

Signed

AMENDED AND RESTATED AGREEMENT

THIS AGREEMENT made as of the ____ day of ____ 2015, (this "Agreement") between the City of Stamford (the "City"), a municipal corporation organized and existing pursuant to the laws of the State of Connecticut with its principal place of business at 888 Washington Boulevard, Stamford, Connecticut 06901, and the Mill River Collaborative, Inc. d/b/a Mill River Park Collaborative (the "Collaborative"), a Connecticut not-for-profit corporation with its principal place of business at 1010 Washington Boulevard, Stamford, Connecticut 06904-06901.

WITNESSETH

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

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

WHEREAS, the City, wishes to work with the Collaborative to enhance the existing and proposed park known as the Mill River Park & Greenway (which is more specifically described in Exhibit A attached hereto and made a part hereof), and foster opportunities for active and passive recreational uses in the Mill River Park & Greenway by developing public greenway pathways, other landscape features and architectural amenities within Mill River Park & Greenway to foster such uses; and

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

WHEREAS, the Collaborative has raised a total of approximately \$28,000,000.00 as of this date for Mill River Park & Greenway from donations from members of the general public, foundations, and other private sources has managed the design and construction of Mill River Playground, provided Public Safety Ambassadors and maintained Mill River Park & Greenway since June 2006; and

WHEREAS, the Collaborative is willing to continue to raise money for use in Mill River Park & Greenway and to continue to perform certain responsibilities associated with maintaining, repairing and constructing improvements in Mill River Park & Greenway for the benefit of the general public, including but not limited to offering programs and activities that will increase public interest in and awareness of Mill River Park & Greenway; and

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

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

1. SCOPE OF AGREEMENT

The Collaborative shall provide, or cause to be provided, services specified for construction of improvements, programming, maintaining and repairing Mill River Park & Greenway 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 & Greenway 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 _____, 2015, and terminate on _____, 2025, unless sooner terminated by the City as provided in Paragraph 21 of this Agreement, or by the Collaborative as provided in Paragraph 22 of this Agreement;

(b) Unless terminated by the City as provided in Paragraph 21 of this Agreement or the Collaborative as provided in Paragraph 22 of this Agreement, this Agreement shall be extended **upon written request of the Collaborative and written acceptance by the City** for a renewal term of 5 calendar years commencing the day after the expiration of the initial term or any renewal term.

3. SERVICES

A. General Standards. The Collaborative shall maintain and repair Mill River Park & Greenway 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 & Greenway in a clean, neat and good condition.

(b) All walkways, sidewalks and all other improvements and facilities in Mill River Park & Greenway, 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 within Mill River Park & Greenway shall be cleaned regularly to prevent clogging.

(e) Branches and trees damaged or felled within Mill River Park & Greenway by weather conditions, vandalism, and/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 snow melting agents shall be spread as needed to the extent such activities do not adversely affect the Mill River.

(3) Landscape Maintenance

The Collaborative shall perform the following landscape maintenance work to areas within Mill River Park & Greenway:

(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 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 within Mill River Park & Greenway shall include, but not be limited to, the following:

(a) **Benches or Other Seating:** The 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, to the extent practicable, other installed signs.

(e) **Facilities:** All recreation facilities and equipment and any other facilities and equipment that are located in Mill River Park & Greenway 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 the Collaborative shall be responsible for bronze restoration, cleaning, repointing and stone work.

(5) Public Assistance and Non-Law Enforcement Security

(a) **Obligations of the Collaborative related to non-law enforcement security or public assistance** shall include, but not be limited to, providing personnel (which will wear clothing which identifies such personnel as employees of the Collaborative), to assist patrons at the park and remind them of park rules and regulations. Such personnel shall patrol Mill River Park & Greenway and report to City Police any damage, destruction, vandalism, or undesirable behavior.

(b) Any non-law enforcement security or public assistance provided by the Collaborative hereunder shall be subject to the terms and conditions of paragraph 3C.

(c) No non-law enforcement security personnel or public assistance personnel may carry or be permitted to carry any firearms under any circumstances.

B. Financial Limitations. The Collaborative agrees that before the commencement of each fiscal year, which, for purposes of this Agreement, begins on July 1st of every calendar year, it shall submit (1) its audited financial statements for the prior fiscal year; (2) its annual budget for improvement, repair, replacement, maintenance, security, and public assistance (the "Budget"); and (3) any Capital Budget requests to the City for review and comment in accordance with Exhibit B attached hereto. The 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 the extent to which the Collaborative will be seeking to use the City's resources and its employees to perform tasks outlined in the Budget. The Budget shall not be final until written approval is given by the City and the City's contributions, if any, under this Agreement have been approved by the City Board of Finance and the City Board of Representatives. The Collaborative further agrees that the aggregate amount of the 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, the Collaborative agrees to use reasonable efforts to make said amounts available; provided, however, that in no event shall the Collaborative be obligated to expend funds that are restricted for a designated purpose for any other purpose. **Notwithstanding the foregoing, this provision shall not obligate the City to make any appropriations or contributions to the Collaborative, in either the City's Operating Budget or its Capital Budget, for any fiscal year.**

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

D. Use of City Employees. To the extent that City employees are required to perform services or any other work at Mill River Park & Greenway, subject to applicable laws, rules, regulations, and any contractual provisions, the Collaborative and the City shall jointly determine whether City employees will be assigned to Mill River Park & Greenway for purposes of performing services customarily performed by City Employees which services may be required under this Agreement. The provision of City employees by the City shall be at the sole cost of the City, and at no cost to the Collaborative.

