TOWN OF HAMDEN
OFFICE OF THE TOWN ATTORNEY

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2750 Dixwell Avenue
Hamden, Connecticut 06518

Town Attorney
SUSAN GRUEN

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Assistant Town Attorney
TIMOTHY J. LEE
J. BRENDAN SHARKEY

August 5, 2016

Ann M. Catino, Esq.
Halloran and Sage LLP
One Goodwin Square
225 Asylum Street
Hartford, Connecticut 06103

RE: Newhall Local Design District – Soil Management

Dear Attorney Catino:

Enclosed please find the following documents regarding the above-referenced matter:

1. Memorandum of Agreement, in duplicate original, between the Connecticut Department of Energy and Environmental Protection and the Town of Hamden;
2. Approval letter under date of August 4, 2016 from Hamden's Legislative Council;
3. Certified Resolution Authorizing the Town of Hamden to Enter into a Memorandum of Agreement with the Connecticut Department of Energy and Environmental Protection and an Agreement with the Hamden Economic Development Corporation for Newhall Long-Term Soil Management Fund Project;
4. Certificate of Mayor Curt Balzano Leng's Incumbency;
5. Certified Resolution Adopting a Policy to Support the Nondiscrimination Agreements and Warranties Required Under the Connecticut General Statutes;
6. Photocopy of executed Agreement between the Town of Hamden and the Hamden Economic Development Corporation.

Should you have any questions or require anything further, please feel free to contact me.

Yours truly,

Susan Gruen
Town Attorney

SG:pal
Enclosures

To be provided by Sponsoring Agency		
PS#	Core CT Contract #	PO#

Rev. 1/2/14

MEMORANDUM OF AGREEMENT
BETWEEN THE
CONNECTICUT DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION AND
THE TOWN OF HAMDEN, CONNECTICUT

This Agreement is entered into by the Commissioner of the Connecticut Department of Energy and Environmental Protection ("Commissioner" or "DEEP") and the Town of Hamden, Connecticut ("the Town") for the purpose of undertaking a project of mutual interest.

1. **Duration**: The period of this Agreement shall begin on Execution and shall expire upon depletion of funds in the Long-Term Soil Management Fund established exclusively for certain of the residential properties located within the boundary of Consent Order SRD-128 entered on April 16, 2003, and others specifically located in the Newhall Local Design District ("NLDD") of Hamden, Connecticut. This Agreement may be amended through a formal written amendment to this Memorandum of Agreement, signed by all parties.

2. **Title**: This project is entitled: "**Newhall Long-Term Soil Management Fund**" (the Fund).

3. **Purpose/Background**: The purpose of this project is to cover the expense to remove and properly manage contaminated waste fill in soil that was historically placed on non-public, residential properties located within Hamden's NLDD, including those residential properties that are located within the area shown on Attachment 1 which represent the boundary of Consent Order SRD-128 (the "Newhall CO Properties") issued by DEEP in 2003.

   Some properties located within the NLDD area, including the Newhall CO Properties once contained wetlands and other low-lying areas that were filled in the late 1800s through approximately 1950 with waste fill material. The waste fill material deposited in the neighborhood during this period was primarily comprised of concentrated ash from burned wood and coal in conjunction with industrial processes, and/or household type trash that was incinerated on a large scale (collectively referred to herein as "waste fill"). The primary pollutants associated with the waste fill material include lead, arsenic and polycyclic aromatic hydrocarbons. Following the filling activities, a residential neighborhood, two town parks and a former middle school were constructed over the filled areas.

   In 2000, the presence of wide spread historically placed waste fill was discovered in the NLDD area. Analytical testing showed that the waste fill generally contained pollutants at concentrations that exceeded the Residential Direct Exposure Criteria of Connecticut's Remediation Standard Regulations (RSRs) and therefore posed an unacceptable risk to human health, if human exposure to the pollutants was not controlled.

   To abate the risk to human health, contaminated waste fill located within four feet of ground surface was excavated from over 200 individual properties in the NLDD area from 2009 to 2013 as part of the Newhall Neighborhood State Superfund Project. All remedial actions were conducted in accordance with Consent Order SRD-128.

4. **Authorizations**: The Commissioner is authorized to enter into agreements pursuant to Connecticut General Statutes, Sections 4-8 as amended, and Sections 22a-5 and 22a-6. The Town is authorized to enter into this agreement pursuant to Connecticut General Statutes, Section 7-148(c) as amended and a resolution adopted by the Hamden Town Council.

5. **Total Project Costs** – DEEP will make a one-time total contribution of $1,000,000.00 to the Fund. Pursuant to Consent Order SRD-128, a Settlement Agreement last executed on December 12, 2007, and

the DEEP's Remedy Selection Plan for the Newhall Neighborhood, dated October 2007, Olin Corporation, as the Respondent to DEEP Consent Order SRD-128 with responsibility to investigate and remediate non-public properties located in the Newhall CO Properties boundary will also make a matching one-time contribution of $1,000,000.00 to the Fund. DEEP holds Olin's matching contribution and will transfer the full amount of $2,000,000.00 to the Fund following execution of this Agreement in accordance with paragraph 25.

6. **Project Directors**: The following individuals are designated to serve as Project Directors (or Project Managers or Principal Investigators):

For the Town of Hamden:
Salvatore A. DeCola
Finance Director
Hamden Government Center
2750 Dixwell Avenue
Hamden, CT 06518
E-Mail: sdecola@hamden.com
Phone: 203-287-7010

For DEEP:
Ray Frigon
Supervising Environmental Analyst
DEEP – Remediation Division
79 Elm Street
Hartford, CT 06106
E-Mail: raymond.frigon@ct.gov
Phone: (860) 424-3797

7. **Business Contacts**: The following individuals are designated to serve as contacts for business matters:

For the Town of Hamden:
Salvatore A. DeCola
Finance Director
Hamden Government Center
2750 Dixwell Avenue
Hamden, CT 06518
E-Mail: sdecola@hamden.com
Phone: 203-287-7010

For DEEP:
Laurie Valente
Bureau Business Officer
DEEP - FSS – Financial Management Division
79 Elm Street
Hartford, CT 06106-5127
E-Mail: laurie.valente@ct.gov
Phone (860) 424-3604

For the Hamden Economic Development Corporation:
Dale Kroop
Executive Director
Hamden Economic Development Corporation
Hamden Government Center
2750 Dixwell Avenue
Hamden, CT 06518
E-Mail: dkroop@hamden.com
Phone: 203-287-7033

8. **General Supervision**: Primary responsibility for general supervision of all activities and compliance with the terms of this agreement rests with the Town.

9. **Funding Available under a Newhall Long-Term Soil Management Fund**:

(a) Property Improvement Projects: The Fund is established to cover future costs to properly manage waste fill (associated with and/or similar to the characteristics of waste fill remediated under the Newhall Neighborhood State Superfund Project) remaining on some properties located within the NLDD, including the Consent Order Properties, if such waste fill is encountered in connection with a future property or home improvement activity (collectively referred to herein as a "property improvement project") that is permitted by the Hamden Building Department. A property improvement project is a future property or home improvement activity that includes, but is not

limited to: an addition to a home; construction of an in-ground swimming pool, and replacing/removing an in-ground storage tank used for containing fuel oil to heat a residential structure (Any contamination associated with a fuel leak from the tank and related piping is specifically excluded from eligibility under the Fund).

(b) Eligible Applicants: Applicants that are eligible and ineligible for grants under the Fund are defined in paragraphs 13 and 14 below.

(c) Eligible Expenses: Expenses which may be paid for by the Fund include:

1) Development and implementation of a waste fill remediation and management plan prepared by a qualified licensed engineer, environmental consultant, or environmental contractor retained by the Town or its designated agent;

2) Excavation of waste fill material from within the limits of an approved property improvement project;

3) Sampling and laboratory analysis of waste fill material;

4) Transportation and proper off-site disposal of waste fill material;

5) Publication and postage to distribute documents or reports generated by this Agreement, as stipulated in paragraph 21 of this Agreement.

6) Legal fees, accounting, or insurance costs incurred by the Town or its designated agent in the direct performance of eligible activities under this Agreement, but collectively shall not exceed, in any one year, 50% of the interest earned by the Fund in the prior calendar year. In the first year of this Agreement, payment of such fees from the Fund shall not exceed $8,000.

To the extent that a building permit is needed, all eligible expenses must be performed in conjunction with a permit issued by the Town's Building Department. Eligible Applicants may not be reimbursed directly from the Fund unless otherwise authorized by DEEP.

(d) Administrative Fees: To cover the administrative expense to implement this Agreement, a fee of five percent (5%), or such fee percentage assessed by the Town's Building Department for review of Construction applications, whichever is higher, of the total eligible expenses per property improvement project is payable to the Town or the Town's designated agent as set forth in paragraph 12 below, but shall not exceed 50% of the interest earned by the Fund in the prior calendar year. The parties to this Agreement may negotiate a different administrative fee percentage in the future, but the percentage stipulated in this Agreement will not change unless and until the parties agree to the revised percentage. Additionally, to compensate the Town or its designated agent, as may be applicable, for establishing the protocols to administer this Agreement at the local level, the Town or its designated agent, as set forth in paragraph 12, may be compensated with a one-time payment of $5,000 in the first year of this Agreement. Payment of administrative fees from the Fund in the first year of this Agreement, excluding the one-time payment of $5,000, shall not exceed $8,000.

(e) HEDC-owned Parcels: The eight (8) parcels owned by the Hamden Economic Development Corporation (HEDC) at the time of entry of this Agreement are limited to a total cumulative benefit of up to $80,000.00 as needed, for the life of this Fund. The eight parcels are identified as having the following street addresses: 499 Newhall Street; 230 Butler Street; 45 Edwards Street; 59 Edwards Street; 51 Edwards Street; 32 Edwards Street; 482-484 Shelton Avenue; and, 330 Morse Street.

(f) Ineligible expenses: The Fund is to be strictly used for the remediation of waste fill material located

within the limits of an approved property improvement project, and may not be used for removing or managing any contamination associated with residential underground storage tanks or any activity attributed to the property's residential use. The Fund shall **not** be used for structural repairs or other similar home improvement activities, unless directly related to and necessary for the removal of waste fill material encountered during the approved property improvement project, and specifically authorized in writing by DEEP. The Fund shall also not be used for lawn, tree and plant restoration or other landscaping. Further, the Fund may not be used to cover a property owner's fees for permit applications or legal representation in connection with any property improvement project.

10. **Notification Process**: The Town has placed and continually maintains notification concerning the NLDD in the following places and in the following ways:

    (a) Assessor's Office/Vision Appraisal - Properties located in the NLDD are identified in records maintained by the Hamden Assessor's Office, and on-line property value assessment information – managed by Vision Appraisal as of the date of this Agreement, or any successor on-line appraisal firm.

    (b) NLDD designations on applications - Property owners applying for a permit to conduct certain property or home improvement activities are required to submit an application to the Town Planning and Zoning Commission and the Building Department. All Town building permit applications will have a check box for the applicant to mark if the proposed permitted activity is located on a property within the NLDD. Note that in most cases, Planning and Zoning approval is required prior to issuance of a permit from the Building Department.

11. **Distribution of information to Local Organizations**: Hard copies of information concerning the NLDD, the Consent Order boundary, and the Fund will be distributed by the Town or the Town's designated agent annually. Such information will be supplied to realtor associations in New Haven County, local area builder and contractor associations, and owners of real estate located within the NLDD.

12. **Administration of the Fund**: The Town will serve as trustee of the Fund, and as such the Town is responsible for the administration of the Fund. As trustee, the Town retains the legal obligation to ensure that Fund monies are secure and that the grants distributed under the Fund are consistent with this Agreement. Any depletion of the Fund not authorized by this Agreement shall be replenished by the Town.

DEEP understands and agrees that the implementation of the Newhall Long Term Soil Management Fund and the day to day administrative functions for the Fund may be through a designated agent (Town's designated agent). At this time, the Town's designated agent will be the Hamden Economic Development Corporation (HEDC), which shall administer the Fund pursuant to an agreement between the Town and HEDC, entered into contemporaneously with this agreement. Any such substitution of the Town's designated agent shall be subject to the prior written approval of the DEEP.

