

Special Town Council Meeting

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August 24, 1984

6:00 p.m.

A special Town Council Meeting was held in Council Chambers to

- (1) Authorize the Mayor to execute the agreement with the construction manager for the conversion of the Armory to Police Headquarters, Page 1-4
- (2) Allow Vietnam Veterans Memorial Fund Committee office space in Simpson School building, Page 4
- (3) Establish new line item A/C 511-650 and transfer \$500 from C504-01 to 511-650 for Public Works Department, and Page 4-5
- (4) Accept Wausau Snow Plow. Page 5

Vice Chairman Gessert called the meeting to order at 6:05 p.m. Answering present to the roll called by Town Clerk Rascati were Council members Bergamini, Diana, Gessert, Killen, Krupp, Papale, Polanski and Rys. Also present were Mayor Dickinson, Town Attorney Vincent T. McManus, Jr. and Comptroller, Thomas A. Myers.

Mr. Gessert explained that the Agreement appointing The C. F. Wooding Co. as Construction Manager for Armory conversion to Police Headquarters is before the Council for approval and The C. F. Wooding Co. was selected at the last meeting of the Building Committee for the Police Station. Two bids were received, one for \$114,000 from Bloomfield and one for \$105,000 from C. F. Wooding.

Attorney McManus pointed out to the Council the fact that there are two blanks in this contract--one on page 2 and one on page 7. One speaks to the maximum allocation and the other speaks to the commencement of construction which will be within so many days of the signing of the agreement.

Mr. Gessert indicated the figure is limited to strictly construction and does not include engineering, construction manager, architect, site acquisition or communications and these costs are the difference between \$1.4 million and the \$2.1 million the Council set.

Mr. Diana moved to authorize the Mayor to enter into an agreement with The C. F. Wooding Co. as Construction Manager for the purpose of converting the former National Guard Armory into a Police Station Headquarters. Mrs. Papale seconded the motion. (Amendment page 4.)

Mr. Krupp expressed reservations about this contract, essentially centering on Article I on page 2, and hopes the bottom line incorporates netting out of that the costs mentioned, including the construction manager's fees and charges as detailed in Section V and the recommended insurance costs as detailed in Section VIII.4 if the town elects to go with those insurance costs. The number may be less than \$1.4 million.

Mr. Krupp is not overjoyed with the wording that the construction manager will use his best efforts to bring the project in on budget and preferred a definition of what penalties exist in the event it is not done, perhaps some factor built in that any amounts over that come out of the fees. Mr. Gessert stated that both construction managers interviewed by the Building Committee assured the Committee that they could stay within the budget figures and the architect also agreed it would be within budget, without cutting corners. Mr. Krupp pointed out that good intentions don't mean a thing when you attempt to enforce them as a contract in a court of law.

Attorney McManus indicated there are many things which could happen to this project which are not the responsibility of the construction manager, such as Acts of God, etc. so he can't guarantee it but he is paid as the project progresses and if the job is not being done, he can be terminated.

478 Mr. Krupp expressed concern that, for whatever reason, inability to maintain the established budget would lead to a situation where the cost of the project would exceed the allocated \$2.1 million, necessitating appropriation of additional monies against the ordinance. Mr. Howard Marshall stated the Building Committee is aware of the fact that they will not receive another penny, and everyone has been told from day one, construction manager and architect.

Mr. Diana referred to Article X, section 5. . . termination of the construction manager. . . and asked what if it was decided just to eliminate the project manager and Attorney McManus stated that would be an illusory contract and the contract must have a reason for such termination.

Mrs. Bergamini asked how many construction managers were interviewed and Mr. Marshall said letters were sent to 6 people and it was advertised in the magazine and 2 names were submitted. Mr. Gessert indicated that most construction managers preferred larger projects.