E. Use of City Equipment. The 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 the Collaborative pursuant to this Agreement according to the formulae described in Paragraph 10 herein shall be used by the Collaborative for the purposes set forth in Paragraph 3 of this Agreement.

G. Programming and Events.

(1) During the term of this Agreement the Collaborative shall have the exclusive right to schedule and conduct special events and programs at Mill River Park & Greenway on behalf of the Community, which shall be open to the general public, subject to existing laws and ordinances pertaining to health and safety, including, but not limited to concerts, fairs, festivals and educational programs, **subject to the terms set forth in this subsection "G"**.

(2) The Collaborative shall be solely and exclusively responsible for the scheduling and content of all such programs and events. To facilitate the coordination of such events, the Collaborative shall issue temporary licenses (the "Licenses") to any third party, including the City, wishing to host such events. The Licenses shall set forth, at the Collaborative's sole discretion, the terms and conditions for activating and maintaining such license for use of the Mill River Park & Greenway.

(3) Any and all fees collected for any program or event shall be retained by the Collaborative and shall be the property of 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 & Greenway. Any and all fees collected for any program shall be deemed available for the Collaborative to use towards the Collaborative's funding obligations in accordance with Paragraph 10(a) of this Agreement. The City may not apply any fees collected by the Collaborative pursuant to any programs and events to offset any amounts the City is obligated to pay to the Collaborative under Paragraph 10(a) of this Agreement.

(4) The Collaborative shall be responsible for all costs and all expenses arising from any special program or event including permit fees and reimbursement for the City's direct expense, but not including the regular maintenance and cleaning of Mill River Park & Greenway which shall be incorporated in the Budget.

(5) The Collaborative shall notify the City's Director of Operations of all scheduled events as soon as reasonably practicable, but in no event later than one month prior to the commencement of the event. The City shall provide a list of costs and expenses related to such events to the Collaborative based on such schedule.

H. Construction of Improvements and Development.

(1) Construction

(a) With respect to all construction work to be performed by the Collaborative pursuant to this Subsection "H", the Collaborative shall comply with all applicable provisions of federal, state and City laws, ordinances, rules and regulations, including but not limited to City Code Section 8-6A [compliance with Purchasing Ordinance], Section 47-16 [payment of prevailing rates of wages], the Building Code, and the Fire Code.

(b) The Collaborative acknowledges that, by entering into this Subsection "H", the City does not waive the requirements of City Charter Sections C5-30-2, subsection (2).

(c) The Collaborative shall provide the City's Purchasing Department with copies of all bids, requests for proposals, agreements and change orders within a reasonable time after receiving the same. All bids and requests for proposals must contain such insurance and indemnity provisions as are required by the City Risk Manager.

(d) The Collaborative shall indemnify and save harmless the City, its officers, agents and employees, from all suits, actions, damages, and costs of every name and description arising out of the Collaborative's action pursuant to this Subsection "H". Every agreement entered into by the Collaborative pursuant to this Subsection "H" with contracting parties shall require such parties to so indemnify the City and the Collaborative, and their respective officers, agents and employees.

(e) The Collaborative shall have the right to construct and/or provide new improvements and to replace existing improvements at Mill River Park & Greenway. For any construction in excess of \$25,000.00, the Collaborative shall obtain prior written approval from the City and shall include (i) all requisite approval from the Boards and Agencies of the City, State of Connecticut and Federal Government; (ii) complete plans and specifications describing the proposed construction in such detail as the City may reasonably require; (iii) 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 (iv) set forth the names of the contractors and subcontractors that will be retained for the construction.

(f) The Collaborative shall submit to, and receive the approval of, the Land Use Bureau Chief and the City Engineer for all architectural plans and construction specifications which are required to be filed under Section H.(1)(e) hereof.

