

MAYOR
DAVID R. MARTIN



CITY OF STAMFORD
OFFICE OF LEGAL AFFAIRS

888 WASHINGTON BOULEVARD
P.O. BOX 10152
STAMFORD, CT 06904 - 2152
Tel: (203) 977-4081
Fax: (203) 977-5560

DIRECTOR OF LEGAL AFFAIRS
AND CORPORATION COUNSEL
KATHRYN EMMETT

DEPUTY CORPORATION COUNSEL
VIKKI COOPER

ASSISTANT CORPORATION COUNSEL

BARBARA L. COUGHLAN
CHRIS DELLASELVA
DANA B. LEE
AMY LIVOLSI
BURT ROSENBERG
MICHAEL S. TOMA



May 1, 2019

To: Mayor David R. Martin

From: Burt Rosenberg, Asst. Corporation Counsel 

Re: The Nature Conservancy
Donation of Bioswale in Rippowam Park
(1) Resolution Authorization Acceptance of Gift
(2) Agreement

Attached are three originals of the above described Resolution and Agreement.

The Nature Conservancy, a nonprofit which promotes environmental conservation, wishes to design and construct a bioswale in the City right-of-way at the west end of Rippowam Park. The value of the bioswale, which will be paid for entirely by the Nature Conservancy, is between \$12,000 and \$20,000. As you know, the purpose of a bioswale is to remove pollution from surface runoff water. According to Tyler Theder, Regulatory Compliance Administrative Officer, the installation of the bioswale is consistent with State DEEP MS4 permit requirements.

If the two documents meet with your approval, please forward them to the Board of Representatives with a request that the Board approve both measures.

Thank you for your consideration.

Encl.

C: Kathryn Emmett, Director of Legal Affairs
Mark McGrath, Director of Operations
Tyler Theder, Regulatory Compliance Administrative Officer

AGREEMENT

THIS AGREEMENT dated the day of , 2019, by and between the **CITY OF STAMFORD**, a municipal corporation in the State of Connecticut, hereinafter referred to as the "City", acting herein by David R. Martin, its Mayor, hereunto duly authorized, and **THE NATURE CONSERVANCY**, a District of Columbia non-profit organization having a Connecticut office located at 55 Church Street, 3rd Floor, New Haven, Connecticut 06510-3029, hereinafter referred to as the "Consultant", acting herein by Adam Whelchel, duly authorized.

WITNESSETH

WHEREAS, the Consultant has received one or more private funding grants to design and construct bioswales on behalf of Connecticut municipalities; and,

WHEREAS, the City wishes to have the Consultant construct a bioswale in the public right-of-way on Rippowam Place bordering Rippowam Park ("the Premises"); and,

WHEREAS, the design and construction of the bioswale will be paid for by the Consultant, estimated to be \$12,000.00 to \$20,000.00 in construction costs; and,

WHEREAS, Section C2-10-2 of the City Charter empowers the Board of Representatives to accept gifts of money or property; and,

WHEREAS, the Board of Representatives has passed a Resolution authorizing the acceptance of the gift from the Consultant in providing and paying for the design and construction of the bioswale;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES. The Consultant shall: (a) design the bioswale to be constructed on the Premises, a public right-of-way [hereinafter referred to as "the Project"]; (b) provide related Project Specifications; (c) select a construction contractor for the Project in accordance with the Consultant's Standard Operating Procedures; and (d) oversee the construction of the Project. Access to the Premises by the Consultant and its contractors for all purposes related to this Agreement is hereby provided by the City.

The Consultant shall provide the City with all plans and specifications for the bioswale, which must be approved in advance, in writing by all necessary City departments. In addition, the Consultant and/or its contractors must obtain all required permits to perform the work encompassed by the Project.

2. TERM. The term of this Agreement shall commence upon the execution of the Agreement by both parties and terminate upon the completion of the Project.

3. COMPENSATION.

The Consultant shall be responsible for all Project costs, including payment to the construction contractor. The Consultant and its contractor shall not seek to be, and shall not be compensated by, the City.