Mr. Killen referred to page 5. . . the Town shall designate a representative. . . and asked who the town was in this case and Attorney McManus stated the Building Committee. Mr. Killen stated that the Council wishes to hold very tight reins on this project. Mayor Dickinson pointed out that the Comptroller's Office will pay all bills and Police Chief Bevan has been appointed Treasurer of the Building Committee. Mr. Myers stated that all bills would be reviewed by the Committee and an authorized agent would submit such bills to the Comptroller's Office for payment. Mr. Killen indicated that the Comptroller's Office would have little knowledge of change orders to be issued and Mr. Marshall pointed out that the Building Committee would appoint one person to be available every day for such purposes, at no expense.

Attorney McManus pointed out that the Building Committee is an agent of the town, the town is the town, the Comptroller is the town and they are all the town. Mr. Krupp pointed out that Article I, Section 1 refers to the Construction Manager as agent of the Town and Attorney McManus agreed he acts as the town's agent.

Mr. Killen felt the contract is very vague and responsibilities should be designated.

Mr. Polanski referred to page 10, top paragraph and Mayor Dickinson pointed out that the responsibilities of the construction manager are set forth in this contract and he is operating at the behest of the town as far as those duties set forth in this contract are concerned and this contract does not go into what duties are performed for the town by the Purchasing Agent, Comptroller, Building Committee established by the Council; this contract sets forth duties and the relationship between the construction manager and the Town of Wallingford. The Town of Wallingford is made up of many different activities and there are several different offices performing functions for the town, all operating as agents for the town. This contract is meant to spell out the duties of the construction manager.

Mr. Krupp referred to Article III, section 2 on page 5, "The Town shall designate a representative. . ." and asked who is the town in this case to which Attorney McManus replied the Building Committee. Mr. Krupp indicated this is an extremely critical appointment.

Mr. Killen referred to Article III, section 8 on page 5 and felt that the person upholding the town's end of the stick should be spelled out. Mr. William Fischer stated that Police Chief Bevan would be the on the job watchdog and this has been the intention of the Committee, a clerk of the works, so to speak. Mr. Killen felt that this is not a layman's cup of tea. Mr. Fischer explained that one of the reasons a construction manager was opted for was to have this kind of expertise on the job and part of his duties are to make sure of this.

Attorney McManus indicated that he could redefine "the Town" in all instances in the contract and completely spell out who is responsible for which duties.

Mr. Krupp agrees with Mr. Killen regarding section 8 of Article III and cannot see this item falling into the generic town responsibility as opposed to being the construction manager's responsibility. 47

Mayor Dickinson indicated that paragraphs 2 and 8 on page 5 could be deleted and go with the contract if that solves the problem. Mr. Gessert suggested deleting paragraph 8 on page 5 and changing paragraph 2 to read "The Building Committee" rather than "The Town."

Mr. Diana felt that the Town Council should designate the representative in section 2 of Article III and Mr. Krupp felt that the Council does not have the contact, expertise or background to appoint this individual and he recommends that the Building Committee be specifically designated to appoint that individual.

Mr. Krupp moved to amend Article III, Section 2 to delete the word "Town" and substitute therefor the words "Building Committee" and further, to delete Section 8 of Article III in its entirety. Mrs. Papale seconded the motion.

Vote: Unanimous ayes with the exception of Mrs. Bergamini who passed; motion duly carried.

Mr. Diana agreed to this amendment to his motion on page 1.

Vote: (Agreement, as amended, attached to and made a part of these minutes, page 1 of 11 through page 11 of 11.)

Unanimous ayes with the exception of Mrs. Bergamini and Mr. Killen who voted no; motion duly carried.

Mr. Gessert read the letter dated 8/22/84 from Mayor Dickinson regarding space in Simpson School for the Vietnam Veterans Memorial Fund Committee.

Mr. Krupp moved to authorize the Wallingford Vietnam Veterans Memorial Fund Committee to utilize the former CETA office for their purposes as long as the need exists at the discretion of this Council. Mrs. Bergamini seconded the motion.

Mr. Diana asked if town space could be given up for someone who is not a town agency and Mr. Gessert pointed out that others who are not town agencies use space in town buildings. Mr. Diana asked about insurance and Attorney McManus indicated the group would have to provide the town with an insurance policy before occupancy, a policy with \$100,000/\$300,000 limits, general liability. Mr. Charles Park indicated this would not be a problem. This policy is based on the potential liability of the town to persons being on the premises as a result of this occupancy.