The Town will deposit the Fund in a bank that has a main office or local branch in New Haven County. The Fund will not be commingled with other accounts belonging to the Town or its designee. The Fund may be placed in one or more of the following accounts: a money market interest-bearing checking account; a savings account; a certificate of deposit; or, a similar investment instrument that minimizes risk of loss of principal but allows for interest to accrue (collectively, the "Account"). Said Account shall be the sole authorized depository for the Funds. The Town shall notify The DEEP of the name of the bank and provide the Account information for DEEP's approval prior to DEEP disbursing the payment identified in section 25. Any future relocation of the Fund to another account or financial institution will require DEEP's prior written approval. The Town will provide notice to DEEP 60 days prior to any change of Account or financial institution. Any income taxes or other taxes that may be due on any investment interest or interest income earned by the Fund shall be paid for from the Fund.

The Town hereby agrees, subject to terms of this Agreement and the agreement between the Town and HEDC, to make HEDC a joint owner of the Account so that HEDC may access the Account in order to perform its duties pursuant to this Agreement and the Town-HEDC agreement, provided that HEDC agrees that the Funds shall only be used in accordance with the terms of this Agreement. To the extent HEDC no longer serves as the Town's designated agent, the Town may substitute another designated agent to be a joint owner of the Account, subject to the approval of DEEP.

All interest generated shall remain in the Fund and will be included as Fund monies available for distribution according to the terms of this Agreement.

The Fund may be used to pay for eligible expenses conducted on property owned by eligible applicants, which determinations shall be made by the Town or its designated agent in its sole discretion. The intent of this Agreement is for the Town or its designated agent to cause such work, consistent with the eligible expenses outlined in paragraph 9.c., to be performed on an eligible applicant's property at their request, and in conjunction with a permit issued by the Town's Building Department. The Fund shall be used by the Town or its designated agent to pay those eligible expenses directly. Unless otherwise authorized by DEEP, an eligible applicant may not receive direct compensation or reimbursement from the Fund.

13. **Eligible Applicants**: Applicants eligible to have remedial work performed on their properties under the Fund are:

    (a) Present and future owners of real property presently used or zoned for residential purposes, located within the NLDD as that district is shown on the Hamden Zoning Map dated June 13, 2014, that was remediated pursuant to the Newhall Street Neighborhood Superfund Project in connection with Consent Order SRD-128, implemented between July of 2009 and December of 2012, and where waste fill material is documented to remain at an approved depth on such property; or

    (b) Present and future owners of real property presently used or zoned for residential purposes, located within the NLDD, that have waste fill present in soil that was previously not documented.

    The limits of the Consent Order boundary and the NLDD are identified on Attachment A of this Agreement.

    A database identifying the street address of each property within the NLDD that did and did not participate in the remediation undertaken as part of the Consent Order and Newhall Neighborhood State Superfund Project shall be available in the Town Building Department and DEEP public files. Property-Specific Remedial Action Reports documenting the soil cleanup actions that were implemented on individual properties shall also be maintained on file with the Town Building Department and DEEP.

14. **Ineligible Applicants:**

    (a) DEEP issued Administrative Orders to owners of property located within the boundary subject to Consent Order SRD-128 that have waste fill present, as determined through environmental investigations, and that declined to participate in the cleanup process under Consent Order SRD-128. A Notice of Order is recorded on the land records of all such properties in the NLDD to notify future prospective purchasers of those properties that contaminated waste fill is present at or near the surface on the parcel, and the potential risk to human health posed by the presence of shallow waste fill has not been controlled. As the soil cleanup on those properties is compelled by an Administrative Order issued to the property owner, the property owner including all future successors, heirs, and assigns of such real property not remediated pursuant to the Newhall Neighborhood State Superfund Project and Consent Order are **not eligible** to receive grants from the Fund. To avoid doubt, the properties that are subject to individual Administrative Orders are: 131 Bryden Terrace, 42 Edwards Street, and 48 Edwards Street. Owners of these ineligible

properties, as well as all their future successors, heirs and assigns, are not entitled to receive grants reimbursed directly from the Fund or have work provided by the Town or its designated agent for a property improvement project.

(b) Any prospective property developer or current owner of property that was used for commercial, retail, industrial, charitable, religious, educational, or public purpose (e.g., the former Hamden Middle School) or was abandoned as of April 16, 2003 or at any time thereafter, and the developer or owner is seeking to redevelop such property for commercial, retail, industrial, charitable, religious, educational, public or residential use are **not eligible** for grants from the Fund.

15. **Application Process**:

(a) Applications for a grant under the Fund will be available through the Town or the Town's designated agent. Prospective grant applicants must demonstrate that: they are the owner of property which is the subject of a proposed property improvement project; the property is located within the NLDD, the applicant is an Eligible Applicant, the proposed property improvement project meets all local zoning and building requirements, and that the proposed property improvement project will likely encounter any deep waste fill. Funding may only be used for managing waste fill material and those cost items set forth in paragraph 9. The Town or the Town's designated agent, as may be applicable, shall notify DEEP prior to approving each grant.

(b) The action of excavating and disposing waste fill shall be conducted under the oversight of a qualified licensed engineer, environmental consultant, or environmental contractor retained by the Town or its designated agent. Waste fill material and associated contaminated soil will be managed in accordance with the Waste Management Protocol outlined in Paragraph 16.

(c) The grant funds are to be used only to remediate the waste fill necessary for the proposed property improvement project. If the Town or its designated agent determines that the waste fill or any environmental condition extends beyond the area of the proposed property improvement project, the Town or its designated agent shall have no obligation under this Agreement to investigate the scope or extent of the waste fill or the condition or engage in any remediation. In the event such fill or condition is encountered, the Town or its designated agent shall report its observations as to its existence to DEEP. The Town and its designated agent shall have no obligation under this Agreement to fund or perform any work beyond that investigation and remediation narrowly required for the proposed property improvement project as part of the Fund administration. To the extent any further investigation or remediation work is required beyond the property improvement project, such a determination as to the scope, nature, and responsibility for such work falls within the discretion of DEEP.

16. **Waste Management Protocol**: When conducting an approved property improvement activity that may encounter waste fill, the following steps shall be followed:

(a) To suppress dust that may be generated during excavation of waste fill, the work zone shall be wetted with water.

(b) Stockpiled material containing waste fill shall be securely covered with plastic sheeting during non-work hours.

(c) Waste fill and associated contaminated soil must be sufficiently characterized for proper disposal.

17. **Annual Reporting**: The Town or its designated agent shall itself provide or shall cause, through its designated agent, an annual report as set forth in paragraph 23 on the status of the Fund to DEEP that includes: a statement of the Fund balance; interest earned during the reporting period; and, itemized expenses by property, for the prior year.

18. **Information on the Web**: For further information on the Fund, contact the Town Finance Director at (203) 287-7010 or, or visit www.newhallinfo.org

19. **Other Programs**: For further information about other programs specific to properties located within the NLDD, contact the Hamden Economic Development Corporation.

20. **Deliverables**. Upon demand by the DEEP, the Town or its designated agent shall provide a report identifying the activities taken under the Fund at any time during any reporting period.

21. **Publication of Materials:** No general distribution of any documents or reports generated as a result of any work supported by this agreement shall be conducted prior to receiving approval from DEEP. Such approval shall not be unreasonably withheld by DEEP.

    The Town or the Town's designated agent may be reimbursed from the Fund for expenses to print and distribute any documents or reports generated by this agreement.

    Unless specifically authorized in writing by the State, on a case by case basis, the Town or its designated agent shall have no right to use, and shall not use, the name of the State of Connecticut, its officials, agencies, or employees or the seal of the State of Connecticut or its agencies: (1) in any advertising, publicity, promotion; or (2) to express or to imply any endorsement of Contractor's products or services; or, (3) to use the name of the State of Connecticut, its officials agencies, or employees or the seal of the State of Connecticut or its agencies in any other manner (whether or not similar to uses prohibited by (1) and (2) above), except only to manufacture and deliver in accordance with this Agreement such items as are hereby contracted for by the State. In no event may the Town or its designated agent use the State Seal in any way without the express written consent of the Secretary of State.

22. **ADA Publication Statement**: For all public notices printed in newspapers, the following ADA and Title VI Publication Statement should be used:

    The Connecticut Department of Energy and Environmental Protection is an Affirmative Action and Equal Opportunity Employer that is committed to complying with the Americans with Disabilities Act. To request an accommodation contact us at (860) 418-5910 or mailto:deep.accommodations@ct.gov

If there is not a meeting or event associated with the material(s) being published, the following ADA and Title VI Publication Statement should be used:

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action/Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act. Please contact us at (860) 418-5910 or deep.accommodations@ct.gov if you: have a disability and need a communication aid or service; have limited proficiency in English and may need information in another language; or if you wish to file an ADA or Title VI discrimination complaint.

If the material(s) being published have a meeting or event associated with them, the following ADA and Title VI Publication Statement should be used:

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action/Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act. Please contact us at (860) 418-5910 or deep.accommodations@ct.gov if you: have a disability and need a communication aid or service; have limited proficiency in English and may need information in another language; or if you wish to file an ADA or Title VI discrimination complaint. Any person needing a hearing accommodation may call the State of Connecticut relay number - 711. Requests for accommodations must be made at least two weeks prior to any agency hearing, program or event.

For videos that will be published on the DEEP website, the following ADA and Title VI statement and the following line should be included on the DVD cover and the title page of the video:

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action and Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act. To request an accommodation contact us at (860) 418-5910 or deep.accommodations@ct.gov.

This video with closed captioning is available at www.ct.gov/deep.

23. **Schedule of Reporting**: Following execution of this Agreement, the Town, either itself or through its designated agent, shall provide an Annual Report to the DEEP Remediation Division each year for as long as this Agreement is in effect. Such report shall provide a summary of the actions taken pursuant to the Fund, and the balance of the Fund at the end of each calendar year.

24. **Submission of Materials:** For the purposes of this agreement, all correspondence, summaries, reports, products, and extension requests shall be submitted to:

Department of Energy and Environmental Protection
Bureau of Water Protection and Land Reuse
Remediation Division
79 Elm Street
Hartford, CT 06106-5127

25. **Payment Schedule**: Following execution of this Agreement, payment shall be made to the Town within thirty (30) days after DEEP's receipt and approval of an itemized service transfer invoice(s) submitted by the Town, along with any documentation demonstrating completion of specific tasks to the satisfaction of the DEEP as listed below. No payment shall be released prior to dispatch of an associated Purchase Order entered into Core-CT. All Transfer Invoices shall reference the Purchase Order number. Payment may be withheld if deliverables and/or reports have not been received and approved by DEEP in accordance with the terms of this agreement. Payments shall be disbursed as follows:

    100% of the total amount, which includes 100% of Olin's matching contribution, following execution of this agreement and receipt of a Service Transfer Invoice from the Town.

26. **Cancellation**: This Agreement can be modified or terminated with the consent of both DEEP and the Town. If the Agreement is terminated, expenses incurred prior to the date of termination, plus the costs of all non-cancellable commitments, will be paid from the Fund. If the Town and DEEP mutually agree to cancel this Agreement, the Fund shall be transferred to DEEP.

27. **Use of Funds:** As substantially set forth in the agreement between the Town and HEDC (Attachment 2), the Town, through its designee HEDC, agrees to expend the Funds solely for the purposes outlined in this Agreement. The Town accepts the terms of this Agreement and the amount of funding as hereinafter computed to be the full and total obligation of the DEEP. The Funds are available on a first-come, first-served basis to Eligible Applicants. Once the Fund has been expended and depleted, the Town shall not be obligated to seek or provide for additional funding for any property owner that may be eligible for funding under this Agreement. Once the Fund has been exhausted, the account shall be closed and the Town is fully and forever released and discharged from any liability or responsibility to administer this Agreement. Except as set forth in paragraph 12, at no time does the DEEP expect that the Town shall provide any monies or contributions to the Fund and the Town is not obligated to do so at any time or under any circumstance.

28. **Transfer of Grant Prohibited**: This Agreement may not be transferred from one institution to another.

29. **Standard Terms and Conditions**. The Town agrees to abide by the attached Standard Terms and Conditions attached hereto as Appendix A.

