

WATERFRONT WALKWAY RECONSTRUCTION PROJECT
PUBLIC PRIVATE PARTNERSHIP AGREEMENT

This Agreement is made on this _____ day of October, 2011, between STEVENS INSTITUTE OF TECHNOLOGY, an educational not-for-profit body corporate, with offices located at Howe Center, 13th Floor, Castle Point on Hudson, Hoboken, New Jersey 07030 (hereinafter referred to as "Stevens") and the CITY OF HOBOKEN, a municipal corporation, with offices located at 94 Washington Street, Hoboken, New Jersey 07030 (hereinafter referred to as the "City").

RECITALS

WHEREAS, the utilization of public-private partnerships, where appropriate, to help communities thrive in economic downturns, stimulate the local economy, and provide meaningful public relationships to corporations with a local presence are widely endorsed; and

WHEREAS, Stevens and the City acknowledge that, acting alone, they cannot independently provide the most effective and efficient goods and services to properly rehabilitate and reconstruct the Hudson River Walkway at Castle Point and Sinatra Field (the "Project"); and

WHEREAS, the parties wish to memorialize an arrangement through the creation of the herein Public-Private Partnership Agreement (the "Agreement") by and among the parties relating to their respective roles in properly and effectively reconstructing and rehabilitating the Hudson River Waterfront at Sinatra Field and Castle Point; and

WHEREAS, the parties contemplate that no services or goods, shall be otherwise provided pursuant to this Agreement, except in accordance with all applicable

federal, state, and local laws and regulations governing the provisions of services hereunder; and

WHEREAS, Stevens has agreed to donate goods it had purchased in anticipation of the restoration of its portion of the Waterfront Walkway to the City to aid in the City's restoration of the Walkway; and,

WHEREAS, the City will be given the opportunity to reconstruct the Waterfront Walkway as one seamless project as a result of the donation of goods from Stevens, and, as a result, the City has agreed to undertake the costs associated with reconstruction of the Waterfront Walkway, and particularly the connection between the Stevens portion of the Walkway and the City portion of the Walkway.

IN CONSIDERATION OF THE MUTUAL PROMISES STATED IN THE ABOVE RECITALS, WHICH SHALL BE INCORPORATED HEREIN AS CONTRACTUAL OBLIGATIONS OF THE PARTIES, THE PARTIES THEREFORE AGREE AS FOLLOWS:

SECTION ONE

DURATION OF AGREEMENT AND RIGHT TO CANCELLATION

The term for this Agreement shall commence upon final execution by both parties. This Agreement will continue in effect on the terms and conditions provided herein until completion of the Project, as determined by written confirmation of the City Engineer or until cancelled by either party in accordance with the within cancellation terms. Cancellation shall be effected by any party providing written notice to the other of its intent to terminate ninety (90) days in advance of such cancellation. Cancellation shall also be subject to the provisions of Sections Six and Seven of this Agreement. Notwithstanding anything in this Agreement to the contrary, this Agreement may not be terminated by the City after Stevens has provided the Goods (as defined below) to the City.

SECTION TWO DEFINITIONS

As used in this Agreement, unless the context indicates otherwise, the following terms shall have the following meanings and are to be interpreted consistent with the context of this Agreement in which each term is used:

1. "Agreement" shall refer to the herein Public-Private Partnership Agreement executed by the City and Stevens.
2. "Stevens" shall refer to Stevens Institute of Technology.
3. "City" shall refer to the City of Hoboken.
4. "City Engineer" shall refer to the Professional Engineer appointed by the City of Hoboken to render general engineering services to the City of Hoboken relating to the Project.
5. "Property" shall refer to the Hudson River Waterfront Walkway from the southernmost portion of Castle Point to the northernmost point of Sinatra Field, adjacent to the existing Hudson River Waterfront Walkway.
6. "Project" shall refer to the reconstruction of the Property, as described herein and within the attachments hereto.