Vote: Unanimous ayes; motion duly carried.

Mr. Diana moved to establish a new line item A/C 511-650 Public Works Department-Railroad Station Outside Contracts, seconded by Mrs. Bergamini.

Mr. Killen asked on what basis a line item is being established for something that was not discussed at budget time and wanted to know if the Council is authorized to do so. Mayor Dickinson indicated that the Council has the power at any time to set up a new line item outside of the budget process for expenditures requested. Mr. Killen asked where the authority to do so was in the Charter and Attorney McManus indicated it is inherent. Mr. Myers explained that the bottom line was not being changed and these funds were all within the Public Works budget.

Mr. Killen stated that any department could introduce new line items with excess funds without going before a public hearing simply because of the weight of the votes behind it and that smacks of politics and he doesn't like it. Mr. Killen would like a formal legal opinion from the Town Attorney's Office on this matter.

Mrs. Papale pointed out that this \$500 is just for design of the gazebo and there will be further costs. Mayor Dickinson commented that this is town property, on the green by the railroad station and this is an attempt to improve the downtown area. The Beautification Committee has a much larger project that involves property not owned by the town and the green should rightfully be the town's expense and the town should set an example. Mr. Gessert indicated that progress on the part of the town will promote a willingness on the part of the Beautification Committee.

480 Vote: Unanimous ayes with the exception of Messrs. Killen and Krupp and Mrs. Papale who voted no; motion duly carried.

Mrs. Bergamini moved a transfer of \$500 from C504-01 to 511-650, Public Works. Mr. Rys seconded the motion.

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

Mr. Gessert read the 8/22/84 letter from Steven L. Deak regarding acceptance of one Wausau Snow Plow, Model No. R-4511.

Mrs. Bergamini moved acceptance of one Wausau Snow Plow, Model No. R-4511, seconded by Mr. Rys.

Mr. Killen asked why the town should be doing business with Connecticut Equipment Sales Co. if past problems could not be solved. Mr. Deak stated that the plow being offered is a different type from the one with which the town had problems. Mr. Killen does not like to go on record as being you are taking this to say you can sell us all the inferior products you want and in the future make a generous offer and we will gladly forgive them. Mr. Killen asked if this supplier had received any bids in the recent past and Mr. Deak indicated he had not. Mrs. Bergamini indicated that acceptance of this snow plow was not with any contingencies.

Vote: Unanimous ayes with the exception of Mrs. Papale who was not present; motion duly carried.

Mr. Killen moved to waive Rule V and there was some discussion about this not being allowed under FOI guidelines at a special meeting. Mr. Killen stated that his problem was that he sent a letter to the Town Attorney's Office and requested that an item be put on the next agenda, whether regular or special. That letter was a followup to a letter sent on 6/1/84 and Mr. Killen feels he has been shunted aside. Mr. Gessert stated he had a copy of Mr. Killen's letter but this agenda was prepared by the Mayor's Office and there was a communication problem and indicated Mr. Killen has the right to have a legal opinion formalized on the funding and financing of the utilities and this should be discussed at a special meeting. Mr. Killen indicated this matter cannot be discussed without the opinion from the Town Attorney.

Mr. Krupp pointed out that the Council Chairman cannot ignore any request from a member of the Council to put an item on an agenda and, therefore, at the September 11, 1984 meeting, that item must appear on the agenda, under the Council rules.

Mr. Killen wanted to make two points--(1) the request has been there for a long time and (2) no where does it say that anyone other than the Council Chairman, Acting Chairman or Council Secretary will draw up an agenda but that was done also and he was still sidestepped. Mr. Killen wanted to know if he would receive this opinion in the interim and Mayor Dickinson expected it to be available by the next regular Council meeting, if not before. Mr. Gessert indicated that if necessary, a special meeting will be held to discuss this matter.

A motion to adjourn was duly made, seconded and carried and the meeting adjourned at 7:20 p.m.