30. **Approved by:**

DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION	**TOWN OF HAMDEN, CONNECTICUT**
APPROVED	APPROVED
Date: _____	Date: August 3, 2016
By: _____	By: _____
Authorized Signature pursuant to CGS § 4-8	*Authorized Signature pursuant to CGS § 7-148(c) as amended* Curt Balzano Leng, Its Mayor Duly Authorized

*Chartfield Distributions For **DEEP** use only.*

Amount	Dept	Fund	SID	Program	Project	Activity	Bud Ref	Agency CF 1	Agency CF 2	Account

*Chartfield Distributions For **Receiving** Agency use only.*

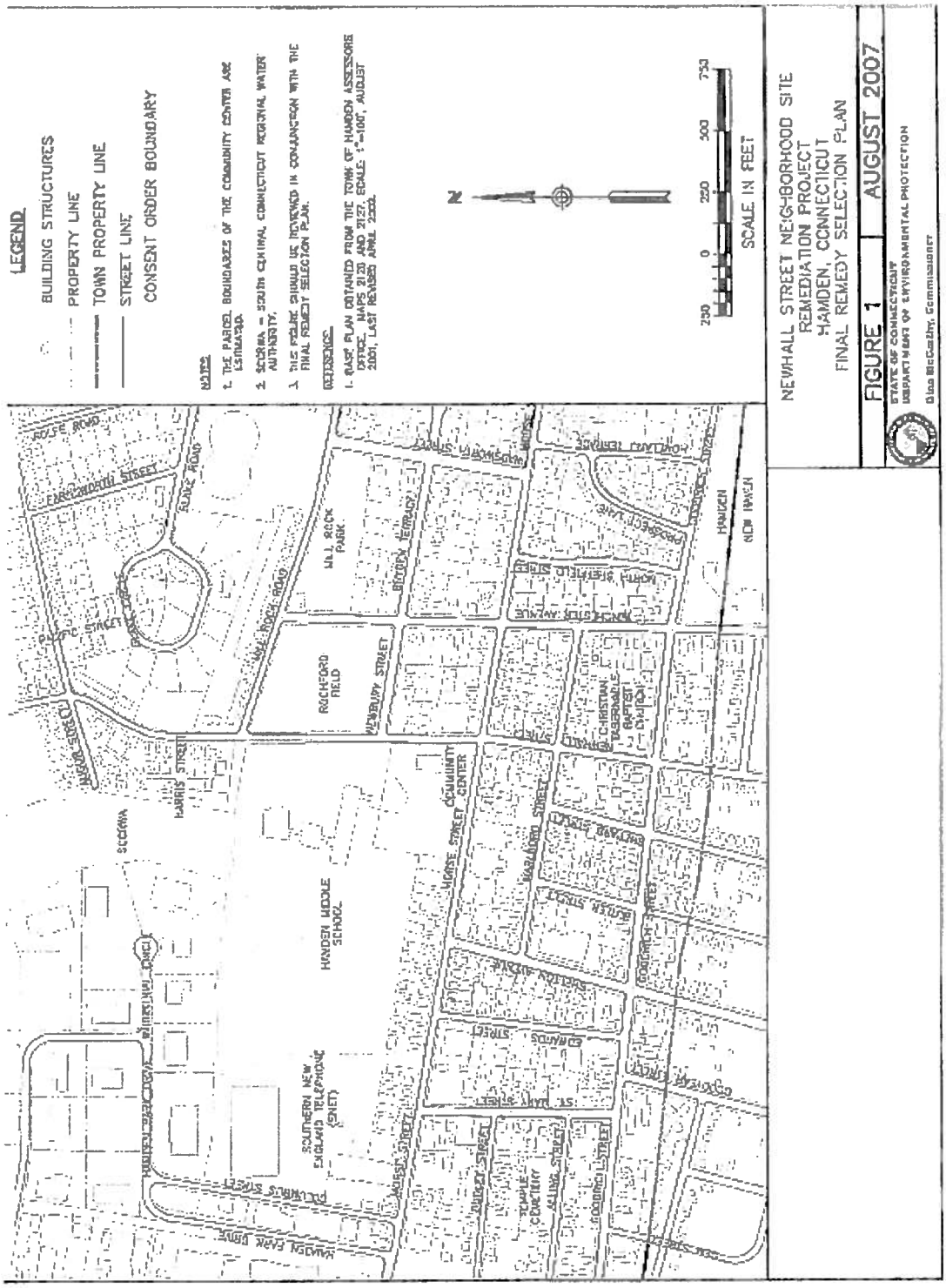
Amount	Dept	Fund	SID	Program	Project	Activity	Bud Re	Agency CF 1	Agency CF 2	Account

Attachment 1

Map of Consent Order Boundary SRD-128

Figure

Figure 1 - Site Locus



Appendix A

Standard Terms and Conditions

Appendix A
Standard Terms and Conditions
(Rev 6-12-13)

1. Executive Orders. The Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency shall provide a copy of these orders to the Contractor. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions.

2. Indemnification.

    a. The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance of the Contract.

    b. The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.

    c. The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.

    d. The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

    e. The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.

    f. The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party

    g. This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

3. State Liability. The State of Connecticut shall assume no liability for payment for services under the terms of this agreement until the contractor is notified that this agreement has been accepted by the contracting agency and, if applicable, approved by the Office of Policy and Management (OPM) or the Department of Administrative Services (DAS) and by the Attorney General of the State of Connecticut.

4. Definitions:

5. State. The State of Connecticut, including the Department of Energy and Environmental Protection and any office, department, board, council, commission, institution or other agency of the State.

6. Commissioner. The Commissioner of Energy and Environmental Protection or the Commissioner's designated agent.

7. Parties. The Department of Energy and Environmental Protection (DEEP or Agency) and the Contractor.

8. Contractor Parties. Contractor Parties shall be defined as a Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity. To the extent that any Contractor Party is to participate or Perform in any way, directly or indirectly in connection with the Contract, any reference in the Contract to the "Contractor" shall also be deemed to include "Contractor Parties", as if such reference had originally specifically included "Contractor Parties" since it is the Parties' intent for the terms "Contractor Parties" to be vested with the same respective rights and obligations as the terms "Contractor."

9. Contract. This agreement, as of its Effective Date, between the Contractor and the State for any or all goods or services as more particularly described in Appendix A.

10. Execution. This contract shall be fully executed when it has been signed by authorized representatives of the parties, and if it is for an amount exceeding three thousand dollars ($3,000.00), by the authorized representative of the state Attorney General's office.

11. Exhibits. All attachments, appendices or exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.

12. Records. For the purposes of this Contract, records are defined as all working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.

13. Confidential Information. shall mean any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license

number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.

14. Confidential Information Breach. shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

15. Distribution of Materials. The Contractor shall obtain written approval from the Commissioner prior to the distribution or publication of any materials prepared under the terms of this Contract. Such approval shall not be unreasonably withheld.

16. Change in Principal Project Staff. Any changes in the principal project staff must be requested in writing and approved in writing by the Commissioner at the Commissioner's sole discretion. In the event of any unapproved change in principal project staff, the Commissioner may, in the Commissioner's sole discretion, terminate this Contract.

17. Further Assurances. The Parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

18. Recording and Documentation of Receipts and Expenditures. Accounting procedures must provide for accurate and timely recording of receipt of funds by source, expenditures made from such funds, and of unexpended balances. Controls must be established which are adequate to ensure that expenditures under this Contract are for allowable purposes and that documentation is readily available to verify that such charges are accurate.

19. Assignability. The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Commissioner thereto: provided, however, that claims for money due or to become due the Contractor from the Commissioner under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commissioner.

20. Third Party Participation. The Contractor may make sub-awards, using either its own competitive selection process or the values established in the state's competitive selection process as outline in DAS General Letter 71, whichever is more restrictive, to conduct any of the tasks in the Scope of Work contained in Appendix A. The Contractor shall advise the Commissioner of the proposed sub-awardee and the amount allocated, at least two (2) weeks prior to the making of such awards. The Commissioner reserves the right to disapprove such awards if they appear to be inconsistent with the program activities to be conducted under this grant. As required by Sec. 46a-68j-23 of the Connecticut Regulations of State Agencies the Contractor must make a good faith effort, based upon the availability of minority business enterprises in the labor market area, to award a reasonable proportion of all subcontracts to such enterprises. When minority business enterprises are selected, the Contractor shall provide DEEP with a copy of the Affidavit for Certification of Subcontractors as Minority Business Enterprises (MBE) along with a copy of the purchase order or contract engaging the Subcontractor. The Contractor shall be the sole point of contact concerning the management of the Contract, including performance and payment issues. The Contractor is solely and completely responsible for adherence by any subcontractor to all the applicable provisions of the Contract.

21. Procurement of Materials and Supplies. The Contractor may use its own procurement procedures which reflect applicable State and local law, rules and regulations provided that procurement of tangible personal property having a useful life of more than one year and an acquisition cost of one thousand dollars ($1,000.00) or more per unit be approved by the Commissioner before acquisition.

22. Audit and Inspection of Plants, Places of Business and Records.

    a. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.

    b. The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.

    c. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.

    d. All audits and inspections shall be at the State's expense.

    e. The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.

    f. The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.

    g. The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

23. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. The DEEP may cancel the Contract if the Contractor fails to comply with the Act.

24. Affirmative Action and Sexual Harassment Policy. The Contractor agrees to comply with the Departments Affirmative Action and Sexual Harassment Policies available on DEEP's web site. Hard copies of the policy statements are available upon request at DEEP.

25. Sovereign Immunity. The Parties acknowledge and agree that nothing in the Solicitation or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section of this Contract, this section shall govern.

26. Termination.

    a. Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.

    b. Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.

    c. The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.

    d. Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.

    e. The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency in accordance with Exhibit A, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.

    f. For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.

    g. Upon Termination of the Contract, all rights and obligations shall be null and void, so that no Party shall have any further rights or obligations to any other Party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.

    h. Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.

27. Breach. If either Party breaches the Contract in any respect, the non-breaching Party shall provide written notice of the breach to the breaching Party and afford the breaching Party an opportunity to cure within ten (10) days from the date that the breaching Party receives the notice. In the case of a Contractor breach, any other time period which the Agency sets forth in the notice shall trump the ten (10) days. The right to cure period shall be extended if the non-breaching Party is satisfied that the breaching Party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching Party in writing prior to the Termination date; no further action shall be required of any Party to effect the Termination as of the stated date. If the notice does not set forth an effective Contract Termination date; then the non-breaching Party may Terminate the Contract by giving the breaching Party no less than twenty four (24) hours' prior written notice. If the Agency believes that the Contractor has not performed according to the Contract, the Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that the Agency notifies the Contractor in writing prior to the date that the payment would have been due.

28. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.

29. Contractor Guarantee. The Contractor shall: perform the Contract in accordance with the specifications and terms and conditions of the Scope of Work, furnish adequate protection from damage for all work and to repair any damage of any kind, for which he or his workmen are responsible, to the premises or equipment, to his own work or to the work of other contractors; pay for all permits, licenses, and fees, and to give all notices and comply with all laws, ordinances, rules and regulations of the city and the State.

30. Forum and Choice of Law. The Parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut

do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

31. Force Majeure. The Parties shall not be excused from their obligation to perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. A Force Majeure event materially affects the cost of the Goods or Services or the time schedule for performance and is outside the control nor caused by the Parties. In the case of any such exception, the nonperforming Party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.

32. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

33. Confidential Information of the Contractor. The Agency will afford due regard to a written request from the Contractor for the protection of the Contractor's proprietary and/or confidential information and the Agency will endeavor to keep said information confidential to the extent permitted by law. However, all materials associated with a bid and/or this Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a written request, the Contractor shall delineate with specificity which materials provided by the Contractor to the Agency, and in Agency's possession, are deemed proprietary or confidential in nature and not, therefore, subject to release to third parties. Particular sentences, paragraphs, pages or sections of any document or Record that the Contractor believes are exempt from disclosure under the FOIA must be specifically identified as such. Additionally, the Contractor shall provide the Agency with a detailed explanation of its rationale sufficient to justify each claimed exemption consistent with the FOIA. The rationale and explanation shall be stated in terms of the prospective harm to the competitive position of the Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. Additionally, the Contractor shall specifically and clearly mark all claimed documentation as "CONFIDENTIAL." However, nothing in this provision shall impose upon the Agency or the State any obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief, to prevent disclosure of any information deemed confidential and/or proprietary by the Contractor that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. Nothing in this provision shall be deemed to impose upon the Agency or the State any liability for the disclosure of any documents or information in its possession which the Agency believes are required to be disclosed pursuant to the FOIA or other requirements of law.

34. Protection of State Confidential Information.

    a. Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.

    b. Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

        i. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;

        ii. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;

        iii. A process for reviewing policies and security measures at least annually;

        iv. Creating secure access controls to Confidential Information, including but not limited to passwords; and

        v. Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

    c. The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.

    d. The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.

    e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

35. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in

retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

36. Entirety of Contract. The Contract is the entire agreement between the Parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the Parties, whether written or oral. The Contract has been entered into after full investigation, neither Party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.

37. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

38. Tangible Personal Property.

    a. The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:

        i. For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;

        ii. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;

        iii. The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;

        iv. The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and

        v. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.

    b. For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.

    c. The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

TOWN OF HAMDEN, CONNECTICUT 06518
OFFICE OF THE LEGISLATIVE COUNCIL
(203) 287-2577

COUNCIL PRESIDENT
James Pascarella

COUNCIL MEMBERS-AT-LARGE
Austin T. Cesare
John J. DeRosa
Jack Kennelly
Berita Rowe-Lewis
Carol L. Noble
Elizabeth S. Wetmore

DISTRICT COUNCIL MEMBERS
Michael McGarry
First District

Harry Gagliardi, Jr.
Second District

Oswald Brown
Third District

Eric Annes
Fourth District

Kathleen M. Schomaker
Fifth District

Myron W. Hul
Sixth District

Michael R. Colaiacovo, Jr.
Seventh District

James Pascarella
Eighth District

Marjorie M. Bonadies
Ninth District

LEGISLATIVE COUNCIL
ADMINISTRATOR &
CLERK OF THE COUNCIL
Kimberly A. Renta

August 4, 2016

Curt Leng
Mayor

Re: Resolution authorizing the Town of Hamden to enter into a Memorandum of Agreement with the Connecticut Department of Energy and Environmental Protection and an agreement with the Hamden Economic Development Corporation (HEDC) - Newhall Long-Term Soil Management Fund Project

Dear Mayor Leng:

Please be advised that the Legislative Council, at its meeting held on August 1, 2016, approved the above resolution which administers $2,000,000 in funding to invest in the remediation of land in the Newhall Local Design District for homeowners who choose to expand their homes, or in some manner disturb the soil, in neighborhoods that have already been remediated.

Copy of said resolution is attached.

Very truly yours,

Kim Renta

Kim Renta,
Clerk of the Council

cc: Dale Kroop, Economic Development Director
Sal DeCola, Finance Director
Sue Gruen, Town Attorney

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LEGISLATIVE COUNCIL ADMINISTRATOR & CLERK OF THE COUNCIL
Kimberly A. Renta

CERTIFICATION

I, the undersigned, Clerk of the Legislative Council for the Town of Hamden, a Connecticut Municipality, do hereby certify that the following is a true and correct copy of the Resolution adopted at a meeting of the Legislative Council of the Town of Hamden, duly held and convened on August 1, 2016 at which meeting a duly constituted quorum of the Legislative body was present and acting throughout and that such Resolution has not been modified, rescinded or revoked.

I further certify that the attached "Resolution authorizing the Town of Hamden to enter into a Memorandum of Agreement with the Connecticut Department of Energy & Environmental Protection and an agreement with the Hamden Economic Development Corporation - Newhall Long Term Soil Management Fund Project", is the same presented and passed at said meeting of the Legislative Council, which was held in accordance with the law with due and proper notice given.

Dated: August 4, 2016

Kimberly Renta
Clerk of the Council

TOWN OF HAMDEN
LEGISLATIVE COUNCIL

RESOLUTION AUTHORIZING THE TOWN OF HAMDEN TO ENTER INTO A MEMORANDUM OF AGREEMENT WITH THE CONNECTICUT DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION AND AN AGREEMENT WITH THE HAMDEN ECONOMIC DEVELOPMENT CORPORATION NEWHALL LONG-TERM SOIL MANAGEMENT FUND PROJECT

Presented by: Austin Cesare

WHEREAS, the Town is a party to Consent Order No. SRD-128, dated April 16, 2003 (the "Consent Order"), which addresses, among other things, the obligations of the Town, Connecticut Department of Energy and Environmental Protection ("DEEP") and Olin Corporation ("Olin") regarding certain investigations and remediation with respect to the Site; and

WHEREAS, pursuant to the Consent Order, Olin was obligated to investigate the extent and degree of pollution at the Non-Public Properties (identified on a map included as Exhibit 1 to the Consent Order), which are located within the Site, and thereafter remediate these properties; and

WHEREAS, pursuant to the Consent Order, a Settlement Agreement last executed on December 12, 2007 by Olin and DEEP, and the DEEP's Remedy Selection Plan for the Newhall Neighborhood, dated October 2007, Olin, as the Respondent to the Consent Order with responsibility to investigate and remediate non-public properties has, implemented remedial activities in accordance with the Consent Order, and the Commissioner has determined that Olin completed its work under the Consent Order and the Non-Public Properties subject to remediation by Olin have been remediated up to 4 feet below grade; and

WHEREAS, on the Non-Public Properties remediated by Olin, the remedial activities included: (1) excavation of fill within the top four (4) feet and off-site disposal at authorized facilities; (2) backfilling with clean soil; and (3) restoration of pre-existing features (such as patios, landscaping, driveways, etc.) if disturbed during remediation; and

WHEREAS, pursuant to the DEEP-Olin Agreement, the Commissioner and Olin agreed that funding should be available for further remedial activities when certain owners ("Eligible Applicants") of Non-Public Properties undertake "Property Improvement Projects" that disturb waste fill; and

WHEREAS, these Non-Public Properties are located in a district designated by the Hamden Planning & Zoning Commission as the Newhall Local Design District ("NLDD"), (and more particularly shown on the Hamden Zoning Map dated 6/13/14); and

WHEREAS, pursuant to an Agreement between the Town and DEEP ("Town/DEEP Agreement") (attached hereto) a fund called the "Newhall Long-Term Soil Management Fund" (the "Soil Fund") has been established to hold funds deposited by the Commissioner and Olin pursuant to the Settlement Agreement and dedicated to the payment of certain costs associated with Property Improvement Projects at properties owned by Eligible Applicants located in the NLDD; and

WHEREAS, pursuant to the Town/DEEP Agreement, $2,000,000.00 is deposited into the Soil Fund (representing equal contributions by DEEP and Olin, which are jointly referred to as the "Funds"); and

WHEREAS, in accordance with the Town/DEEP Agreement, the Town will serve as trustee to the Soil Fund; and

WHEREAS, in accordance with the Town/DEEP Agreement, the Town is authorized to delegate joint administration of the Soil Fund to the HEDC; and

WHEREAS, the Town believes that it is in its best interest to authorize HEDC to administer the Soil Fund and to oversee, manage and report on the use of the Funds therein and also to administer the use of the Funds with respect to Property Improvement Projects on behalf of Eligible Applicants.

NOW, THEREFORE, be it resolved as follows:

1. The Mayor of the Town of Hamden is hereby authorized and empowered to enter into a Memorandum of Agreement between the Connecticut Department of Energy and Enviornmental Protection and the Town of Hamden.

2. The Mayor of the Town of Hamden is hereby authorized and empowered to enter into an Agreement between the Town of Hamden and the Hamden Economic Development Corporation.

3. The Mayor of the Town of Hamden is hereby authorized and empowered to enter into or amend any contractual instruments in the name of and on behalf of the Town of Hamden, with the State of Connecticut Department of Environmental Protection and/or the Hamden Economic Development Corporation for the Newhall Long-Term Soil Management Project.

Adopted by the Legislative Council at its meeting held on August 1, 2016.

APPROVED AS TO FORM:

Susan Gruen
Town Attorney

James Pascarella, President
Legislative Council

Kim Renta, Clerk
Legislative Council

APPROVED:

Mayor Curt Balzano Leng

Date: 8/3/16

TOWN OF HAMDEN

OFFICE OF THE TOWN CLERK

Vera Morrison
Town Clerk

Hamden Government Center
2750 Dixwell Avenue
Hamden, Connecticut 06518
Tel: (203) 287-7162
Fax: (203) 287-7095
vmorrison@hamden.com

CERTIFICATE OF INCUMBENCY

I, Joanne Cifarelli, do hereby certify that I am an Assistant Town Clerk of the Town of Hamden, a municipal corporation organized and exiting under the laws of the State of Connecticut having its principal place of business at 2750 Dixwell Avenue, Hamden, Connecticut, 06518, that I am the keeper of the corporate records and seal.

That the following is a true and correct copy of resolution duly adopted and ratified by the Legislative Council on August 1, 2016 in accordance with the constituent charter of the Town of Hamden; and that the same has not in any way been modified, repealed or rescinded, but is in full force and effect.

BE IT RESOLVED, that Curt Balzano Leng, Mayor, of the Town of Hamden, is hereby authorized to enter into an Memorandum of Agreement with the Connecticut Department of Energy and Environmental Protection and an Agreement with the Hamden Economic Development Corporation New Hall Long-Term Soil Management Fund Project.

BE IT FURTHER KNOWN THAT Curt Balzano Leng, was elected Mayor and his first term of office began on May 29, 2015 at 10:00 a.m. and continued to November 29, 2015 at 11:59 a.m. and his second term of office began on November 29, 2015 at noon and continues to November 26, 2017 at 11:59 a.m. As the Mayor, Curt Balzano Leng serves as the Chief Executive Officer for the Town of Hamden, and is duly authorized to enter into agreements and contacts on behalf of the Town of Hamden.

Dated at Hamden, Connecticut this 5th day of August, 2016.

Joanne Cifarelli
Assistant Town Clerk

TOWN OF HAMDEN
LEGISLATIVE COUNCIL

RESOLUTION AUTHORIZING THE TOWN OF HAMDEN TO ENTER INTO A MEMORANDUM OF AGREEMENT WITH THE CONNECTICUT DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION AND AN AGREEMENT WITH THE HAMDEN ECONOMIC DEVELOPMENT CORPORATION NEWHALL LONG-TERM SOIL MANAGEMENT FUND PROJECT

Presented by: Austin Cesare

WHEREAS, the Town is a party to Consent Order No. SRD-128, dated April 16, 2003 (the "Consent Order"), which addresses, among other things, the obligations of the Town, Connecticut Department of Energy and Environmental Protection ("DEEP") and Olin Corporation ("Olin") regarding certain investigations and remediation with respect to the Site; and

WHEREAS, pursuant to the Consent Order, Olin was obligated to investigate the extent and degree of pollution at the Non-Public Properties (identified on a map included as Exhibit 1 to the Consent Order), which are located within the Site, and thereafter remediate these properties; and

WHEREAS, pursuant to the Consent Order, a Settlement Agreement last executed on December 12, 2007 by Olin and DEEP, and the DEEP's Remedy Selection Plan for the Newhall Neighborhood, dated October 2007, Olin, as the Respondent to the Consent Order with responsibility to investigate and remediate non-public properties has, implemented remedial activities in accordance with the Consent Order, and the Commissioner has determined that Olin completed its work under the Consent Order and the Non-Public Properties subject to remediation by Olin have been remediated up to 4 feet below grade; and

WHEREAS, on the Non-Public Properties remediated by Olin, the remedial activities included: (1) excavation of fill within the top four (4) feet and off-site disposal at authorized facilities; (2) backfilling with clean soil; and (3) restoration of pre-existing features (such as patios, landscaping, driveways, etc.) if disturbed during remediation; and

WHEREAS, pursuant to the DEEP-Olin Agreement, the Commissioner and Olin agreed that funding should be available for further remedial activities when certain owners ("Eligible Applicants") of Non-Public Properties undertake "Property Improvement Projects" that disturb waste fill; and

WHEREAS, these Non-Public Properties are located in a district designated by the Hamden Planning & Zoning Commission as the Newhall Local Design District ("NLDD"), (and more particularly shown on the Hamden Zoning Map dated 6/13/14); and

WHEREAS, pursuant to an Agreement between the Town and DEEP ("Town/DEEP Agreement") (attached hereto) a fund called the "Newhall Long-Term Soil Management Fund" (the "Soil Fund") has been established to hold funds deposited by the Commissioner and Olin pursuant to the Settlement Agreement and dedicated to the payment of certain costs associated with Property Improvement Projects at properties owned by Eligible Applicants located in the NLDD; and

WHEREAS, pursuant to the Town/DEEP Agreement, $2,000,000.00 is deposited into the Soil Fund (representing equal contributions by DEEP and Olin, which are jointly referred to as the "Funds"); and

WHEREAS, in accordance with the Town/DEEP Agreement, the Town will serve as trustee to the Soil Fund; and

WHEREAS, in accordance with the Town/DEEP Agreement, the Town is authorized to delegate joint administration of the Soil Fund to the HEDC; and

WHEREAS, the Town believes that it is in its best interest to authorize HEDC to administer the Soil Fund and to oversee, manage and report on the use of the Funds therein and also to administer the use of the Funds with respect to Property Improvement Projects on behalf of Eligible Applicants.

NOW, THEREFORE, be it resolved as follows:

1. The Mayor of the Town of Hamden is hereby authorized and empowered to enter into a Memorandum of Agreement between the Connecticut Department of Energy and Enviornmental Protection and the Town of Hamden.