SECTION THREE

GOODS AND SERVICES TO BE UTILIZED AND OBLIGATIONS OF THE PARTIES

- A. Services: The services shall include rehabilitation of the Property, contracted by the City of Hoboken. The rehabilitation shall include construction of the remaining section of the Property's walkway along the Stevens portion of the Property as well as reconstruction of Sinatra Field on the City's portion of the Property, and structurally contiguous connection of the City and Stevens portions of the Property's walkway. All services shall be performed by and be the obligation of the City of Hoboken, by and through its contractors, professionals and agents. The proposed Project shall be in accordance with the "Boswell McClave Engineering, Hoboken Waterfront Reconstruction, Contract Documents," attached hereto as **Exhibit A** as well as the August 9,

2011 letter from Joseph Pomante, P.E. of Boswell McClave Engineering to Mayor Zimmer, attached hereto as **Exhibit B**. The City of Hoboken shall be solely responsible for all aspects of the rehabilitation of the Property as described above including, without limitation, selecting and awarding contracts, administering and making payments under such contracts and all matters relating to liability and insurance.

- B. Goods: The goods to be utilized for this Project were purchased by Stevens prior to execution of this Agreement. The previously purchased goods are listed in the "Stored Items" documents, attached hereto as **Exhibit C** (the "Goods"). Stevens shall be solely responsible for providing the Goods to the City of Hoboken for use by the City of Hoboken and its contractors in completing the Project. The Goods are stored at a site owned by Stevens and will be made available by Stevens to the City of Hoboken and/or its contractors for loading and shipping by the City or such contractors, as provided in this Agreement.
- C. Stevens will work with the City and its subcontractors to provide separate documentation of a right-of-way across and temporary license to use Stevens' property for the conduct of the Project, provided that Stevens may require indemnification, insurance and other protections relating to liability against the actions and failures of the City and such subcontractors.

SECTION FOUR

PROJECT FUNDING AND CONSIDERATION FOR THIS AGREEMENT

- A. The City agrees to furnish all services relating to this Project, as described herein, which shall constitute good and valuable consideration under this Agreement, subject to the City's ability to adequately appropriate the amounts necessary to fund the services.
- B. Stevens agrees to furnish the Goods listed in Exhibit C within ten (10) days of request by the City, the City Engineer, or the City's contractor. The parties acknowledge and agree that, once the Goods have been delivered to the City or its contractor, Stevens shall have no further responsibility or liability with respect

to the Goods and the City and its contractors shall not make or assert any complaint, claim or other concern regarding the Goods against Stevens.

- C. The cost of any materials and goods necessary to complete the Project which have not been provided for by Stevens, as described in Exhibit C, shall be the sole responsibility of the City. The City will make additional purchases to complete the Stevens Walkway if a need to procure additional materials such as sand or brick pavers becomes necessary.
- D. Stevens and the City agree that their respective obligations relating to the funding, services and goods herein described shall constitute the full and valuable consideration paid to both parties under this Agreement, and shall be made available only for the reconstruction and renovation of the Property, as described in Section Three of this Agreement.
- E. The City shall not, under any conditions, be required to compensate Stevens for the performance, services or goods hereunder described in excess of the obligations described herein, and no terms or conditions of this contract shall be interpreted inconsistent with this restriction.
- F. No other charges shall be assessed against the City on behalf of Stevens relating to this Project during the term of this Agreement.
- G. The City shall be solely responsible for awarding the contract(s) for the reconstruction and rehabilitation of those areas of the Hudson River Walkway, at Castle Point and Sinatra Park, described herein and in administering the Project in accordance with this Agreement, the New Jersey Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), and all other applicable laws.
- H. Failure of the City to appropriate the funds necessary to effectuate the Project under which this Agreement is made shall result in termination of this Agreement without damages being charged by either party against the other. In the event the City has not appropriated the funds for this Project by January 20, 2012, this Agreement shall terminate, unless both Parties consent to an extension of the appropriate date in writing, to a date certain.

