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7. Nothing contained herein shall be deemed to create any contractual relationship between the Construction Manager and the Architect or between the Construction Manager and any of the trade contractors, or their subcontractors, or material suppliers on the Project; nor shall anything contained herein be deemed to give any third party any claim or right of action against the Town or the Construction Manager which does not otherwise exist without regard to this Agreement.

8. Unless otherwise specified, this Agreement shall be governed by the law in effect at the location of the Project.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement on the day and year first written hereinabove.

WITNESSES:

TOWN OF WALLINGFORD

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

CONSTRUCTION MANAGER

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Terry Wooding  
of The C. F. Wooding Co.  
Its Vice President

Special Town Council Meeting

September 4, 1984

6:00 p.m.

A special Town Council meeting was held in Council Chambers to

- (1) Discuss and award the fuel contract, Page 1-3.
- (2) Discuss and award janitorial contract for the municipal buildings, Page 3-4.
- (3) Discuss Electric Division's retaining earnings and Page 4-5.
- (4) Accept Town Council meeting minutes of July 31, 1984, August 7, 1984 and August 24, 1984. Page 5.

Acting Chairman Gessert called the meeting to order at 6:05 p.m. Answering present to the roll called by the Council Secretary were Council members Bergamini, Diana, Gessert, Killen, Krupp, Papale, Polanski and Rys. Also present were Mayor Dickinson, Town Attorney McManus and Comptroller Myers. The pledge of allegiance was given to the flag. Town Clerk Rosemary A. Rascati arrived following the pledge.

Mr. Gessert read the 8/29/84 letter from Mr. Donald Dunleavy regarding discussion and award of fuel oils, including gasoline, diesel fuel and No. 2 fuel oil. Mr. Gessert noted that the price was at least 10¢ per gallon lower than last year.

Mr. Dunleavy commented that he felt strongly about a firm price and it was offered and the low bidder on gas is Petrol Plus of Naugatuck, Inc. and they offered -.0203 under New Haven Harbor Low, a published figure. The Town of Wallingford asked for New Haven Harbor Low so that everyone is quoting on the same figure. Mr. Dunleavy made a recommendation to the Council that they accept the fixed figure for No. 2 fuel, diesel and gasoline. The only important factor when going with the float is the + or - New Haven Harbor Low figure since the New Haven Harbor posting is the one the Town will be paying from and that figure changes every Thursday.

Mr. Rys asked how many gallons of gasoline were used per year and Mr. Dunleavy indicated a little under 200,000 gallons of the three products. Mr. Diana asked if any other discounts applied and Mr. Dunleavy said there were none. 489

Mr. Krupp asked which vehicles required super unleaded gas and Mr. Dunleavy stated that request came from the Fire Department. There was further discussion about the New Haven Harbor Low and Mr. Dunleavy stated again that this is the only price which will be used and that figure will float weekly. It was pointed out that Ohr's Fuel, Inc. listed guaranteed price for full year on all gasolines and this was attached.

Mr. Krupp commented that the question that must be considered is what are the odds that the price of gasoline will go up by 13¢ a gallon. Past history and current projections, barring disaster, doesn't seem to indicate that that is a realistic expectation.

Mr. Dunleavy stated that 66,000 gallons of regular gas are used, 105,000 gallons of unleaded and 10,000 gallons of super unleaded and these are the requests he has in-house from all departments.

Mrs. Bergamini moved to accept the low bid on the fluctuating price, Petrol Plus of Naugatuck, Inc., seconded by Mr. Diana.

Vote: Unanimous ayes with the exception of Mrs. Papale who voted no; motion duly carried.

Mr. Dunleavy noted that 60,000 gallons of diesel fuel were requested.

Mr. Krupp moved to accept the low bidder for diesel fuel, Ohr's Fuel, Inc. (variable price), seconded by Mrs. Bergamini.

Mr. Polanski asked why Ohr's Fuel, Inc. was the only company to indicate a guaranteed price for the full year and Mr. Dunleavy stated that it came as a surprise to him since all bidders could have submitted a guaranteed price for the full year. Mr. Krupp observed that paying a guaranteed price is a considerable sum to pay for a calculated risk.

Mr. Rys asked if diesel fuel and No. 2 oil were basically the same and Mr. Dunleavy stated that basically they are but there is an additive to diesel fuel to make engine starting easier. Mr. Rys indicated that a Texas freeze last year caused a price increase of 27¢ per gallon of No. 2 fuel oil and asked if this could affect diesel fuel prices and he wondered if it would be better to go with a fixed price in this instance. Mr. Dunleavy stated the fixed price last year was \$1.0187.

Vote: Unanimous ayes with the exception of Mr. Rys who voted no; motion duly carried.

Mr. Dunleavy stated that 95,000 gallons of No. 2 fuel oil were requested for this year and last year's price was \$1.0187. Mrs. Bergamini indicated she preferred to have a guaranteed price for the full year on No. 2 fuel oil which Ohr's Fuel, Inc. bid at \$ .899.