2. The Mayor of the Town of Hamden is hereby authorized and empowered to enter into an Agreement between the Town of Hamden and the Hamden Economic Development Corporation.

3. The Mayor of the Town of Hamden is hereby authorized and empowered to enter into or amend any contractual instruments in the name of and on behalf of the Town of Hamden, with the State of Connecticut Department of Environmental Protection and/or the Hamden Economic Development Corporation for the Newhall Long-Term Soil Management Project.

Adopted by the Legislative Council at its meeting held on August 1, 2016.

APPROVED AS TO FORM:

Susan Gruen
Town Attorney

James Pascarella, President
Legislative Council

Kim Renta, Clerk
Legislative Council

APPROVED:

Mayor Curt Balzano Leng

Date: 8/3/16

AGREEMENT

This Agreement (this "Agreement") is made and entered into as of this 4th day of August, 2016 by and between the **Town of Hamden**, a municipality of the State of Connecticut, having an address at 2750 Dixwell Avenue, Hamden, Connecticut 06518 (the "Town"), and the **Hamden Economic Development Corporation**, a Connecticut non-stock, non-profit corporation, having a mailing address of P.O. Box 185441, Hamden, Connecticut 06518 ("HEDC").

WITNESSETH:

WHEREAS, the Town is a party to Consent Order No. SRD-128, dated April 16, 2003 (the "Consent Order"), which addresses, among other things, the obligations of the Town, Connecticut Department of Energy and Environmental Protection ("DEEP") and Olin Corporation ("Olin") regarding certain investigations and remediation with respect to the Site (as defined in the Consent Order; capitalized terms used in this Agreement and not otherwise defined herein have the respective meanings ascribed to them in the Consent Order);

WHEREAS, pursuant to the Consent Order, Olin was obligated to investigate the extent and degree of pollution at the Non-Public Properties (identified on a map included as Exhibit 1 to the Consent Order), which are located within the Site, and thereafter remediate these properties in accordance with R.C.S.A §§ 22a-133k-1 to 133k-3 (the "RSRs");

WHEREAS, pursuant to the Consent Order, a Settlement Agreement last executed on December 12, 2007 by Olin and DEEP ("DEEP-Olin Agreement"), and the DEEP's Remedy Selection Plan for the Newhall Neighborhood, dated October 2007, Olin, as the Respondent to the Consent Order with responsibility to investigate and remediate non-public properties has, implemented remedial activities in accordance with the Consent Order and the RSRs, and the Commissioner has determined that Olin completed its work under the Consent Order and the Non-Public Properties subject to remediation by Olin have been remediated up to 4 feet below grade;

WHEREAS, on the Non-Public Properties remediated by Olin, the remedial activities included: (1) excavation of fill within the top four (4) feet and off-site disposal at authorized facilities; (2) backfilling with clean soil; and (3) restoration of pre-existing features (such as patios, landscaping, driveways, etc.) if disturbed during remediation;

WHEREAS, pursuant to the DEEP-Olin Agreement, the Commissioner and Olin agreed that funding should be available for further remedial activities when certain owners (hereinafter defined as "Eligible Applicants") of Non-Public Properties undertake "Property Improvement Projects" (as hereinafter defined in Section 3.3.B) that disturb waste fill;

WHEREAS, these Non-Public Properties are located in a district designated by the Hamden Planning & Zoning Commission as the Newhall Local Design District ("NLDD"), (and more particularly shown on the Hamden Zoning Map dated 6/13/14 that is current at the time of this Agreement);

WHEREAS, pursuant to an Agreement between the Town and DEEP ("Town/DEEP Agreement") dated _____, (and attached hereto) a fund called the "Newhall Long-Term Soil Management Fund" (the "Soil Fund") has been established to hold funds deposited by the

Commissioner and Olin pursuant to the Settlement Agreement and dedicated to the payment of certain costs associated with Property Improvement Projects at properties owned by Eligible Applicants located in the NLDD;

WHEREAS, pursuant to the Town/DEEP Agreement, $2,000,000.00 is deposited into the Soil Fund (representing equal contributions by DEEP and Olin, which are jointly referred to as the "Funds");

WHEREAS, in accordance with the Town/DEEP Agreement, the Town will serve as trustee to the Soil Fund;

WHEREAS, in accordance with the Town/DEEP Agreement, the Town is authorized to delegate joint administration of the Soil Fund to the HEDC;

WHEREAS, the Town believes that it is in its best interest to authorize HEDC to administer the Soil Fund and to oversee, manage and report on the use of the Funds therein, and also to administer the use of the Funds as set forth in Section 3 hereof with respect to Property Improvement Projects on behalf of Eligible Applicants; and

WHEREAS, the Town and HEDC are entering into this Agreement to set forth the terms and conditions through which HEDC will jointly administer the Soil Fund.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual benefits to be gained by the performance thereof, the parties hereto hereby covenant and agree as follows:

1. ARTICLE 1: TOWN OBLIGATIONS

1.1 The Town hereby agrees, subject to the terms of this Agreement and the Town/DEEP Agreement, to serve as trustee of the Soil Fund. In its capacity as trustee, the Town may access the Soil Fund Account from time to time in order to determine the status of the Funds. Both the Town and HEDC shall have the authority, as owners of the checkbook to the Account, to make withdrawals on the Account. However, except as otherwise provided in subsection 3.9 herein, the Town shall not make any withdrawals from the Soil Fund Account.

1.2 This Agreement sets forth the understanding and agreement of the parties as to the use and administration of all Funds that are part of the Soil Fund, specifically those monies contributed by both DEEP and Olin.

1.3 The Town is not incurring any liability to any third party as a result of the administration of this Agreement or the services to be performed by HEDC under this Agreement.

2. ARTICLE II: HEDC REPRESENTATIONS, WARRANTIES, COVENANTS AND OBLIGATIONS

2.1 Form of Business Entity

HEDC represents that it is a Connecticut non-stock, non-profit corporation duly created and validly existing under the laws of the State of Connecticut. Further,

HEDC will preserve and maintain its existence as a non-stock corporation duly organized, validly existing, and in good standing under the laws of Connecticut during the term of this Agreement.

2.2 Ability to Conduct Business

HEDC has all permits, licenses, and other similar authorizations necessary for the conduct of its business as now being conducted by it, and it is not aware of any facts that would make it impossible or impractical to obtain any similar authorization necessary for the conduct of its business as planned to be conducted. The HEDC is not in violation, nor will the transactions contemplated by this Agreement cause a violation of the terms or provisions of any of its authority, governing rules, or any such permit, license, or similar authorization.

2.3 Authorization to Enter Into and Execute Project Documents

The execution and delivery of this Agreement by the HEDC, and the performance of its obligations hereunder are within its power, have been duly authorized by all necessary action on its part, and are not in contravention of law nor in contravention of its organizational documents or governing bylaws or of the provisions of any indenture, agreement, or undertaking to which it, its principals or employees are parties or by which they are bound.

2.4 Other Authorization Unnecessary

No consent, license, or approval from any governmental authority is or will be necessary for the valid administration by the HEDC of the Soil Fund, or the performance of any Property Improvement Projects. The HEDC agrees that nothing in the Agreement relieves it from any obligation under law to obtain any such license, consent, or approval.

2.5 Use of Soil Fund

As more fully set forth in Article 3 of this Agreement, HEDC shall be responsible for administering the Soil Fund as required by and in accordance with the Town/DEEP Agreement and this Agreement.

2.6 Compliance with Laws, Regulations, Rules and Executive Orders

In the administration and execution of this Agreement, the HEDC shall comply with all pertinent provisions of local, State and Federal law applicable to it and/or its properties and/or its business, including, to the extent applicable any laws local State and Federal laws, rules regulations or ordinances relating to prevailing or standard wage. Failure to do so shall constitute an instance of default by the HEDC under this Agreement.

2.7 Indemnification

HEDC hereby agrees to indemnify and hold harmless the Town from and against any liabilities, losses, fines, penalties, interest, damages, costs, or expenses or the like, including attorneys' fees incurred or sustained, arising out of or in connection with the performance by HEDC of its obligations under this Agreement, which indemnity shall survive the expiration or termination of this Agreement.

2.8 Insurance

A. HEDC shall maintain insurance for itself in order to insure against any liabilities that may arise of the performance of this Agreement. HEDC shall maintain insurance as follows:

a. Commercial general liability insurance against liability for bodily injury and property damage with respect to the work performed hereunder in amounts satisfactory to the Town and the State of Connecticut, and shall provide the Town with certificates of coverage and paid receipts upon request of the Town. The minimum amount of coverage provided will be $1,000,000 each person and $2,000,000 each occurrence.

b. Directors & Officers Liability Insurance: $1,000,000 Aggregate Limit of Liability for all Claims made or Deemed Made during the Policy Period.

c. Crime Insurance covering Fidelity - Employee Theft; Forgery or Alteration of Checks and Computer and Funds Transfer Fraud at $1,000,000.

B. Each general contractor hired by HEDC shall maintain Commercial General Liability Insurance and Excess Liability totaling in combination a minimum of $10 Million in coverage.

C. HEDC and all contractors shall only carry insurance issued by companies and on forms reasonable acceptable to Town. Each policy of HEDC and its contractors shall name the Town as an additional insured. In addition, each contractor hired by HEDC shall include a provision in its agreement with its subcontractors requiring that the Town and HEDC be named as additional insureds on the subcontractor's insurance policies. The insurance of the contractor and the insurance of the contractor's subcontractors shall also state that it is primary to any insurance available to both HEDC and the Town, which insurance shall be secondary and non-contributory. The

contractor shall, before commencement of its work, and prior to the commencement of the work of any of its subcontractors, submit to both the Town and HEDC evidence of the aforementioned insurance requirements from itself and its subcontractors in the form of a certificate of insurance and additional insured endorsements.

D. The contractor shall provide payment and performance bonds to HEDC, naming the Town as an obligee and evidence of such bonds shall be provided to the Town.

E. Any failure by the contractor to provide the endorsements required in subsection (C) or the bonds required in subsection (D) of this section shall entitle the Town to withhold payment from any application for payment then due or to become due until such time as the endorsements are provided.

F. HEDC and its contractor(s) shall deliver copies of such insurance policies or certificates thereof to the Town upon the execution and delivery of this Agreement or any contractor agreements, and thereafter at least thirty (30) days before the expiration dates of expiring policies. The Town shall be deemed to be fully and completely satisfied with the insurers, coverages, and policy amounts selected by HEDC unless the Town states any and all objections in a written notice delivered to HEDC delivered no later than ten (10) after the Town's receipt of the proffered insurance policies or certificates.

2.9 Notification of Instance of Default by HEDC

The HEDC shall notify the Town promptly of the occurrence of any default hereunder or by an engineer hired to undertake a Property Improvement Project, or an occurrence of default under any other document, instrument or agreement to which HEDC or its properties are subject and of the actions it intends to take in order to cure such default in a timely manner.

2.10 Representations in Other Documents

All statements contained in any certificate, financial statement, legal opinion or other instrument delivered by or on behalf of the HEDC made specifically to the Town in connection with the Soil Fund shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made at and as of the date of this Agreement, at and as the date of a contract with any vendor hired by HEDC with respect to this Agreement, and at and as of the date of receipt of the Funds. All representations and warranties made under this Agreement shall survive the execution and delivery hereof and shall not be deemed to have been waived by any investigation made or not made by the Town. Agreements with engineers and the accountant and insurer (and any other

vendor required to perform the tasks set forth in each Project Scope and Project Budget) to which the HEDC is a party, when delivered, will be legal, valid and binding obligations of the HEDC, enforceable against it in accordance with their respective terms.

3. ARTICLE 3: PROJECT ADMINISTRATION

3.1 Administration of Soil Fund

A. To perform the activities necessary to undertake and complete Property Improvement Projects (as defined in subsection 3.3.B of this Agreement), HEDC agrees, for each Property Improvement Project, to:

a. Competitively seek cost proposals from and contract with an appropriate engineer, contractor or consultant who will prepare a scope of work that addresses all of the tasks necessary to properly manage waste fill during a particular Property Improvement Project (the "Project Scope"); and

b. Prepare a budget, consistent with the Project Scope, for the use and expenditure of the Soil Fund. Each budget shall include a breakdown of the costs to implement each task specified in the Project Scope as well as cost proposals from the contractors that HEDC has elected to use for the particular Property Improvement Project ("Project Budget").

c. HEDC shall submit such proposed Project Budget to the Town for informational purposes only and, if required by DEEP, shall submit such Project Budget to DEEP.

d. In no event shall HEDC incur any obligations for costs in excess of a proposed Project Budget.

e. At no time shall HEDC cause to be incurred or incur any obligations for costs in excess of any amount deposited or any balance in the Soil Fund. Any and all costs incurred by HEDC beyond those in the Soil Fund shall be the exclusive responsibility of HEDC with no claim against or recourse to the Town.