(2) Master Plan

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

(3) Naming Rights

The City acknowledges that in order to obtain the funds to construct many of the improvements outlined in the Corridor and Design Plans, the Collaborative may find it necessary to offer a program of "naming" existing City-owned streets, parks and facilities or portions thereof located within Mill River Park & Greenway with names designated by donors making contributions to the Collaborative for the benefit of Mill River Park & Greenway. Subject to the right of the City's Board of Representatives to reject a proposed name change in the name of an existing street pursuant to Section 21-1 of the Stamford Charter and Code of Ordinances, the City agrees to grant to the Collaborative such "naming" rights during the term of this Agreement in accordance with said section. The City further acknowledges and agrees that this Agreement is merely an amended and restated Agreement and remains subject to the terms of Section 21-1 of the Stamford Charter and Code of Ordinances as if this Agreement were the original Agreement between the Collaborative and the City dated November 30, 2007.

(4) 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(2) 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 funds under this Agreement.

4. MAINTENANCE EXCLUSIONS

Except as expressly set forth in Paragraph 3 of this Agreement, the Collaborative shall have no duties, responsibilities or obligations with respect to the maintenance and repair of Mill River Park & Greenway. The 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 & Greenway.

5. DESIGN AND CONSTRUCTION APPROVALS

The Collaborative shall comply with all required provisions of the City Charter and Code, and all procedures for review of landscape redesign, renovation, construction and rehabilitation projects in Mill River Park & Greenway.

6. MAINTENANCE AND REPAIR

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

7. MAINTENANCE COSTS

The City acknowledges that its current level of funding for the Park known as Mill River Park & Greenway is inadequate to fund a maintenance budget for an expanded and enhanced Mill River Park & Greenway. Throughout the term of this Agreement, the City agrees to use reasonable efforts to increase its funding of Mill River Park & Greenway in order to keep pace with the expanded and enhanced Mill River Park & Greenway including, but not limited to new facilities, added park space and inflation. The City shall use reasonable efforts to increase the level of funding allocated to Mill River Park & Greenway. **The failure of the City to fund a maintenance budget, in whole or in part, shall not constitute a breach of this Agreement. In the event that the combined funds of the Collaborative and the City are not adequate to maintain the Park, the parties shall negotiate a written agreement setting forth those maintenance functions which shall be performed with available funds.** Notwithstanding anything herein to the contrary, the City shall not bring any claim, demand, action or suit against the Collaborative related to the diminution of the level of maintenance provided by the Collaborative due to the City's failure to fund or fully fund a maintenance budget, nor shall the City have the right to terminate this Agreement based upon such diminution.

8. CONCESSIONS

(a) The Collaborative shall manage and collect fees from all concessions in operation in Mill River Park & Greenway, and reserves the right to develop additional concession opportunities in Mill River Park & Greenway. Notwithstanding anything herein to the contrary, the Collaborative shall not do anything regarding any and all concessions that is contrary to City policy.

(b) The Collaborative shall be permitted to use locations throughout Mill River Park & Greenway for its own fundraising events.

(c) Any net proceeds from concessions will be used solely to support the Collaborative's obligations under this Agreement to operate, maintain and improve Mill River Park & Greenway and shall be the property of the Collaborative. The Collaborative may use these fees towards the Collaborative's funding obligations in accordance with Paragraph 10(a) of this Agreement. **Such fees collected shall be and remain the property of the Collaborative and not the property of the City.**

9. ALTERATIONS BY THE CITY

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

10. COLLABORATIVE FUNDING COMMITMENT/CITY FUNDING GOAL/PAYMENTS TO COLLABORATIVE

(a) Beginning with its fiscal year starting July 1, 2013, and for the term of this Agreement, the Collaborative agrees to raise and expend annually a minimum of \$500,000 with respect to development, programming, operations, maintenance, repairs, landscaping, and the renovation and rehabilitation of existing facilities in Mill River Park & Greenway, including the services described in Paragraph 3 hereof. For these purposes, all costs and expenses of performing these services shall be included in the **Collaborative's Operating and Capital Budgets**. In consideration of the services rendered pursuant to this Agreement, in the fiscal year beginning July 1, 2015, and in all subsequent years during the term of this Agreement, the City shall use reasonable efforts to pay the Collaborative a minimum amount of \$500,000 per fiscal year ("Funding Goal"). 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 or other City capital funding. **The failure of the City to make an appropriation in any amount for any fiscal year shall not constitute a breach of this Agreement.**

(b) The Collaborative and the 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 & Greenway as a "first class urban park" are predicated on the City continuing to meet or exceed the **Funding Goal**. In the event that in any one year the City fails to meet the **Funding Goal**, 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 the Collaborative fails to perform services at the required standards, as set forth in Paragraphs 3, 6 and 8 of this Agreement, the City reserves the right to withhold payment pursuant to this Paragraph 10 pending the Collaborative's cure of said deficiency.

(c) The 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.

(d) All monies paid to the Collaborative by the City pursuant to this Agreement shall be used by the 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.

(e) All payments to the Collaborative under this Agreement shall be contingent on annual appropriations by the City, **approved by the City's Board of Finance and Board of Representatives**, and shall be subject to all other applicable City, State and federal laws, regulations, requirements and practices.