SECTION FIVE

INDEMNIFICATION/INSURANCE

- A. The City shall be responsible for all claims and suits resulting from the City's obligations under this Agreement which arise out of the gross negligence or intentional misconduct of employees, agents, or contractors of the City of Hoboken, and the City agrees to fully indemnify and hold harmless Stevens from any such claims or suits including, but not limited to, any reasonable attorneys fees and costs of suit incurred by Stevens as a result thereof.
- B. Stevens shall be responsible for all claims and suits resulting from Stevens obligations under this Agreement which arise out of the gross negligence or intentional misconduct of employees, agents, or contractors of Stevens, and Stevens agrees to fully indemnify and hold harmless the City from any such claims or suits including, but not limited to, any reasonable attorneys fees and costs of suit incurred by the City as a result thereof.
- C. The City shall provide evidence of insurance coverage as set forth immediately herein below. The City shall furnish to Stevens, a Certificate of such insurance coverage containing a thirty (30) day advance cancellation clause; and said coverage shall name Stevens as an additional insured for the City.
 - a. Comprehensive General Liability Insurance coverage in the amount of \$2,000,000.00 aggregate combined single limit bodily injury and property damage, including personal liability.
 - b. Workers compensation insurance coverage in the amount of \$500,000.00.
- D. Stevens shall provide evidence of insurance coverage as set forth immediately herein below. Stevens shall furnish to the City, a Certificate of such insurance coverage containing a thirty (30) day advance cancellation clause; and said coverage shall name the City as an additional insured.
 - a. Comprehensive General Liability Insurance coverage in the amount of \$2,000,000.00 aggregate combined single limit bodily injury and property damage, including personal liability.
 - b. Workers compensation insurance coverage in the amount of \$500,000.00.
- E. The City shall require that (i) the contractor(s) who performs the Project shall

comply with all requirements of **Exhibit D** prior to commencing work on the Project and throughout the term of the Project and (ii) such contractor(s) shall deliver to the City and to Stevens prior to commencement of the Project an insurance certificate evidencing such compliance and naming the City and Stevens as additional insureds.

SECTION SIX DEFAULT

The following events shall constitute default of this Agreement:

A. Failure of either party to pay any undisputed amount that becomes due under this Agreement or provide any goods or services herein described which becomes due, for a period greater than sixty (60) days after written demand is made;

B. The assessment by either party that: (i) the other party has not performed its obligations set forth in this Agreement in an adequate or satisfactory manner; or (ii) the other party has not utilized the other party's consideration, described hereunder, for the purposes described herein, subject to the right to cure as set forth in Section Seven of this Agreement.

C. The appointment of a receiver or other trustee for either of the parties;

D. Failure of either party to perform or fulfill any other covenants or conditions set forth in this Agreement, subject to the right to cure as set forth in Section Seven of this Agreement.

E. The non-appropriation of necessary funding by the City, in accordance with applicable laws, for the payments required hereunder shall furnish grounds for termination of the Agreement pursuant to Section Seven. Termination under this Subparagraph E of this Agreement shall be effectuated by either party's providing thirty (30) days' written notice of its intent to terminate this Agreement. Such termination shall be effective upon the expiration of the aforementioned thirty (30) day period. The City's inability to legally obtain and/or appropriate proper funding shall be deemed a default for which no damages may be awarded to either party or to any beneficiaries, whether intended or unintended, and any litigation resulting from the City's non-appropriation of

funding shall not entitle any party or any beneficiary, intended or unintended, to an award of attorney fees or costs.

SECTION SEVEN

TERMINATION

1. In the event of default as defined in Section Six of this Agreement, except as set forth in Subsection (E) of Section Six, the non-defaulting party may serve upon the defaulting party a written notice of its intent to terminate this Agreement and demand that the defaulting party cure such default within sixty (60) days from the date of such written notice. No such period shall be necessary, and termination shall occur immediately upon notice, whether actual or constructive, in the event that the breach is incapable of cure. If the defaulting party cures the default within sixty (60) days from the date of such notice, then the notice of intent to terminate shall have no force or effect. If, however, the defaulting party has not cured the default by the end of the sixty (60) day period, after the expiration of the sixty (60) day period, the non-defaulting party may serve upon the defaulting party written notice of the former party's intent to terminate this Agreement immediately.