4. INDEMNIFICATION OF CITY. The Consultant covenants and agrees to hold City, and its directors, employees and agents harmless from and on account of any and all loss, damages, claim, liability or expense arising out of, or resulting from Consultant's performance of its duties pursuant to this Agreement, the Consultant's use of the City Premises described herein and/or Consultant's negligence resulting in claims or injury to either persons or property upon or about the Premises, during the term hereof. The Consultant shall not be liable for any claims or injuries to either persons or property not resulting from the acts or omissions of the Consultant, or its agents and contractors.

If either City or Consultant receives notice of any claim giving rise to City's obligation to indemnify Consultant under this Agreement, that party shall immediately notify the other party in writing of such claim. The Consultant shall have the right and option in the first instance, through counsel of its own choosing and at its own expense, to deal with, defend, settle or compromise any such claim.

If Consultant fails to appoint counsel to deal with, defend or settle or compromise any such claim within sixty (60) days after receiving notice thereof, City may deal with, settle or compromise any such claim through counsel of its own choosing at the expense of Consultant, subject to the limitations set forth above. In such event, no settlement or compromise shall be made without prior notice to the Consultant. City shall cooperate with Contractor in the defense of any such claim or litigation, at the Consultant's expense, subject to the extent of the Consultant's liability.

The Consultant shall require the contractor which performs construction of the bioswale to indemnify the City in the same manner as set forth above.

5. ASSIGNMENT. Other than with respect to the permitted construction contractor contemplated herein, the Consultant shall not assign, sub-contract, or

transfer any portion of the work set forth herein without the prior written approval of the City.

6. REPRESENTATION. The Consultant represents that it has the requisite skill, expertise, and knowledge necessary to perform the scope of services required under the terms of this Agreement, including any supplementary work and the City relies upon said representation in executing this Agreement.

7. INSURANCE. The Consultant shall maintain such paid-up insurance as is set forth in Exhibit A attached hereto. Moreover, the Consultant shall require the construction contractor to provide insurance certificates in the minimum coverage amounts required by the City and naming the City an additional insured on general liability and excess liability policies. The insurance requirements of the Consultant's construction contractor are set forth in Exhibit B attached hereto.

8. ENTIRE AGREEMENT. This Agreement, including all Exhibits referenced herein, constitutes the entire agreement between City and Consultant, and may be modified or altered only by written agreement between City and Consultant, and no act or omission of any employee or agent of City or Consultant shall alter, charge or modify any of the provisions hereof.

9. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Connecticut and the parties hereto hereby waive any and rights to choice of law.

10. GIFTS; POLITICAL CONTRIBUTIONS. During the term of this Agreement, including any extensions, the Consultant shall refrain from making gifts of money, property or services to any employee or appointed or elected official of the City of Stamford or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions Departments, Agencies or Authorities. All references to the Consultant shall include its officers, directors, and employees. Violation of this provision shall constitute a material breach of this Agreement, for which this Agreement may be summarily terminated.

EXHIBIT A

CITY OF STAMFORD INSURANCE REQUIREMENTS FOR CONSULTANT Rippowam Place Bioswale Design

The Consultant will be required to submit certificates of insurance, which contain the minimum insurance coverages described below:

1. Standard workers' compensation, which complies with all Connecticut workers' compensation statutes and regulations.
2. Employer's liability insurance, which contains limits of liability of not less than \$100,000 each accident, \$100,000 disease policy limit and \$100,000 disease – each employee.
3. Commercial general liability insurance, with a minimum limit of liability of \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Such coverage shall include the following:
 - (a) Products liability and completed operations, which shall be maintained for a period of not less than three (3) years following completion of the services under this Agreement or termination of the Agreement, whichever is later.
 - (b) Contractual liability insurance, which insures any indemnities contained in the Agreement between the Consultant and the City of Stamford;
 - (c) City of Stamford and its employees, agents and officers designated as additional insureds;
 - (d) Policy shall be underwritten on an occurrence basis.
4. Commercial automobile liability insurance, which contains minimum limits of liability of \$1,000,000 per accident, and contains, at a minimum, the following coverage provisions:
 - (a) Coverage for all owned, non-owned and hired vehicles;
 - (b) City of Stamford and its employees, agents and officers designated as additional insureds.
5. Professional liability insurance, which covers the services to be provided pursuant to the Agreement between the City of Stamford and the Consultant. The minimum limit of liability shall be \$1,000,000 per claim and in the aggregate.
6. If any insurance is underwritten on a claims made, as opposed to an occurrence basis, the retroactive date in the policy shall be the earlier of the effective date of the Agreement between the Consultant and the City of Stamford or the date the Consultant commences its services for the City. The policy shall also contain an extended reporting date of not less than three years following

termination of the Agreement between the Consultant and the City of Stamford or conclusion of the services rendered by the successful Consultant, whichever is later.