11. PAYMENT PROCEDURES

The City shall make payments to the Collaborative based the provisions set forth in Paragraph 10 of this Agreement. Such payments shall be remitted to the Collaborative on August 1 of each year during the term of this Agreement, provided that the Collaborative has performed its obligations under this Agreement to the satisfaction of the City. The Collaborative shall provide to the City written statements for each quarter of its fiscal year evidencing the profits and losses of the Collaborative for the preceding quarter of such fiscal year.

12. INSURANCE

(a) The Collaborative, at its own cost and expense, shall procure and maintain such insurance through the term of this Agreement as will protect the Collaborative and the City. Failure of the Collaborative to procure or maintain any insurance required under this Agreement (the "Insurance Requirements") shall not relieve the Collaborative of any liability under this Agreement.

(b) The Collaborative, at its own cost and expense, shall provide and maintain the following insurance coverage at such limits of coverage and to such specifications as are reasonably required by the City's Risk Manager:

- **Commercial and General Liability**
- **Worker's Compensation, as required by State law**
- **Operations Liability**
- **Products Liability and completed operations, which shall be maintained for a period of not less than three years following completion of the work/services under this Agreement**
- **Personal Injury Liability**
- **Broad Form Property Damage**
- **Comprehensive Automobile Liability Insurance for all owned, leased, hired and non-owned vehicles**
- **Employer's Liability**
- **Excess (Umbrella) Liability Insurance**

(c) In addition to the above, the Collaborative shall have the following terms and conditions written into the policies of insurance riders:

(1) The policies shall not be canceled, terminated or modified unless 30 days prior written notice is sent by certified mail to the 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 & Greenway, sent by the Collaborative to its insurance company, shall be deemed notice by the Collaborative and the 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.

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

(d) Architects, Engineers, General Contractors, Subcontractors and Vendors

(1) The Collaborative shall require its **architects, engineers, general Contractors, Subcontractors and Vendors (hereinafter collectively referred to as "Contractors")** who perform work for the Collaborative pursuant to this Agreement and in connection with the Collaborative's responsibilities in Mill River Park & Greenway to procure and maintain a policy of commercial general liability insurance with such limits as may be reasonably required by the City Risk Manager. Any policy or policies evidencing such insurance shall include the City, the Collaborative and their officers, trustees, employees, volunteers, and agents as additional insured parties, and the Collaborative shall require its subcontractor(s) to provide the Collaborative with a certificate of insurance naming such additionally insured parties prior to the execution of any agreement with the 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) The Collaborative shall require the following terms and conditions to be written into all Contractors' policies of insurance as riders:

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

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

(3) Notices of accidents occurring in Mill River Park & Greenway, sent by such Contractor to its insurance company shall be deemed notice by both the Collaborative and the City to the insurance company;

(4) The insurance company shall defend, indemnify and hold harmless the City, the 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;

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

(e) The City and the Collaborative shall meet each year prior to the Collaborative renewing its existing insurance policies to discuss the appropriateness of the existing insurance coverage based on current circumstances and conditions and to implement such changes in coverage as may be mutually agreed upon.

13. INDEMNIFICATION

The Collaborative shall indemnify and save harmless the City, its officers, agents and employees, from all claims, suits, actions, damages and costs of every name and description to the extent caused by the negligent acts, errors or omissions of the Collaborative in the performance of any of the covenants and specifications of this Agreement, including any supplements thereto, and such indemnity shall not be limited by reason of any insurance coverage required herein. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys.

14. INSPECTION AND AUDIT REPORTS

(a) Records, Accounts and Audits.

The Collaborative shall 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.

The Collaborative shall provide notice to the City of all of the Collaborative's meetings, hearings, and other proceedings of the Collaborative's Board of Directors, and will make available all of the Collaborative's officers and employees to the City in connection with the Collaborative's obligations in this Agreement. The Collaborative shall also make available, at its principal place of business, for audit, inspection, or removal of copies by the City, or by a City-authorized independent auditor, the 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 the Collaborative's responsibilities in Mill River Park & Greenway pursuant to this Agreement; (5) registration and attendance records of the Collaborative sponsored programs, and any other matters relating to the performance of and compliance with this Agreement.

15. NO REMOVAL OF RECORDS FROM PREMISES

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

16. INSPECTION AT SITE

The City shall have the right to have representatives of the City, the State or Federal governments present at Mill River Park & Greenway to observe the any of the Collaborative's work being performed pursuant to this Agreement.

17. RETENTION OF RECORDS

The 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 & Greenway Administrator.

The Collaborative shall select the individual who shall serve as the Administrator of Mill River Park & Greenway subject to reasonable review by the City.

(b) Notification of Appointment of Key Personnel.