Delores B. Fetta
Council Secretary

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

⁴
September ~~11~~, 1984
Date

Rosemary A. Rascati
Rosemary A. Rascati, Town Clerk

⁵
September ~~11~~, 1984
Date

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AGREEMENT

THIS AGREEMENT, dated this _____ day of _____, 1984, by and between the WALLINGFORD MUNICIPAL CORPORATION, hereinafter referred to as the "Town", acting herein by _____, its _____ hereunto duly authorized, and THE C. F. WOODING CO., of the Town of Wallingford, County of New Haven and State of Connecticut, acting herein by Terry Wooding, its Vice President hereunto duly authorized, hereinafter referred to as the "Construction Manager".

WITNESSETH:

WHEREAS, the Town has acquired from the State of Connecticut certain property located on North Main Street, Wallingford, Connecticut, known as the National Guard Armory for the purpose of converting the property into a Police Station Headquarters, hereinafter referred to as the "Project"; and

WHEREAS, the architect for the Project is Kaestle Boos Associates, Inc., of New Britain, Connecticut, hereinafter referred to as the "Architect"; and

WHEREAS, all construction work for the Project shall be performed by trade contractors under individual contracts between the Town and the trade contractors, and all materials, supplies and equipment required for the construction of the Project shall be paid for, purchased or provided by the Town; and

WHEREAS, the Town and the Construction Manager have entered into an agreement whereby the Construction Manager will provide certain construction management and related services in connection with the Project; and

WHEREAS, the parties are desirous of committing to writing a memorandum of their agreement in connection with the Project.

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements hereinafter set forth and for good and other valuable considerations, the parties hereby agree as follows:

ARTICLE I

Scope of the Agreement

1. The Construction Manager, as agent of the Town, shall provide construction management services in accordance with the terms and conditions of this Agreement.
2. The Construction Manager accepts the relationship of trust and confidence established between him and the Town by this Agreement. The Construction Manager covenants with the Town to furnish his best skill and judgment and to cooperate with the Architect in furthering the interests of the Town. He agrees to furnish efficient business administration and superintendence and to use his best efforts at all times in the best way and in the most expeditious and economical manner consistent with the interests of the Town.

3. The Construction Manager acknowledges that the Police Station Building Project is on a strict construction budget having a maximum allocation of _____ million dollars and the Construction Manager further acknowledges that he will use his best efforts to bring the project in on budget.

ARTICLE II

Construction Manager's Services

The Construction Manager will provide the following construction management and related services for the Project:

(A) PRECONSTRUCTION SERVICES

1. Develop and submit a complete construction quantity budget estimate and cash flow prediction for the Project. Develop alternates as required to meet the budget allotment.
2. During preparation of budget estimates, develop alternative studies leading to possible cost and time savings.
3. Prepare and monitor CPM schedule showing time required for completion of all construction operations, to include critical delivery procurement and to coordinate construction operations.
4. Review construction documents as prepared by the Architect with respect to possible duplication of work, omissions and scarce labor items which could affect time and costs, without however assuming any of the Architect's responsibility for design. Advise on divisions of the construction work to facilitate obtaining complete and sensible trade contract bids.
5. Consult with others and review with the Town and Architect recommendations for an overall insurance program to provide maximum coverage with minimum cost.
6. Maintain close liaison with the Architect, including visits to the Architect's Office and review of the drawings and specifications, in order to advise the Architect and the Town, and to make recommendations for corrective action, if it appears that the budget guidelines may be exceeded.

(B) CONSTRUCTION SERVICES

1. Prepare Invitations to Bid with maximum effort to achieve completeness of contract bids and avoidance of extra charges. Obtain unit prices for added or omitted work to facilitate processing of changes ordered by the Town.
2. Upon approval by the Town and Architect and receipt of satisfactory Contract Documents for the work involved, coordinate with the Town Purchasing Agent who will advertise and receive the Bids and recommend awards of individual portions of the Project. The Construction Manager shall also review trade contracts prepared by the Purchasing Agent and make recommendations when appropriate.
3. Approve billings by contractors and suppliers before submission to Architect.
4. Supervision and inspection of the construction work.
5. Coordination and general direction of trade contractors.
6. Organization and scheduling of the construction work.
7. Provide job site coordination with a full time, on-site superintendent.
8. Conduct and take minutes of weekly job site meetings.
9. Provide a representative to attend Building Committee meetings as required.
10. Make necessary construction cost estimate revisions.
11. Recommend trade contractors who, in the opinion of the Construction Manager, are qualified.
12. Review shop drawings, materials and samples.