B. To the extent that HEDC determines that additional funds are needed to complete a Property Improvement Project beyond the Project Budget HEDC shall notify the Town and present a revised Project Budget. Approval by the Town of any revised budget shall not constitute or imply a revision of the total amount of funds available in the Soil Fund. Nothing herein authorizes HEDC to approve any contracts, encumber any funds or incur any indebtedness or obligations beyond the Soil Fund.

C. HEDC and the engineering firm selected for a Property Improvement Project shall consult with the Town during the development of a Property Improvement Project. HEDC and the assigned engineers shall meet with representatives of the Town during the development of the Property Improvement Project at times to be determined by the Mayor or his designee.

D. HEDC shall, upon request, provide an accounting to the Town as to the balance in the Soil Fund and the status of each Project Budget. HEDC shall be responsible for: (a) contracting with all engineers, consultants, contractors, Licensed Environmental Professionals (LEPs), service providers and all persons necessary for HEDC to undertake a particular Property Improvement Project, and (b) paying all bills from the Funds for the services and tasks identified in the Project Scope and Project Budget.

E. HEDC expressly understands and agrees that the limit of DEEP's liabilities and obligations under this Agreement equal a one-time contribution of $1,000,000.00, and the limit of Olin's liabilities and obligations under this agreement equal a one-time contribution of $1,000,000.00 (together, the "Funds"), and that the Town shall not be responsible to HEDC for any contribution to the Soil Fund or cost overruns or liabilities incurred by HEDC in excess of the Funds. To the extent that the services to be provided on behalf of or to Eligible Applicants hereunder (inclusive of the fee paid to HEDC under subparagraph 3.1.I) are less than the Funds, HEDC shall not encumber the balance for any other purpose not expressly stated in this Agreement.

F. HEDC shall use its currently engaged accountant, T. M. Byxbee Company, 2319 Whitney Avenue, P.O. Box 187169, Hamden, CT 06518, to assist in the recordkeeping required under this Agreement and HEDC understands that the Town reserves all rights to audit the accounts and expenses of HEDC at any time as it relates to the administration, purposes and goals or this Agreement.

G. HEDC shall hire an attorney to represent it in the negotiation of this Agreement and with respect to its obligations hereunder. The cost of such attorney is to be borne exclusively by HEDC and is not a chargeable cost or expense to the Soil Fund. Any legal fees necessary to support the implementation of this Agreement (e.g., legal fees to contract with the environmental consultants, engineers, or contractors) may be a chargeable cost or expense to the Soil Fund as set forth in and limited by the Town/DEEP Agreement . Any costs of litigation to prosecute or defend any lawsuits with residential owners, contractors, consultants or other third parties are not chargeable cost or expense to the Soil Fund.

H. HEDC shall purchase insurance as set forth in subsection 2.8 to protect itself, its officers and its directors as to any liabilities that may arise relating to the performance of this Agreement. The cost of such insurance beyond any costs for insurance typically incurred by HEDC is a chargeable cost or expense to the Soil Fund as set forth in and limited by the Town/DEEP Agreement, provided HEDC notifies both the Town and DEEP of its base cost for insurance and the additional amount needed to administer this Agreement.

I. HEDC shall be compensated for its administrative fees only as specifically set forth in the Town/DEEP Agreement. HEDC shall include in each Project Budget a fee for the administration of developing and overseeing a Property Improvement Project, provided that HEDC's fee is as set forth in and limited by the Town/DEEP Agreement. Such fee may be automatically deducted from the Soil Fund at such times as HEDC may reasonably determine; provided that no fee may be deducted until a Property Improvement Project has begun.

J. HEDC agrees to use all Funds solely for the purposes set forth in this Town/DEEP Agreement, and for no other purpose. If, after completing a Property Improvement Project, there are Funds remaining in the Project Budget after providing for all costs of the Property Improvement Project, the Fund balance shall be adjusted and, to the extent removed, the remaining funds shall be returned to the Soil Fund.

K. All interest earned on the Soil Fund will be placed directly into the Soil Fund Account and used, if required, solely for the purposes of this Agreement and as set forth in the Town/DEEP Agreement. Monies in said Soil Fund will not be comingled with any other funds received by the Town or HEDC. HEDC shall consult with DEEP to insure that recordkeeping is appropriate to meet any requirements imposed by the State for the proper administration of the Funds.

L. HEDC shall not cause or permit any Funds to be used for any unlawful purpose, nor shall any such Funds be used or spent in the name of the Town. No purchase, rehabilitation or demolition of any structure shall be made by HEDC from the Funds and the use of the Fund is restricted as set forth in the Town/DEEP Agreement. HEDC shall comply with and conform to all agreements, requirements and conditions set forth in the Town/DEEP Agreement, and all federal, state and local laws, rules and regulations of the State of Connecticut and the Town in connection with this Agreement.

M. The Town and HEDC agree and acknowledge that the Funds are to be maintained and used for the benefit of the residential properties within the NLDD owned by Eligible Applicants as set forth in the Town/DEEP Agreement and for no other purpose. It is the expectation of the parties

that the Soil Fund will be maintained over the long term and to be used as needed on behalf of the Eligible Applicants in strict accordance with the Town/DEEP Agreement. To the extent any conflict exists between the Town/DEEP Agreement and this Agreement, the Town/DEEP Agreement controls the use of the Funds. Any ambiguity in this agreement regarding the use of the Funds or the Administration of the Fund shall be resolved through reference to the Town/DEEP Agreement.

N. The grant funds are to be used only to remediate the waste fill necessary for the proposed Property Improvement Project. If HEDC determines that the waste fill extends beyond the area of the proposed property improvement project, neither the Town nor HEDC shall have any obligation to investigate the scope or extent of the waste fill or to remediate the condition. In the event such a condition is encountered, the HEDC shall report its observations as to the existence of such a condition to DEEP and the Town.

O. HEDC shall not expend, use, leverage, collateralize, or encumber any of the Soil Funds except as set forth in this Agreement. If HEDC does expend, use, leverage, collateralize or encumber any of the Soils Funds in a manner contrary to this Agreement or as otherwise determined by DEEP to be in violation of the purpose of the Town/DEEP Agreement, HEDC shall be solely responsible for reimbursement to the Soil Fund of the amount and the full replenishment and restoration of the Soil Funds. If HEDC contracts for or expends any of the Soil Funds for an Ineligible Expense as described in section 3.3.E. below, HEDC shall be responsible for paying directly for such expense and, if Soil Funds were used, HEDC shall provide reimbursement to the Soil Fund.

P. Prior to implementation of any Property Improvement Project, HEDC shall enter into a written agreement with the Eligible Applicant (as hereinafter defined in section 3.3.A.), that provides that:

1. the Eligible Applicant understands that the Project Scope to be performed under this Agreement shall only be completed provided the Eligible Applicant demonstrates that it is ready and able to perform fully the Property Improvement Project, which determination shall be made to the reasonable satisfaction of the HEDC;

2. the Eligible Applicant is not entitled to receive any Soil Funds directly;

3. the Eligible Applicant agrees that the use of the Soil Funds will be only for the purposes set forth as "Eligible Expenses" and will not be used for "Ineligible Expenses" as defined in Section 3.3.D. &

3.3.E. The Eligible Applicant shall also agree that it understands that if it does not complete the Property Improvement Project, neither HEDC nor the Town shall be obligated or responsible for restoring the property, including any backfilling, or the placement of fill into any excavated area, grading and landscaping;

4. the Eligible Applicant understands and agrees that (a) the Town is not performing the Project Scope, (b) HEDC is an independent, third party vendor, (c) any disagreements or disputes regarding the Project Scope and the work performed will be handled by HEDC and not the Town and (d) the Project Scope is limited by the scope and extent of the Project Improvement Project and waste fill may remain on his/her property after completion of the Project Scope; and

5. prior to the initiation of the Project Scope, the Eligible Applicant waives, releases and holds the Town harmless from any claims, controversies, suits, actions, causes of actions, trespasses, variances, judgments, extents, executions, damages, or demands, in law or in equity, which against the Eligible Applicant and/or it's heirs, executors, administrators, successors and assigns ever had, now has or hereafter can, shall, or may have, for, upon or by reason of the existence of any waste fill, the implementation of the Project Scope, and the activities relating to assessing and removing the waste fill necessary for the Eligible Applicant to proceed with the proposed Property Improvement Project.

Q. All funds are to be expended and used by either the Town or the HEDC on behalf of an Eligible Applicant. At no time shall any funds be disbursed or provided to any Eligible Applicant either directly, for reimbursement or for expenses directly incurred by the Eligible Applicant.

R. Trucking routes will be established between the Police Chief of the Town and HEDC, delineating where trucks carrying excavated materials will travel prior to initiating any Property Improvement Project.

3.2 Records

The HEDC shall maintain records in a complete, businesslike manner and in a form satisfactory to the Town and DEEP including full, accurate and current records regarding (a) each Property Improvement Project and (b) the Soil Fund. The HEDC will furnish to the Town or its designee, at such times as the Town shall determine, copies of any document, data, and information relating to the Soil Fund in HEDC's possession as requested by the Town. The Town, or its designee, shall, for the purpose of determining the proper disposition of the

Soil Funds, have the right at any time during normal business hours to inspect all documents maintained by HEDC, including but not limited to minutes, records, books, files, contracts and any other papers, as well as electronic records, or to make inspection of any physical location of the HEDC. The HEDC shall aid and cooperate with any such inspection.

3.3 Determination of Eligibility

A. "Eligible Applicant" Defined

a. In accordance with the Town/DEEP Agreement, Funds will only be distributed to or used on behalf of owners of properties with a residential use located within the boundaries of the NLDD that submit a meet certain criteria as set forth in this subsection (referred to herein as "Eligible Applicants"). Eligible Applicants are defined through reference to the definition of Eligible Applicants in the Town/DEEP Agreement as:

i. Present and future owners of real property presently used or zoned for residential purposes, located within the NLDD, that was remediated pursuant to the Newhall Street Neighborhood Superfund Project in connection with Consent Order SRD-128, implemented between July of 2009 and December of 2012, and where waste fill material is documented to remain at an approved depth on such property; or

ii. Present and future owners of real property presently used or zoned for residential purposes, located within the NLDD, that have waste fill present in soil that was previously not documented.

iii. The limits of the Consent Order boundary and the NLDD are identified on Attachment A of this Agreement.

iv. A database identifying the street address of each property within the NLDD that did and did not participate in the remediation undertaken as part of the Consent Order and Newhall Neighborhood State Superfund Project shall be available in the Town Building Department and DEEP public files. Property-Specific Remedial Action Reports documenting the soil cleanup actions that were implemented on individual properties shall also be maintained on file with the Town Building Department and DEEP.

b. "Ineligible Property Applicants." Owners of the following properties, as well as all future successors, heirs and assigns, are not eligible to have a Property Improvement Project funded by or receive grants from the Soil Funds for a Property Improvement Project: 131 Bryden Terrace; 42 Edwards Street; and 48 Edwards Street. In addition, ineligible property applicants include any prospective property developer or current owner of property that was used for commercial, retail, industrial, charitable, religious, educational, or public purpose (e.g., the former Hamden Middle School) or was abandoned as of April 16, 2003 or at any time thereafter, and the developer or owner is seeking to redevelop such property for commercial, retail, industrial, charitable, religious, educational, public or residential use are not eligible for grants from the Fund.

c. HEDC-owned Parcels. Eight (8) HEDC-owned parcels are eligible for funding as specifically set forth in and as limited by the Town/DEEP Agreement.

B. "Property Improvement Project" Defined

In accordance with the DEEP Agreement the Soil Fund is established to cover future costs to properly manage waste fill (associated with and/or similar to the characteristics of waste fill remediated under the Newhall Neighborhood State Superfund Project) remaining on some properties located within the NLDD, including the Consent Order Properties, if such waste fill is encountered in connection with a future property or home improvement activity (collectively referred to herein as a "Property Improvement Project") that is permitted by the Hamden Building Department. A property improvement project is a future property or home improvement activity that includes, but is not limited to: an addition to a home; construction of an in-ground swimming pool, and replacing/removing an in-ground storage tank used for containing fuel oil to heat a residential structure. (Any contamination associated with a fuel leak from the tank and related piping is specifically excluded from eligibility under the Fund).