The Collaborative shall notify the City in writing within 5 days of appointments to or resignations from the position of Chairman and Chief Financial Officer. In addition, the Collaborative shall notify the City, in writing, within 10 days of the occurrence, of any change in the individuals who serve as trustees and officers of the 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. The Collaborative shall 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. The Collaborative agrees to comply with all guidelines and procedures of the City concerning the screening and employment of personnel provided in writing to the Collaborative, including, but not limited to the following:

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

(2) The 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) The 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) The Collaborative and the City Agree that Collaborative is an Independent Contractor.

It is understood and agreed that all personnel employed by the Collaborative are employees of the Collaborative and are not employees of the City, and that the Collaborative alone is responsible for their work, direction, compensation and personal conduct while engaged pursuant to this Agreement. The Collaborative agrees that neither it nor its personnel or agents shall 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 the 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 the Collaborative or its consultants, experts, employees, servants, agents or independent contractors.

(e) Non-Discrimination

The 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

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

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

All such notices from the Collaborative to the City shall be in writing and delivered to the attention of the Director of Operations with a copy to the Director of Legal Affairs, **888 Washington Boulevard, Stamford, Connecticut 06901**. All notices from the City to the Collaborative shall be dispatched in the same manner, and delivered to the Collaborative at 1010 Washington Boulevard, Stamford, Connecticut 06904-06901, 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:

(1) Under any right to terminate as specified in any section of this Agreement;

(2) If the City determines that the Collaborative failed to comply with any of the terms and conditions of this Agreement, including the Collaborative's failure to perform services at the required standards set forth in paragraphs 3, 6, and 8 of this Agreement;

(3) Upon the Collaborative dissolving or becoming insolvent;

(4) Upon the commencement of any proceeding under the Bankruptcy Act against the Collaborative, either voluntary or involuntary.

(b) The City shall give the 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 (2) above, the City shall first give written notice to the Collaborative outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by the 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, the Collaborative shall comply with City closeout procedures, including but not limited to:

(1) 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. Not incurring or paying any further obligation pursuant to this Agreement beyond the termination date. Any obligation necessarily incurred by the 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.

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

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

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

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

(f) The rights and remedies of the City or the 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) The Collaborative **shall** have the right to terminate this Agreement under the following conditions:

(1) Imposition by the City of additional material conditions to or change in the scope of this Agreement which the Collaborative reasonably finds **onerous and burdensome**;

(2) Breach by the City of any of its **material** obligations hereunder.

(b) The Collaborative shall provide the City not less than 30 days' written notice of termination which specifies the reason(s) therefore, and the City shall have 30 days to cure the basis for the Collaborative's termination.

23. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

The Collaborative agrees to comply with all applicable federal, state and local laws, rules, regulations, codes, procedures, requirements, guidelines, policies, directives, instructions and orders including the Stamford Charter and Code of Ordinances.

24. REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) The Collaborative makes the following representations and warranties:

(1) The 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.

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

(3) 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 the Collaborative's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Collaborative is bound, or, to the knowledge of the Collaborative, any order, rule or regulation of any court, governmental agency or body having jurisdiction over the Collaborative or any of its activities or properties.

(4) The 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.

(5) The 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) The 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) The 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 the 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, the Chair of the Land Use/Urban Redevelopment Committee of the Board of Representatives, or other Representative designated by the President of the Board of Representatives. If such Representative for any reason ceases to serve as a member of the Collaborative, then the President of the Board of Representatives 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 boards, commissions and agencies.

25. CONFLICT OF INTEREST

The 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. The 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 the Collaborative, in whole or in part, will be effective unless it is agreed to, in writing, by the City and signed by a duly authorized Mayor of the City.

27. FEDERAL EMPLOYER IDENTIFICATION NUMBER

The 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 the Collaborative to receive public contracts. The Federal Employer Identification Number of the Collaborative is 06-1507648.

28. CITY'S RESERVATION OF RIGHTS AND INTERESTS

(a) **Public Events.** The parties to this Agreement shall 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, the Collaborative will conspicuously acknowledge the involvement of the 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 & Greenway is incorrect or unacceptable, the Collaborative and the City agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

(c) **Publications.** If the Collaborative publishes a work discussing any aspect of performance of any service covered by this Agreement, the Collaborative shall acknowledge therein the involvement, if any, of the City.

(d) **Special Events.** The 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 & Greenway; 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, management and coordination of the Special Event. Subject to any further agreements which may be entered into by the parties hereto, any monies collected by the City for special events shall be included in the calculations of the annual revenue from concessions described in Paragraph 8 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 & Greenway.

29. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

This Agreement, and any disputes arising therefrom, shall be governed by and construed in accordance with the laws of the State of Connecticut, without giving effect to any choice or conflict of law provision or rule (whether of Connecticut or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than Connecticut, and shall take effect and be binding upon and inure to the benefit of the parties and their respective successors and assigns.