13. Provide a detailed safety program and monitor same.
14. Maintain job site records, including time and materials for all unit cost work.
15. Prepare monthly cost and progress reports.
16. Review all changes proposed by the Town and Architect: analyze thoroughly and recommend approval by the Town if costs are justified.
17. Review all Requisitions for Payment. After approval by Construction Manager, submit same to Architect and Town for payment.
18. Coordinate the work of all testing laboratories and provide necessary personnel in the field to assure that materials furnished and workmanship are in accordance with the Contract Documents.
19. Coordinate and expedite progress of all fixed equipment purchased by the Town.
20. When areas of the building near completion, prepare and execute all Punch Lists in cooperation with the Architect. Advise Town of dates of completion and assist Town in obtaining all approvals to occupy project at the earliest date possible.
21. At the proper stage of completion, instruct Town's maintenance personnel in operation of all mechanical and electrical systems. Direct preparation of maintenance manuals and "as-built" drawings to facilitate operation of the facility by the Town.
22. After completion of the Project, continue liaison with the proper guarantors for compliance with the Contract Documents during the entire guarantee period.
23. Review an insurance program for the Project with the Town.
24. Be responsible for labor relations with his own employees.
25. Advise the Town on bonding of trade contractors.
26. Provide close liaisons with the Architect.
27. Expedite critical delivery procurement.
28. Provide critical path or fast track schedule.
29. Provide all transportation required by the Construction Manager.
30. Coordinate job site facilities: locate trailers to house Contractor's equipment, use of parking areas, etc.

ARTICLE III

Town's Responsibilities

The Town's responsibilities in connection with the Project shall include:

1. The Town shall provide full information regarding its requirements for the Project.
2. The Building Committee shall designate a representative who shall be fully acquainted with the Project, and has authority to render decisions promptly, approve Project construction budgets, issue change orders and furnish information expeditiously.
3. The Town has retained an Architect for design and to prepare construction documents for the Project. The Architect's services, duties and responsibilities are described in an Agreement between the Town and the Architect, pertinent parts of which will be furnished to the Construction Manager and will not be modified without written notification to him.
4. The Town shall furnish such legal, accounting and insurance counselling services as may be necessary for the Project, and such auditing services as it may require.
5. The Town shall provide the Construction Manager with a sufficient quantity of construction documents.
6. If the Town becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, it shall give prompt written notice thereof to the Construction Manager.
7. The services, information, surveys, and reports to be provided by the Town shall be furnished at the Town's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.
8. Deleted.

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ARTICLE IV

Costs of the Project

1. The Town shall be responsible for and shall pay directly all trade contractors performing work on the Project and all suppliers and vendors of materials, supplies and equipment for the Project. Except as may be otherwise provided herein, the Town shall also be responsible for and shall pay directly all other costs of construction including, but not limited to, all necessary permit and license fees, costs of tests and surveys, architect's and engineer's fees, insurance premiums, legal and accounting fees and the Construction Manager's Compensation described in Article V herein.

2. Evaluation of the Town's Project Budget and cost estimates prepared by the Construction Manager represent the Construction Manager's best judgment as a professional familiar with the local construction industry. It is recognized, however, that the Construction Manager does not have control over the costs of labor, materials, supplies and equipment or over trade contractor bids or contracts entered into by the Town in connection with the Project, therefore, the Construction Manager cannot and does not represent that the construction costs will not vary from the Project Budget or from any cost estimate or evaluation prepared by the Construction Manager.