Mr. Killen asked why Geremia did not bid on this and Mr. Dunleavy indicated it may have been the size of the tanks and the drops since the Town has many 100 gallon and 275 gallon tanks which is why many large firms do not bid.

Mrs. Bergamini moved to accept Ohr's Fuel, Inc.'s guaranteed price for full year on No. 2 fuel oil of \$ .899. Mr. Diana seconded the motion.

Vote: Unanimous ayes with the exception of Mr. Krupp who voted no; motion duly carried.

Mr. Gessert asked Mr. Myers to research how much money was spent on repair of boilers and burners per year.

Mr. Dunleavy pointed out that the first year total of \$59,998.67 for J & J Custodial Service, Inc. contract was based on twelve months. Mr. Rys indicated the figure based on ten months is \$49,998.88 and asked specifically how the bid specs went out. Mr. Dunleavy stated they read specifically a ten month period, from 9/1/84 to 6/30/85.

Mrs. Papale indicated that a committee was formed to negotiate with J & J Custodial Service, Inc. Mr. Killen stated it had gone out to bid. Mr. Dunleavy stated that it was out to bid when it became the wish of the Council to negotiate and when Mr. Dunleavy was informed of this, he had to cancel the bid. Mrs. Papale asked how this could be put out to bid when a bid was made public. Mrs. Bergamini explained that through an oversight, the contract had never been awarded and this was part of the procedure. Mr. Killen referred Mrs. Papale to the Charter.

Mayor Dickinson pointed out there are a number of ways to look at this but if you are looking at the town's interest and the money to be spent cleaning the municipal buildings, the alternative of the J & J Custodial proposal comes in at the low figure. It is a 3 year bid but for the first year, it would be a low figure, given the bids that went out for that first year period.

Mr. Gessert noted that persons bidding have the right to bid under exceptions and alternates and any bidder could have submitted a multi-year bid. Mr. Krupp agreed this point is very valid; however, he pointed out that one has to keep in mind that discussions with J & J center on the 3 year contract and the individual is aware that this might be an acceptable alternative to the town. M. Richard & Company was not party to those negotiations and had no way of knowing a 3 year contract was discussed as an alternative. Mr. Dunleavy indicated it wasn't being discussed as an alternative, but M. Richard & Company only has operated with multi-year contracts since he has been with the town for 14 years.

Mr. Killen asked what action the Council is being asked to take and Mr. Gessert stated to award the contract. Mr. Killen pointed out that the Council can only enter into this if the award is made to other than lowest bidder since lowest bidder is out of the Council's hands. Mr. Killen stated that the Council should have a recommendation from Mr. Dunleavy and a recommendation from the department head involved.

Mr. Dunleavy pointed out that a 3 year contract is being offered as an alternate bid which is not addressed in either the Charter or Ordinance and is being correctly handled by forwarding it to the Council for discussion and action.

Mr. Diana is not happy with the direction this has taken and feels that a grave injustice has been done to J & J Custodial because an unfair advantage has been given to any competition by negotiating in good faith and coming up with a figure which was publicized. Attorney McManus pointed out that the town could not be bound by the negotiations but Mr. Diana is absolutely right about the unfair advantage. Mayor Dickinson pointed out that the low figure is J & J and he asked that the Council approve it.

Mr. Polanski asked if M. Richard & Company had ever cleaned the municipal buildings and Mr. Dunleavy stated they have been the exclusive cleaners of Sheehan School since it was opened and any questions about their performance must be directed to the Board of Education.

Mr. Krupp stated that in the best interests of the Town of Wallingford and in the interest of fair and equitable business dealings, he would recommend that the low bid be waived in this case and that the contract be awarded to the alternate proposal submitted by J & J Custodial Service, Inc. in the addendum dated August 22, 1984 through June 30, 1987. Mr. Polanski seconded the motion.

Vote: Unanimous ayes with the exception of Killen who passed and Rys who voted no; motion duly carried.

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Mr. Killen requested to waive Rule V and comment about Section 10 491 of Ordinance 272 regarding officials and employees of the town bidding and felt this should have been brought up before. Mayor Dickinson stated he was aware of that and took the matter up with Adam Mantzaris and it was Adam's opinion that the Charter changes for the Code of Ethics supersede and render that language null and void because of the Charter change. Mr. Killen felt that the ordinance can be changed and the Charter should not supersede in an instance such as this. Attorney McManus stated that the Charter is the town's constitution. Mr. Killen indicated that in certain instances, the ordinances do take precedence over the Charter, even state statute, according to a recent opinion. Mayor Dickinson noted that any ordinance adopted would have to comply with current Charter provisions and if the Charter were changed, wherever that portion of the ordinance conflicts with the Charter, that portion is not effective. Mr. Killen requested to be shown in the Charter where such a purchase is allowed to go forward.