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 the Collaborative have agreed that the City and the Collaborative are the sole parties to this contract. The City of Stamford Urban Redevelopment Commission is not a party to this contract and that the said City of Stamford Urban Redevelopment Commission has no rights or obligations arising under this contract. To the extent that the Collaborative activities within property described in Exhibit A are subject to an urban redevelopment plan, the Collaborative shall comply with all rules and regulations of the City of Stamford 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 of Stamford 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 the City and the Collaborative.

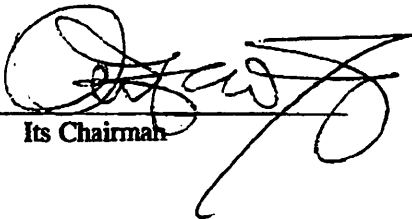
36. SERVICE OF WINE, BEER AND LIQUOR

Notwithstanding anything herein to the contrary, the Collaborative and its agents and contractors may serve, sell and/or permit the consumption of wine, beer and/or liquor at the Mill River Park & Greenway, provided such service, sale and/or consumption shall (a) comply with all applicable Federal, state and local laws and ordinances now or hereafter in effect, and (b) in the case of wine and/or liquor, take place only (i) at events sponsored by and for the benefit of the Collaborative, or (ii) in or on the buildings (including patio, roof and tented areas adjacent thereto or part thereof) located in the Mill River Park & Greenway known as Carousel Pavilion (and only when such building is closed to the public) and the Discovery Center. This Section 36 constitutes and is hereby deemed to be an exception to Section 72-2 of the Code of Ordinances of the City of Stamford, which exception shall continue in full force and effect throughout the Term of this Agreement.

[SIGNATURE PAGE FOLLOWS]

Agreed to the __ day of _____, 2015

MILL RIVER COLLABORATIVE

By: 
Its Chairman

CITY OF STAMFORD

By: _____
David R. Martin
Its Duly Authorized Mayor

Approved as to Form:

Burt Rosenberg
Corporation Counsel

Approved as to Insurance:

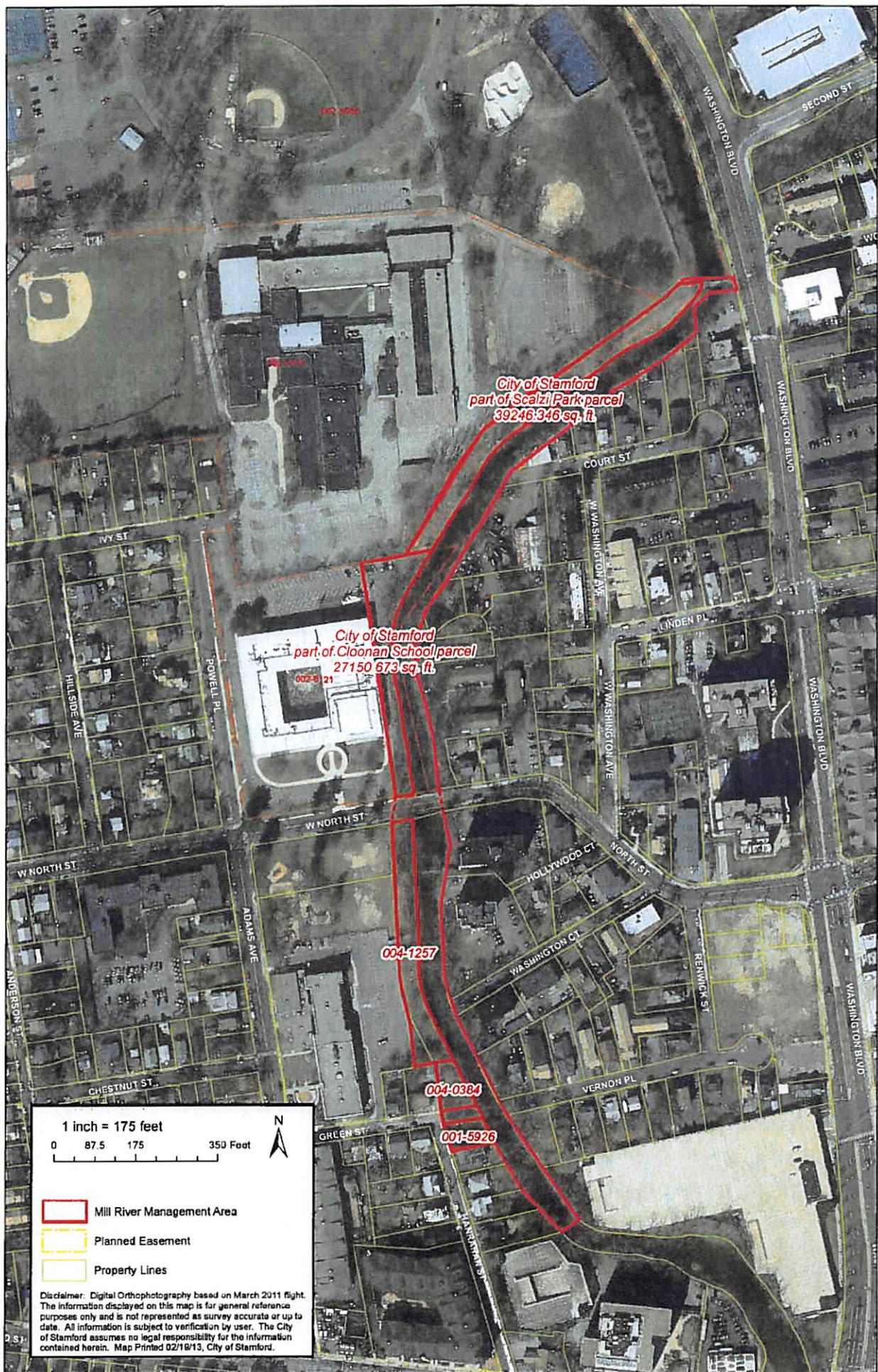
Ann Marie Mones
Risk Manager

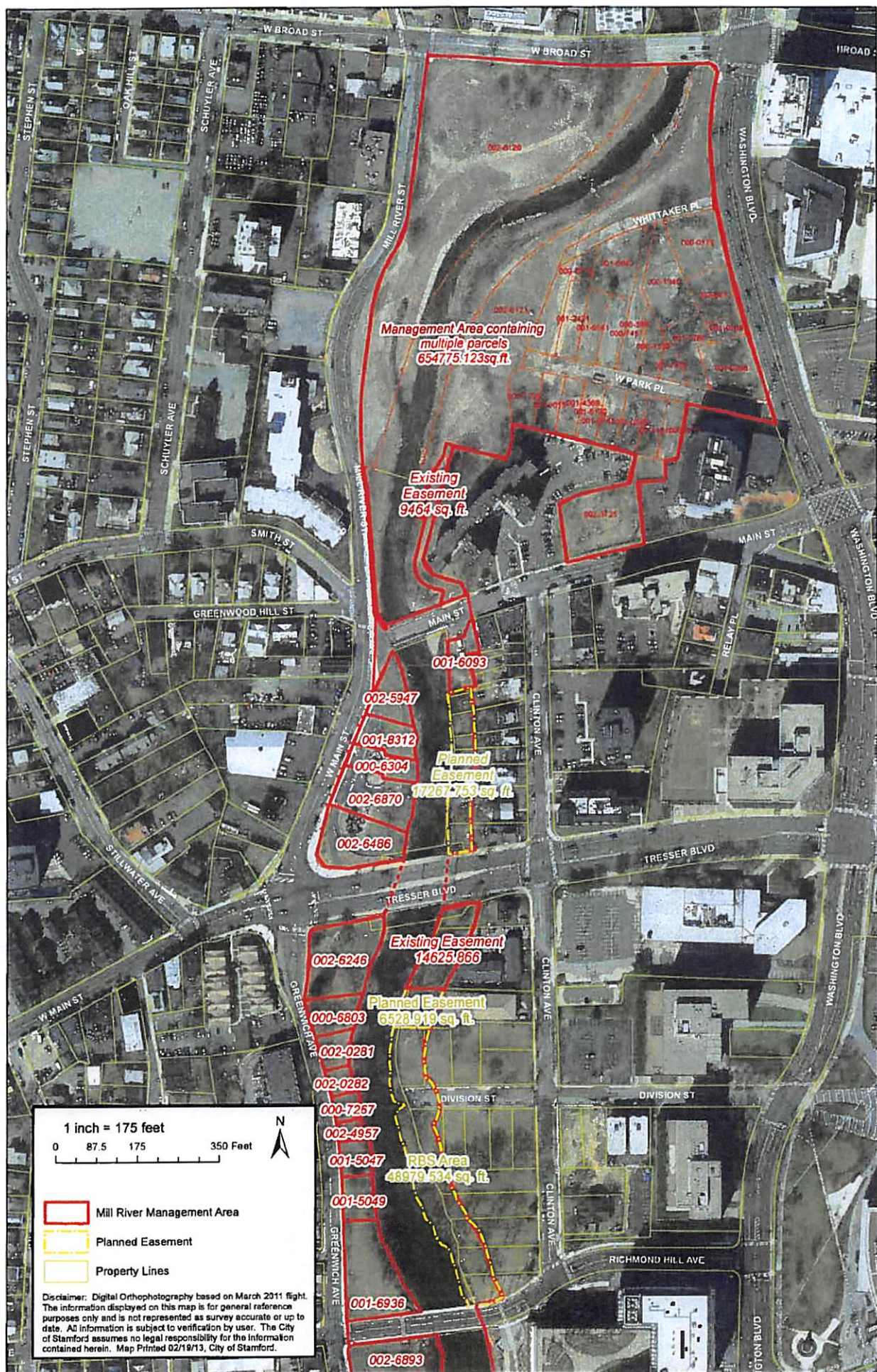
Exhibit A

Mill River Park & Greenway

Subject to the reasonable written approval of the Planning Department, which approval shall not be unreasonably withheld, conditioned or delayed, the Mill River Park & Greenway consists of all that real property located in the City of Stamford and outlined or otherwise delineated in red, blue and/or yellow as set forth on the three (3) maps, which maps are attached hereto and made a part hereof, to the extent that the City owns the fee interest to or holds a license, easement or other interest in, through, over or across the same. The City and the Collaborative may agree to vary or alter the real property boundaries referred to herein as the Mill River Park & Greenway by written agreement executed the City and the Collaborative.