C. Screening of Eligible Applicants

a. HEDC agree to advise and work together with the Town Building and Planning & Zoning Departments to amend each Department's Application Forms so that they include boxes

that applicants can check to indicate the following: (a) whether or not their property is located within the boundaries of the NLDD and (b) whether or not their property contains a residential use.

b. Upon receiving a Building Form for Property Improvement Project on a residential property located within the NLDD, the Planning & Zoning Department or the Building Department, as applicable, shall conduct an inquiry using its maps and records to determine: (a) whether the subject property was remediated under the Newhall Neighborhood State Superfund Project and (b) whether the Property Improvement Project proposed to be conducted will likely extend to or greater than four (4) feet in depth such that waste fill may be encountered. If the Department's inquiry results in affirmative answers to these questions, and the applicant is not otherwise an Ineligible Applicant, that applicant shall be deemed an "Eligible Applicant" and the reviewing Department shall forward the Form to HEDC for proper handling in accordance with this Agreement.

c. HEDC shall coordinate and train the Town Finance, Building and Planning & Zoning Departments officials, at least once a year, as to (1) the purpose and administration of the Soil Fund, (2) the adequacy of the application forms within the Building and Planning & Zoning Departments as to the properties within the NLDD that are affected by this Agreement, (3) a notification and application process to notify and allow such homeowners who are seeking a Property Improvement Project access to the program established under this Agreement and (4) any recordkeeping required of the Town to administer this Agreement or the Town/DEEP Agreement..

D. Eligible Expenses

Eligible expenses covered by the Soil Fund include:

(1) Development and implementation of a waste fill remediation and management plan prepared by a qualified licensed engineer, environmental consultant, or environmental contractor retained by the Town or its designated agent;

(2) Excavation of waste fill material from within the limits of an approved property improvement project;

(3) Sampling and laboratory analysis of waste fill material;

(4) Transportation and proper off-site disposal of waste fill material;

(5) Publication and postage to distribute documents or reports generated by this Agreement, as stipulated in paragraph 21 of this Agreement.

(6) Legal fees, accounting, or insurance costs incurred by the Town or its designated agent in the direct performance of eligible activities under this Agreement, but collectively shall not exceed, in any one year, 50% of the interest earned by the Fund in the prior calendar year. In the first year of this Agreement, payment of such fees from the Fund shall not exceed $8,000.

E. Ineligible Expenses

a. HEDC shall not use Funds from the Soil Fund Account to pay for any structural repairs or the actual property improvement itself, unless: (a) said costs are directly related to and necessary for the removal of waste fill encountered during the permitted Property Improvement Project, and (b) DEEP provides its written authorization.

b. Funds may not be used to cover fees incurred by Eligible Applicants for permit applications or legal representation in connection with any Property Improvement Project.

c. HEDC shall not use Funds from the Soil Fund Account to pay for any expenses relating to normal wear-and-tear, which are associated with any improvement project.

d. The Fund is to be strictly used for the remediation of waste fill material and may not be used for any other contamination, including but not limited to contamination associated with residential underground storage tanks or any activity attributed to the property's residential use. If such contamination is encountered, HEDC shall immediately notify the homeowner, the Town and DEEP that such conditions are encountered and that the homeowner is responsible for remediating the condition, contracting with the appropriate company(ies) and paying for all costs associated with remediating the conditions that are not within the scope of this Agreement. If such conditions are encountered, HEDC shall suspend all work and not use the Soil Funds to remediate such condition under this Agreement.

e. The Fund shall not be used for lawn, tree and plant restoration or other landscaping.

3.4 LEP Oversight & Waste Management Protocol

HEDC will retain an environmental professional licensed in the State of Connecticut ("LEP") to be on-site when any Property Improvement Project is occurring, and to oversee and conduct environmental sampling and testing as necessary.

When conducting an approved property improvement activity that may encounter waste fill, the LEP shall implement the following steps:

(a) To suppress dust that may be generated during excavation of waste fill, the work zone shall be wetted with water.

(b) Stockpiled material containing waste fill shall be securely covered with plastic sheeting during non-work hours.

(c) Waste fill and associated contaminated soil must be sufficiently characterized for proper disposal.

3.5 Payments from Soil Account

A. The Town, as the trustee of the Soil Fund, and HEDC, as the Soil Fund's administrator, shall be the sole parties authorized to access the Soil Fund Account. Except as otherwise provided in subsection 3.9 herein, HEDC shall be the only party authorized to make withdrawals from the Soil Fund Account. All withdrawals made by HEDC shall be made directly to:

a. The contractor(s) or vendor(s) for the Property Improvement Project; or

b. To the HEDC itself for reimbursement after the HEDC has paid a contractor or vendor from the Funds or for its permitted fees and costs set forth in paragraphs 3.1.G to 3.1.I, provided, further, that the HEDC indicates on each draft made payable to the HEDC itself, the date(s) of previous payment(s) made to such contractor(s) or vendor(s) for the Property Improvement Project and the source of funding thereof. In addition, for each payment made to itself for those permitted fees and costs, as may be applicable, HEDC shall provide invoices from the attorneys, documentation to support the increased insurance costs and the total of the Project Budget for purposes of calculating the administrative fee.

B. Each time that HEDC makes a withdrawal from the Soil Fund, it will calculate the amount of Funds remaining in the Soil Fund Account. HEDC will also perform this calculation quarterly, even when no Funds

have been paid during that quarter, in order to ensure that it maintains an accurate balance of the Funds.

3.6 Personal Service Contracts

All Project Scope cost items for personal service, except those to be performed by volunteers and those to be performed by employees of the HEDC who will not receive extra compensation for such service, shall be performed pursuant to a written contract, and the HEDC shall, upon request, provide the Town with copies of all such contracts.

3.7 Audit

HEDC must have an audit of its accounts performed annually. The audit shall be in accordance with GAAP, and the requirements established by federal law and state statute. The HEDC shall be subject to an audit of its accounts as they relate to the Soil Fund at such times as required by the Town or DEEP. Such audit shall be in accordance with the auditing standards generally accepted in the United States of America. An independent public accountant as defined in generally accepted government auditing standards ("GAGAS") shall conduct the audits.

3.8 Reports

A. The HEDC shall furnish upon request to the Town within ninety (90) days of the end of each of the HEDC's fiscal year(s) for each year that this Agreement remains in effect, or earlier, as determined by the Town, such financial and other information that the Town may require at its discretion.

B. The HEDC shall provide to the Town, with a copy to the DEEP, an Annual Report inclusive of the reports required in paragraph 23 of the Town/DEEP Agreement.

3.9 Conflict of Interest

The Town and HEDC acknowledge that HEDC currently qualifies, or in the future may qualify as an "Eligible Applicant," as that term is defined in subsection 3.3.A, and would then be entitled to Funds from the Soil Fund Account in order to perform a Property Improvement Project. In such a case, a conflict of interest would arise on HEDC's part as administrator of the Soil Fund Account. The parties agree that requiring HEDC to divest itself of any current holdings located within the NLDD and prohibiting HEDC from acquiring such properties in the future, thus avoiding the conflict, would be disadvantageous to both of them, as HEDC's mission specifically involves the acquisition of properties in order to remediate and restore them, and the Town benefits from these properties being returned to a productive use. Thus, the parties have agreed that HEDC will be allowed to retain any properties within the NLDD that

it currently owns, and acquire such properties in the future, and that the parties will handle any conflicts that arise as follows:

A. As joint owner of the Soil Fund Account, the Town shall have access thereto and shall act as administrator thereof for any Property Improvement Project that HEDC proposes to conduct on property that it owns within the NLDD. At this time, HEDC intends to conduct a Property Improvement Project on 499 Newhall Street. When and if HEDC intends to conduct a Property Improvement Project on any other property it owns, HEDC shall notify the Town at least sixty (60) days prior to submitting the package specified in section 3.9(c) below.

B. Upon execution of this Agreement, HEDC will provide the Town with a list of those properties located in the NLDD that it owns or are under a purchase and sale agreement, and it shall periodically update this list. HEDC shall also state whether it intends to perform any Property Improvement Projects on these properties. Eight (8) properties currently owned by HEDC at the time of entry of this Agreement are limited to a total cumulative benefit of up to $80,000.00 as needed, for the life of this Fund. The eight parcels are identified as having the following street addresses: 499 Newhall Street; 230 Butler Street; 45 Edwards Street; 59 Edwards Street; 51 Edwards Street; 32 Edwards Street; 482-484 Shelton Avenue; and, 330 Morse Street.

   a. Upon execution of this Agreement, and notwithstanding any requirement otherwise set forth in this section 3.9, HEDC shall be entitled to request and receive a check from the Soil Fund of up to $25,000.00 for the remediation of 499 Newhall Street. The amount to be provided to HEDC shall be based upon presentment by HEDC to the Town of the invoices associated with the Eligible Expenses incurred or to be incurred for the Property Improvement Project at 499 Newhall Street.

   b. Upon payment of the Eligible Expenses for 499 Newhall Street, the cumulative benefit for the eight parcels shall be adjusted.

C. To perform the activities necessary to undertake and complete a Property Improvement Project with Funds from the Soil Fund Account, HEDC shall submit the following package for review and approval by the Town:

   a. A project scope, including a description of the planned Property Improvement Project, the start date and estimated duration of the project as well as engineering details such as the depth to which digging will occur;

   b. A project budget, including a breakdown of the costs to

implement each task required as part of a Property Improvement Project; and

c. Documents demonstrating that it has obtained the permits and approvals that are necessary to complete the Property Improvement Project.

D. The Town will notify HEDC in writing if it approves of the project scope and budget that HEDC has submitted, and may request additional information about the Property Improvement Project to aid in its decision. HEDC's budget shall not include costs of insurance, legal fees or overhead unless otherwise expressly permitted herein. HEDC's scope and budget shall only include those Eligible Costs set forth in 3.3.D.

E. When HEDC's project budget estimates that eligible costs will be more than $5,000.00, the Town will require HEDC to submit bids from at least two (2) contractors licensed in the State of Connecticut who will perform the work associated with soil management on-site (including excavation and back-filling), as well as separate bids for other necessary consultants and contractors. The Town shall evaluate the bids submitted by HEDC and choose a contractor that it believes will best be able to perform the soil management work in compliance with the RSRs and in a cost-effective manner. The Town will provide written notice to HEDC of its choice of contractor(s).

F. When HEDC's project budget estimates that eligible costs will be less than $5,000.00, the Town will not request that HEDC submit bids for contractors, and will disburse Funds in accordance with paragraphs G through I.

G. Funds will be disbursed to HEDC on a reimbursement basis. As HEDC incurs eligible expenses as described in subsection 3.3.D herein and receives bills therefor, HEDC will prepare and submit a payment request form to the Town, along with copies of receipts and invoices to substantiate the requested reimbursement. The Town will then prepare and approve a payment request form.

H. Disbursement approval will generally be authorized and Funds disbursed to HEDC within two (2) weeks from the date the Town receives a payment request. Payment of Funds will be made through check made payable to the HEDC.

I. HEDC may only request reimbursement for the eligible expenses described in subsection 3.3.D herein, and may not seek reimbursement for any ineligible expenses as described in subsection 3.3.E.

J. HEDC, along with its approved contractor(s), shall perform the work associated with a Property Improvement Project on any eligible property it owns in the NLDD. HEDC will also retain a LEP to be on-site when any Property Improvement Project is occurring, and to oversee and conduct environmental sampling and testing as necessary. HEDC shall be responsible for (i) contracting with all engineers, consultants, contractors, LEPs, service providers and all persons necessary for HEDC to undertake the Property Improvement Project, and (ii) paying all bills from the Funds allotted for each separate Property Improvement Project. If requested by the Town, HEDC will promptly provide copies of all contracts, receipts, etc. related to a particular Property Improvement Project.

K. For each Property Improvement Project that HEDC receives a payment of Funds for, HEDC shall establish a separate account at Bankwell or its successor financial institution to hold those Funds. Any change in financial institution unrelated to a merger or acquisition of Bankwell shall be approved in writing by the Town. HEDC shall keep the Funds that it receives for each Property Improvement Project separate from one another, and shall not comingle these Funds with any other funds received by HEDC.

L. HEDC and its selected contractor(s) and LEP may meet with representatives of the Town during the development of a Property Improvement Project at times to be determined by the Mayor or his designee.

M. HEDC shall, upon request, provide an accounting to the Town as to the expenditure of the allotted Funds related to a Property Improvement Project on HEDC-owned property, and the status of said Project's budget.