Mr. Gessert moved to the next item of business and Mr. Killen read a letter dated 6/1/84 to Vincent T. McManus, Jr., Town Attorney regarding an opinion on the Electric Division retaining their earnings. Mr. Killen also read his letter dated 8/17/84 to Attorney McManus requesting this same opinion for discussion at the next regular or special Town Council Meeting.

Mayor Dickinson indicated that he has discussed this matter with Attorney McManus and an opinion should be available before the Council meeting of September 11, 1984. He pointed out that this matter is of an extremely complex nature and has many ramifications. The Town Attorney's Office has been very responsive on most, if not all, matters up to this date and this is not a small question. Mayor Dickinson felt that Mr. Killen is looking to change what has been basic procedure for fifteen years.

Mr. Killen indicated that he read from the state statutes and if the statutes say what he said they did, then he is right. Attorney McManus did not feel Mr. Killen had misquoted the statutes. Mr. Killen feels we should run by law. Mayor Dickinson feels there is no intent to twist anything. Things must be interpreted and decided on the basis of cases. Mr. Killen stated he is simply asking for an opinion and is not asking the Town Attorney to say this is good or bad for the Town of Wallingford. If it does have ramifications, it is up to someone else to say, "prepare us for the worst." Mr. Gessert asked Mr. Killen if he wanted this item on the next agenda or if he preferred to wait for the opinion and Mr. Killen stated he had absolutely no faith and when he sees the opinion, he will decide whether or not he wants to discuss it.

Mr. Krupp moved acceptance of the Town Council meeting minutes of July 31, 1984, seconded by Mr. Rys.

Vote: Unanimous ayes with the exception of Messrs. Killen and Polanski who passed; motion duly carried.

Mr. Krupp moved acceptance of the Town Council meeting minutes of August 7, 1984, seconded by Mrs. Bergamini.

Vote: Unanimous ayes with the exception of Messrs. Killen and Polanski and Mrs. Papale who passed; motion duly carried.

Mr. Krupp moved acceptance of the Town Council meeting minutes of August 24, 1984, seconded by Mr. Rys.

Vote: Unanimous ayes with the exception of Mr. Killen who passed; motion duly carried.

A motion to adjourn was duly made, seconded and carried and the meeting adjourned at 7:15 p.m.

Delores B. Fetta  
Council Secretary

Approved David A. Gessert  
David A. Gessert, Acting Chairman

September 11, 1984  
Date

Rosemary A. Rascati  
Rosemary A. Rascati, Town Clerk

September 11, 1984  
Date

Summary/Town Council Meeting

September 11, 1984

- Appointed Steven B. Holmes to Town Council to fill vacancy created by resignation of Robert F. Parisi on August 10, 1984 2
- Elected David A. Gessert as Chairman and Marie B. Bergamini as Vice Chairwoman of Town Council 2-3
- Appointed and confirmed Joseph F. Pavlick as Alternate on Planning and Zoning Commission, to fill vacancy created by Louis A. Troccoli 3
- Tabled appointment of Richard R. LeClaire to Regional Planning Agcy. 3
- SET PUBLIC HEARINGS FOR SEPTEMBER 25, 1984 on following:
  - 7:45 p.m. - TOWN OF WALLINGFORD ALARM ORDINANCE 3
  - 8:15 p.m. - AN ORDINANCE AMENDING SECTION 16(e) OF THE PURCHASING ORDINANCE, NO. 272, ENTITLED "COMPETITIVE BIDDING" 3-4
  - 8:30 p.m. - AN ORDINANCE AMENDING ORDINANCE NO. 149 TO INCREASE THE APPROPRIATION AND PRINCIPAL AMOUNT OF BONDS AND NOTES FROM \$507,500 TO \$529,115 AND AUTHORIZING THE ISSUANCE OF BONDS AND NOTES TO DEFRAY SAID APPROPRIATION. 12
- Sale of bond anticipation notes for MacKenzie Dam Reconstruction Project and 1984-85 Capital Improvement Project 4-6
- Waived bid to appoint Edward T. Lynch, Jr., Esq. as Labor Relations Negotiator/approved transfer of \$12,416 to 130-901 6-7
- Approved merit increase/John J. Costello, Engineering Department 7
- Resolution on behalf of The Wallingford Committee on Aging 7-8
- Resolution authorizing Payment-in-Lieu-of-Taxes program 8-9
- Resolution/Statement of Assurances for Entitlement Period 16 9
- Approved appropriation of \$11,350 from 805-326 to enable appointment of part time electrical inspector/Carmen T. Spiteri 9-11
- Tabled consideration of authorizing demolition of structure at Doolittle Park and renovating basketball court on Wall Street into parking lot for further information from Mr. Shepardson 11
- Approved adjusting transfer (1983-84) of \$1,225 from 503-300 to 503-130/\$697 and 505-130/\$528, requested by Thomas A. Myers 12
- Approved transfer of \$688 from 701-418 to 701-903/Planning & Zoning 12