2. Upon termination of this Agreement, the parties shall promptly pay any outstanding unpaid sums due and owing under this Agreement.

3. The rights granted pursuant to this Section Seven are in addition to any other rights and remedies for breach of contract available to the non-defaulting party at law or in equity.

4. As stated above, once Stevens has complied with its obligations to provide the Goods to the City, the City may not terminate this Agreement.

SECTION EIGHT

SUCCESSORS AND ASSIGNS

The terms of this Agreement shall be binding upon all transferees, successors, grantees or assignees of the parties as though named in this Agreement.

SECTION NINE

NOTICE

1. All notices, requests, or approvals required or permitted under this Agreement shall be in writing and shall be deposited in the United States mail, postage prepaid, and shall be registered or certified or may be provided via personal service or via Federal Express or other recognized national overnight mail carrier.

2. If intended for Stevens, such correspondence shall be sent to the Henry P. Dobbelaar, Jr., P.E., Vice President with a copy to General Counsel, Howe Center, 13th Floor, Castle Point on Hudson, Hoboken, New Jersey 07030. If intended for the City, all such correspondence shall be sent to the Council President, Corporation Counsel and City Clerk, at 94 Washington Street, Hoboken, New Jersey 07030.

3. A change in address must be noticed in the manner set forth in this Section. Any notice, request or approval required or permitted shall be deemed given and received by the addressee on the third business day after mailing or upon delivery, if personally delivered or sent by overnight carrier.

SECTION TEN

RESOLUTION OF DISPUTES

Should any bona fide dispute arise between the parties with respect to any of the terms and conditions hereunder, such bona fide dispute shall be presented to the New Jersey State Board of Mediation for mediation. The parties agree that every best effort shall be made by both parties to resolve any and all disputes prior to mediation and, if no resolution is reached, the dispute shall be presented to mediation. In the event mediation fails, all disputes arising under this Agreement shall be subject to binding arbitration, which shall be conducted in accordance with the laws of the State of New Jersey.

SECTION ELEVEN

WAIVER

A party's waiver of a breach of any term of this Agreement shall not constitute a waiver of any subsequent breach of the same or another term contained in this Agreement. A party's subsequent acceptance of performance by the other party shall not be construed as a waiver of a preceding breach of this Agreement.

**SECTION TWELVE
MISCELLANEOUS**

- A. Invalidity. If any provision of this Agreement is held unenforceable or invalid by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected.
- B. Entire Agreement/Modifications. This Agreement supersedes any and all prior or other oral or written Agreements between the parties. This Agreement may be altered, modified or amended only in writing executed by both of the parties hereto. This Agreement contains the entirety of the Agreement between the parties. There are no other oral Agreements or presentations binding the parties hereto.
- C. Governing Law. This Contract shall be governed by the laws of the State of New Jersey and in compliance with all ordinances, policies and provisions of the City.

**SECTION THIRTEEN
EFFECTIVE DATE**

This Agreement shall become effective if executed on behalf of Stevens by an authorized officer and if legally approved by the governing the City, in accordance with applicable law. The effective date of this Agreement shall be the date executed by the final signatory on the signature page.

**SECTION FOURTEEN
SIGNATURES**

The parties agree that this Agreement may be signed and executed in counterpart, and that the failure of the parties to be mutually present during such signing

or execution, or that the failure of all parties' signatures to appear on the same original of the Agreement, shall not be construed as taking from the validity and effect of same.

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SIGNATURES BEGIN ON THE NEXT PAGE.

CITY OF HOBOKEN

STEVENS INSTITUTE OF
TECHNOLOGY

By: _____

Dawn Zimmer
Mayor

By: _____

Henry P. Dobbelaar, Jr, P.E.
Vice President

Dated: _____

Dated: _____

Attest: _____

James Farina, City Clerk

Attest: _____

Approved as to Form:

Approved as to Form:

Mark A. Tabakin, Esq.
City of Hoboken
Corporation Counsel

Kathy L. Schulz, Esq.
Stevens Institute of Technology
General Counsel