N. The Town shall not incur any liability to any third party as a result of its administration of the Agreement when HEDC performs a Property Improvement Project on property it owns within the Consent Order boundary of the NLDD, or of the work to be performed by HEDC in such a case.

O. Nothing herein authorizes HEDC to approve any contracts, encumber any Funds or incur any indebtedness or obligations beyond the amount of Funds that the Town grants for a specific Property Improvement Project on property owned by HEDC unless:

a. HEDC provides an updated project scope and/or project budget, as required, outlining the additional tasks that need to be completed; and

b. The Town approves the disbursement of additional Funds, in accordance with the updated project scope and/or project budget, in writing.

P. In the event that the audit referred to in subsection 3.7 above demonstrates that the actual expenditures made by the HEDC in connection with a Property Improvement Project on property it owns within the NLDD are less than amount of Funds that the Town authorized disbursement of, as set forth in paragraphs G through I above, any such excess disbursement made by the Town in respect of the Funds and State Funds shall become immediately due and payable back to the Soil Fund. Upon repayment by the HEDC of such excess amount of the Funds which has been disbursed to the HEDC, the stated amount of the Funds under this Agreement shall be amended, as applicable, so as to evidence the actual amount of the Funds which has been received by the HEDC.

Q. For any eligible property located within the NLDD that HEDC acquires after this Agreement is executed, HEDC shall provide immediate notification to the Town if and when it decides to perform a Property Improvement Project thereon. Thereafter, the parties shall follow the procedure set forth in this subsection (3.9) for disbursement of Funds.

3.10 Compliance with the Town/DEEP Agreement

HEDC shall comply with all the terms and conditions of the Town/DEEP Agreement relating to the administration of the Soil Fund even if not expressly stated or referenced in this Agreement, including but not limited to the annual reporting (Paragraph 17 of the Town/DEEP Agreement), deliverables (Paragraph 20 of the Town/DEEP Agreement), publication of materials (Paragraph 21 of the Town/DEEP Agreement), the ADA Publication Statement (Paragraph 22 of the Town/DEEP Agreement), Schedule of Reporting (Paragraph 23 of the Town/DEEP Agreement), and the Standard Terms and Conditions (Paragraph 29 of the Town/DEEP Agreement). To the extent that the Town and DEEP cancels the Town/DEEP Agreement, this Agreement shall terminate and the Fund shall be transferred to DEEP. Expenses incurred prior to the date of termination plus costs of all non-cancellable commitments, including termination costs of project personnel and administrative fees due HEDC for a project, will be paid out of the Fund balance.

4. ARTICLE 4: DEFAULT

4.1 Default

If HEDC shall fail to observe any material term or condition of this Agreement, and such failure shall continue for 10 days after written notice thereof, then the

Town shall have the right to terminate this Agreement by written notice to HEDC and/or to pursue such claims for legal or equitable relief, damage, reimbursement, contribution or compensation as may exist at law or in equity.

4.2 Notices

All invoices, statements, notices, demands, requests or other communications given or required to be given under this Agreement ("Notices") shall be effective only if rendered or given in writing and sent by registered or certified mail or courier service to the parties' respective addresses set forth above or to such other address as the Town or HEDC may designate from time to time. Any notices shall be deemed to have been rendered or given upon receipt or when refused or returned undelivered.

4.3 Instances of Default

The occurrence of any of the following events shall constitute a default under this Agreement (an "Instance of Default"):

A. Breach of Agreement

If the HEDC fails to perform any material act, duty, obligation or other agreement contained herein or fails to forebear from any unpermitted act, or if the HEDC abandons or terminates this Agreement, or takes such steps that such an abandonment or termination is imminent.

B. Misrepresentation

If any representation or warranty made by the HEDC or caused to be made for the HEDC proves at any time to be incorrect in any material respect.

C. Receivership or Bankruptcy

If the HEDC shall: (i) apply for or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of any of its assets; (ii) be unable to admit in writing it inability to pay its debts as they mature; (iii) file or permit the filing of any petition or reorganization or the like under any insolvency or bankruptcy law, or the adjudication of it as a bankrupt, or make and assignment for the benefit of creditors or consent to any form of arrangement for the satisfaction, settlement or delay of debt or the appointment of a receiver for all or any part of its properties; or (iv) any action shall be taken by HEDC for the purpose of effecting any of the foregoing.

D. Condemnation or Seizure

If any Federal, state or local governmental instrumentality, body or agency shall condemn, seize or otherwise appropriate, or take custody

or control of all or any substantial portion of the properties or assets of HEDC.

E. Lack of Adequate Security

If the Town, at any time and in good faith, deems itself to be insecure. For the purposes of this Agreement, the Town shall be entitled to deem itself insecure when some event occurs, fails to occur or is threatened or some objective condition exists or is threatened which materially impairs the prospects of the HEDC's business, or which materially affects the financial condition or business operations of HEDC.

4.4 Events in Instances of Default

A. Notice of Default

If the HEDC defaults or shall commit or allow any breach of the HEDC's covenants, agreements and other obligations under this Agreement, material or otherwise, including, without limitation, an Instance of Default, hereunder, the Town shall notify the HEDC of the default in writing.

B. Opportunity to Cure

Upon the occurrence of an Instance of Default, the Mayor may determine that permitting an opportunity to cure a default could jeopardize the Soil Fund or would not be in the best interests of the Town. Under those circumstances, no opportunity to cure need be given and the Town may seek other remedies. Without in any way limiting the preceding right to act without providing the opportunity to cure, the Town may provide HEDC thirty (30) days after the Notice of Default, or such longer period of time as the Town may determine and set forth in writing, to cure or remedy the default or breach. Said cure or remedy will not be effective unless accepted, in writing, by the Town.

C. Remedies

Upon the occurrence of an Instance of Default, the Town, acting by the Town, shall have, to the full extent permitted by law, each and all of the following remedies in addition to those provided for in other portions of this Agreement:

a. To proceed to enforce the performance or observance of any obligations, agreements, or covenants of the HEDC in this Agreement;

b. To immediately demand and receive repayment of any Funds in HEDC's possession that have not yet been forwarded to Eligible Applicants;

c. The right to a writ of mandamus, injunction or similar relief against the HEDC because of such default or breach;

d. The right to maintain any and all actions at law or suits in equity, including receivership or other proper proceedings, to cure or remedy any defaults or breaches of covenants under this Agreement; or

e. The Town may collect costs associated with collection efforts as outlined in this Agreement.

5. ARTICLE 5: MISCELLANEOUS PROVISIONS

5.1 Assignment

HEDC may not assign this Agreement without a resolution enacted by the Legislative Council of the Town and approval by DEEP. Any assignment made by HEDC without such a resolution and approval shall be void and of no force or effect

5.2 No Waiver

No waiver of any default shall affect or alter this Agreement, but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent default. No reference to any specific right or remedy shall preclude the exercise of any other right or remedy permitted hereunder or that may be available at law or in equity. No failure by either party to insist upon the strict performance of any term or condition of this Agreement, or to exercise any right or remedy consequent upon a default hereunder, and no acceptance of full or partial performance or rent during the continuance of any such default, shall constitute a waiver of any such default, term, or condition.

5.3 Governing Law

This Agreement and the right and obligations of the parties hereunder shall be construed and enforced in accordance with the laws of the State of Connecticut.

5.4 Survival

All agreements, covenants and indemnifications contained herein or made in writing pursuant to the terms of this Agreement by or on behalf of HEDC shall be deemed material and shall survive expiration or sooner termination of this Agreement.

5.5 Severability

If any term or provision of this Agreement is held to be invalid, the remainder of this Agreement will remain in full force and effect.

5.6 Binding Effect

All the terms and conditions of this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

5.7 Entire Agreement

This instrument contains the entire agreement between the parties and no oral statement or representations or prior written matter shall have any force and effect. This Agreement shall not be modified except by a writing executed by both parties.

5.8 Originals

This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

5.9 Gender, Number, Captions, Definitions, Recitals

The use of a personal pronoun shall refer to all persons regardless of the proper grammatical term; the singular includes the plural; and, captions for sections are included only for reference and do not modify or effect the terms, conditions and provisions of any document, agreement or instrument. A.

The words "includes" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed.

The Recitals to this Agreement are incorporated and made a part hereof.

5.10 Modification

This Agreement may not be modified or amended in any manner except in a written agreement executed by all of the parties hereto. In the event that the HEDC seeks modification in the form of a consent or a subordination to financing required by the HEDC in its normal course of business, the HEDC shall request such modification in writing to the Town not less than thirty (30) days prior to the date such modification is required. The HEDC shall promptly reimburse the Town for expenses, including reasonable attorneys' fees, incurred in negotiating and entering into such modification.

5.11 Survival of Representation

For the purposes of this Agreement, the term "HEDC" shall mean and include any successor or assigns of HEDC including any representative of HEDC under the provisions of any state or Federal law governing bankruptcy, insolvency, receivership or reorganization. All warranties, representations and covenants made by the HEDC in this Agreement or in any of the documents referenced herein or in any certificate or instrument made by HEDC and delivered to the Town in connection with the Funds shall be considered to have been relied upon by the Town and shall survive until ten (10) years after the Funds have been fully disbursed. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties; provided, however, that nothing in this provision shall imply that the HEDC has the right or authority to assign its rights, duties or obligations hereunder without the written consent of the Town.

5.12 Governing Documents

In the event of any conflict between this Agreement and documents executed pursuant to it, this Agreement shall be controlling.

5.13 Third Parties

This Agreement is between the Town and the HEDC only and shall not be relied upon by any third party. Without limiting the foregoing, neither the Town nor HEDC shall have any liability to any party whatsoever (including, without limitation, the HEDC or anyone conducting business with HEDC) in the event the Town, for any reason at any time, determines not to exercise its rights under this Agreement.

5.14 Jurisdiction

The HEDC agrees that the execution of the Agreement and the performance of the obligations hereunder, shall be deemed to have a Connecticut situs, and the HEDC shall be subject to the personal jurisdiction of the courts of the State of Connecticut with respect to any action the Town, its successors or assigns may commence hereunder or thereunder. Accordingly, the HEDC hereby specifically and irrevocably consents to the jurisdiction of the courts of the State of Connecticut with respect to all matters concerning this Agreement including the enforcement thereof in any action initiated by the Town or which the Town voluntarily joins as a party.

5.15 Termination

Notwithstanding whether any default exists under Article IV, this Agreement may be terminated at the discretion of either HEDC or the Town upon ninety (90) days written notice. If the Agreement is terminated, Eligible Expenses

incurred prior to the date of termination, plus the costs of all non-cancellable commitments, will be paid from the Soil Fund to HEDC to cover the costs of the administration and implementation of this Agreement until the Termination date.

5.16 Expiration

This Agreement shall expire when the funds in the Soil Fund have been expended and the Soil Fund is effectively depleted.

IN WITNESS WHEREOF this Agreement has been duly executed and delivered as of the date and year first written above.

Witnesses:

Patricia A. Lujick

Gail Vasil

TOWN OF HAMDEN

By:_____
Name: Curt Balzano Leng
Title: Mayor
Duly Authorized

STATE OF CONNECTICUT)
) ss: Hamden August 3, 2016
COUNTY OF NEW HAVEN)

On this 3rd day of August, 2016 ~~XXXX~~, before me, the undersigned officer, personally appeared Curt Balzano Leng, Mayor of the Town of Hamden, known to me (or satisfactorily proven) to be the Mayor of the Town of Hamden, and acknowledged that he executed the same as his free act and deed and the free act and deed of said town.

IN WITNESS WHEREOF, I hereunto set my hand.

~~XXXXXXXXXXXXXXXXXX~~ Susan Gruen
Commissioner of the Superior Court

Witnesses:

Patricia A. Lujick

Gail Vasil

HAMDEN ECONOMIC DEVELOPMENT CORPORATION

By_____
Name: Steven R. Rolnick
Title: President, Duly Authorized

Duly Authorized

STATE OF CONNECTICUT)
) ss: Hamden August 4, 2016
COUNTY OF NEW HAVEN)

On this 4th day of August, 2016~~XXX~~, before me, the undersigned officer, personally appeared Steven R. Rolnick, Pres. of the Hamden Economic Development Corporation known to me (or satisfactorily proven) to be the President of the Hamden Economic Development Corporation, signer and sealer of the foregoing instrument, and acknowledged that he executed the same as his free act and deed and the free act and deed of the State.

IN WITNESS WHEREOF, I hereunto set my hand.

~~XXXXXXXXXXXXXXXXXXXXXXXXXX~~ Susan Gruen
Commissioner of the Superior Court