7. All insurance required hereunder shall contain waivers of subrogation in favor of the City of Stamford and its employees, agents and officers. The Consultant shall waive any right of claim, loss or damage against the City of Stamford, Stamford Board of Education, and its employees, agents and officers.

8. All insurance policies required under this Agreement shall contain thirty (30) days prior written notice to the City of Stamford's Risk Manager in the event of cancellation, termination or material change to any policy terms or conditions required hereunder.

9. The insurance required hereunder shall in no way serve to limit or reduce the liability of the Consultant under this Agreement.

10. The Consultant shall provide the Risk Manager with certificates of insurance, which evidence the insurance required hereunder. The Consultant shall provide the Risk Manager with renewal certificates of insurance within 30 days prior to the expiration of the policies. Consultant's failure to review said certificates of insurance or insurance policies shall not be deemed to be a waiver of the Consultant's obligations to comply with all provisions of these insurance requirements hereunder.

EXHIBIT B
CITY OF STAMFORD
INSURANCE REQUIREMENTS FOR GENERAL CONTRACTOR
Rippowam Place Bioswale

The Contractor will be required to submit certificates of insurance, which contain the minimum insurance coverages described below:

1. Standard workers' compensation, which complies with all Connecticut workers' compensation statutes and regulations.
2. Employer's liability insurance, which contains limits of liability of not less than \$500,000 each accident, \$500,000 disease policy limit and \$500,000 disease – each employee.
3. Commercial general liability insurance, with a minimum limit of liability of \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Such coverage shall include the following:
 - (a) Products liability and completed operations, which shall be maintained for a period of not less than three (3) years following completion of the services under this Agreement or termination of the Agreement, whichever is later.
 - (b) X,C,U coverage or equivalent;
 - (c) Contractual liability insurance, which insures any indemnities contained in the Agreement between the Contractor and the City of Stamford;
 - (d) City of Stamford and its employees, agents and officers designated as additional insureds;
 - (e) Policy shall be underwritten on an occurrence basis.
4. Commercial automobile liability insurance, which contains minimum limits of liability of \$1,000,000 per accident, and contains, at a minimum, the following coverage provisions:
 - (a) Coverage for all owned, non-owned and hired vehicles;
 - (b) City of Stamford and its employees, agents and officers designated as additional insureds.
5. Pollution liability insurance with a minimum limit of liability of \$1,000,000.
6. If any insurance is underwritten on a claims made, as opposed to an occurrence basis, the retroactive date in the policy shall be the earlier of the effective date of the Agreement between the Contractor and the City of Stamford or the date the Contractor commences its services for the City. The policy shall also contain an extended reporting date of not less than three years following

termination of the Agreement between the Contractor and the City of Stamford or conclusion of the services rendered by the successful Contractor, whichever is later.

7. All insurance required hereunder shall contain waivers of subrogation in favor of the City of Stamford and its employees, agents and officers. The Contractor shall waive any right of claim, loss or damage against the City of Stamford, Stamford Board of Education, and its employees, agents and officers.

8. All insurance policies required under this Agreement shall contain thirty (30) days prior written notice to the City of Stamford's Risk Manager in the event of cancellation, termination or material change to any policy terms or conditions required hereunder.

9. The insurance required hereunder shall in no way serve to limit or reduce the liability of the Contractor under this Agreement.

10. The Contractor shall provide the Risk Manager with certificates of insurance, which evidence the insurance required hereunder. The Contractor shall provide the Risk Manager with renewal certificates of insurance within 30 days prior to the expiration of the policies. Contractor's failure to review said certificates of insurance or insurance policies shall not be deemed to be a waiver of the Contractor's obligations to comply with all provisions of these insurance requirements hereunder.