent payable for the remainder of the term of this Lease; and (ii) all expenses of Landlord incurred in recovering possession of the Premises and reletting the same including costs of repair and renovating the Premises, management agents' commissions and fees, court costs and reasonable attorneys' fees, exceed the fair rental value of the Premises.

(b) In the event that Tenant is in default of any provision of this Lease requiring the payment of monies, then Tenant shall pay to Landlord as additional rent interest at the rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less, on the amount due Landlord hereunder.

(c) In the event of a breach or threatened breach by Tenant of any of its obligations under this Lease, Landlord shall also have the right of injunction. The special remedies to which Landlord may resort hereunder are cumulative and are not intended to be exclusive of any other remedies to which Landlord may lawfully be entitled at any time and Landlord may invoke any remedy allowed at law or in equity as if specific remedies were not provided for herein.

(d) Tenant agrees, warrants and represents that the following shall constitute an event of default under the terms of the Lease: If the Tenant should assign or hypothecate this Lease or sublet the Premises in a manner not provided for in this Lease or otherwise dispose of the whole or any part of the Premises or make any structural alterations therein without the prior written approval of the Landlord's Director of Operations, or commit waste or suffer the same to be committed on the Premise or injure or misuse the same, cease to exist as the Southwestern Regional Planning Agency unless otherwise replaced by a successor agency in accordance with the laws of the State of Connecticut, as a corporation or as an IRC qualified or Connecticut not-for-profit corporation, shall be adjudicated bankrupt, or shall make a voluntary or involuntary assignment of its estate or effects for the benefit of creditors, or if a receiver shall be appointed, or if this Lease shall by operation of law, devolve or pass to anyone or to an entity other than the Tenant.

16. **WAIVER OF SUBROGATION.** All insurance maintained by Landlord and Tenant on the Premises and the property therein shall include a waiver by the insurer of all right of recovery against Landlord or Tenant in connection with any loss or damage and neither party shall be liable to the other for loss or damage resulting from such loss or damage and further, Landlord and Tenant each release the other from any and all claims with respect to any such loss to the extent of the insurance proceeds paid with respect thereto.

17. **BROKERAGE.** Landlord and Tenant each represent that it has not dealt with any real estate agent or broker in connection with this Lease.

18. **FORCE MAJEURE.** Landlord and Tenant shall each be excused for the period of any delay in the performance of any obligations hereunder, when prevented from so doing by cause or causes beyond such party's control which shall include, without limitation, all labor disputes, civil commotion, war,

war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire or other casualty, inability to obtain any material, services or financing or through Acts of God, provided that Force Majeure shall not excuse a party from performance hereunder for a period greater than 30 consecutive days.

19. **NOTICES.** Any notice, report, request or demand required, permitted, or desired to be given under this Lease shall be in writing and shall be deemed to have been properly given, for all purposes only if sent by (i) registered or certified mail return receipt requested, (ii) nationally recognized overnight courier, or (iii) personal delivery to the respective party at the addresses set forth above, and shall be deemed to have been given only on the date received or rejected.

20. **PARTIAL INVALIDITY.** If any provision of this Lease or application thereof to any person or circumstance shall to any event be invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

21. **ENTIRE AGREEMENT.**

(a) This Lease and the Exhibits attached set forth the entire agreement between the parties. Any prior conversations and writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed. Submission of this Lease for examination does not constitute an option for the Premises and becomes effective as a lease only upon execution and delivery thereof by Landlord to Tenant. If any provision contained in a rider or addenda is inconsistent with any other provision of this Lease, the provision contained in said rider or addenda shall supersede said other provision, unless otherwise provided in said rider or addenda. The failure of Landlord to insist in any one or more instances upon the strict performance of any one or more of Tenant's obligations under this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such elections.

(b) No payment by Tenant, or acceptance by Landlord, of a lesser amount than shall be due from Tenant to Landlord shall be treated otherwise than as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

22. **HEIRS, ASSIGNS, NUMBER AND GENDER.** This agreement shall be binding upon the parties hereto and their successors and assigns. The use of the neuter singular pronoun to refer to Tenant shall be deemed a proper reference even though Tenant may be an individual, partnership, corporation, limited liability company or a group of two (2) or more of the foregoing. The necessary grammatical changes required to make the provisions of this Lease apply in the plural number where there is more than one Tenant and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

23. **HOLDING OVER.** Any holding over by Tenant after the expiration of the term of this Lease shall be treated as a daily tenancy at sufferance at a rate equal to 12 times the basic rent plus escalation charges and other charges herein provided (prorated on a daily basis) and shall otherwise be on the terms and conditions set forth in this Lease as far as applicable.

24. **GOVERNING LAW; JURISDICTION.** This Lease shall be governed by, and construed in accordance with, the laws of the State of Connecticut. The parties agree to submit all disputes arising under this Lease to the state and federal courts located in the State of Connecticut.

25. **NONAPPROPRIATION.** Any financial obligation or expenditure of any kind on the part of the Landlord shall be used to prior appropriation and approval by the appropriate boards of the Landlord in accordance with the Stamford Charter and Code of Ordinances.

26. **BOOKS AND RECORDS.** The Tenant shall maintain separate books and records in relation to its use and occupancy of the Premises, maintenance, repair and alteration of the Premises, including certifications, inspections related thereto, and shall provide the Landlord with copies of such records, correspondence and documentation immediately upon written request by the Landlord's Director of Operations.

(Signatures on following page)

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year set forth below.

Witnesses:

CITY OF STAMFORD

Acting herein by:

Name: Michael A. Pavia

Title: Mayor

Duly authorized

**SOUTH WESTERN REGIONAL PLANNING
AGENCY**

(insert name):

(insert title):

Duly authorized

Approved as to form:

Approved as to insurance:

Sybil V. Richards
Deputy Corporation Counsel

Ann Marie Mones
Risk Manager

EXHIBIT A