In the event that the Planning Department does not approve (or reject) the above within thirty (30) days from the date of this Agreement, the above-referenced legal description shall be deemed to be the conclusive legal description of the Mill River Park & Greenway.





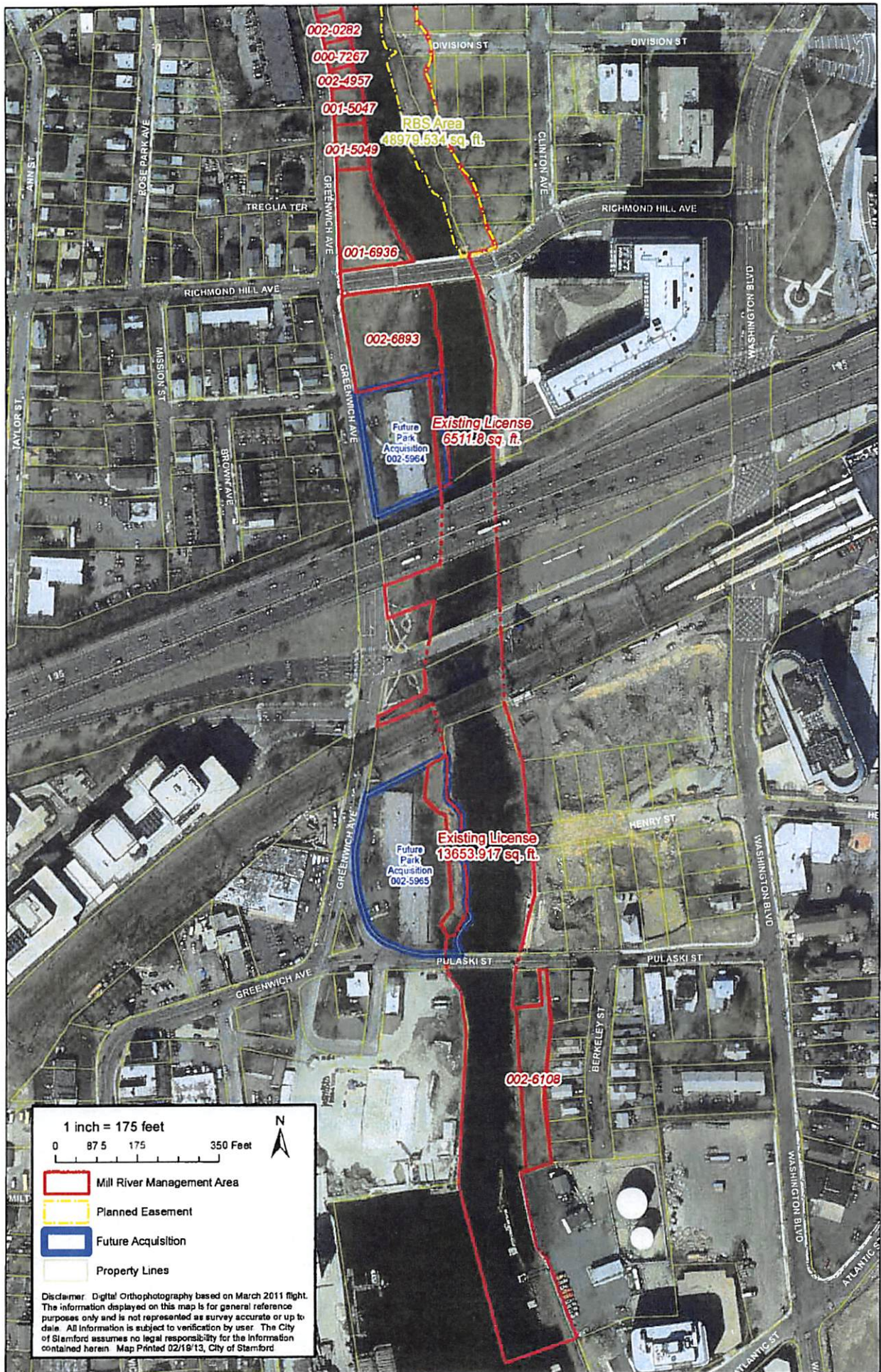


Exhibit B

The Collaborative shall submit to the 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.