ARTICLE V

Construction Manager's Compensation

1. Reimbursable Costs. The Construction Manager shall be reimbursed the following actual costs incurred by the Construction Manager in performing his services hereunder:

- a) All job site costs actually incurred by the Construction Manager, including, without limitation, the costs of properly maintaining the job site, while providing such services as may be required for the fullest and most efficient prosecution of the construction work, and of maintaining a field office at the site, utilities, telephone and sanitary facilities.
- b) All cost of necessary reproduction of plans, drawings and specifications.

2. Fee.

- a) The Town shall pay the Construction Manager as compensation for all of the services to be performed by the Construction Manager hereunder, in addition to his Reimbursable Costs, a Fee of \$105,000, which Fee shall include the salary of the full-time on-site job superintendent the general operating expenses of the Construction Manager's offices (other than the on-site field office) and the Construction Manager's profit.
- b) In the event of (i) a material change in the scope of the Project or (ii) a delay in the completion of the Project for any reason set forth in Article VI, paragraph 4, there shall be equitable adjustment in the Construction Manager's Fee to compensate the Construction Manager for his increased expenses not covered by Reimbursable Costs.

3. Payment.

- a) The Construction Manager shall submit monthly to the Town a statement of all Reimbursable Costs incurred and the amount of the Construction Manager's Fee due (pro-rated on the basis of services performed).

- b) The Construction Manager's monthly statement shall be reviewed by the Architect and the Building Committee and shall be paid by the Town within ten days following submission by the Construction Manager. 45

ARTICLE VI

Schedule

The services to be provided by the Construction Manager under this Agreement shall be in accordance with the following schedule:

1. Pre-construction services shall be commenced by the Construction Manager upon the execution of this Agreement.

2. Construction of the Project shall commence at the earliest practical date following written notice from the Town that appropriate trade contracts have been let. The target date for commencement of construction is _____, 1984. The date of commencement of construction shall be evidenced by instrument in writing signed by the Town and the Construction Manager.

3. Construction of the Project shall be completed within eight months following the date of commencement of construction.

4. Once underway, if construction shall be delayed at any time by any act or neglect of the Town or the Architect; or by changes ordered in the Project; or by labor disputes, fire, unusual delay in transportation, unavoidable casualties; or by any other causes beyond the Construction Manager's control; or by delay authorized by the Town - the Construction Completion Date shall be extended by Change Order for a reasonable length of time.

ARTICLE VII

Changes in the Project

The Town may request changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions. If authorized changes in the Project shall require adjustment in the scheduled date of completion of construction or in the Construction Manager's fee, such adjustment shall be set forth by appropriate Change Order. All Change Orders shall be in writing signed by the Town or its authorized representative, the Architect and the Construction Manager.

ARTICLE VIII

Insurance, Indemnity and Waiver of Subrogation

1. Indemnity.

- a) The Construction Manager agrees to indemnify and hold the Town harmless from all claims for bodily injury and property damage (except for damage to the Project property and the Project construction work) that may arise from the Construction Manager's operations under this Agreement.
- b) The Town shall require all trade contractors working on the Project to agree to indemnify the Town and the Construction Manager and hold them harmless from all claims for bodily injury and property damage (except for damage to the Project property and the Project construction work) that may arise from such trade contractor's operations.

480 2. Construction Manager's Liability Insurance. The Construction Manager shall maintain the following insurance coverage as will protect the Construction Manager from any claims which may arise out of or result from the Construction Manager's operations under this Agreement:

Comprehensive Liability Insurance

A. Limits of Liability

- 1) Bodily Injury & Property Damage Combined Single Limit
\$500,000 each occurrence
\$500,000 annual aggregate

B. Including

- 1) Products and Completed operations liability
- 2) Broad form property damage liability
- 3) Personal injury liability
- 4) Blanket Contractual liability
- 5) Explosion, Collapse, and Underground liability (as necessary)

Comprehensive Automobile Liability

A. Limits of Liability

- 1) Bodily Injury & Property Damage Combined Single Limit
\$500,000

B. Including

- 1) Owned vehicles
- 2) Non-owned vehicles
- 3) Leased vehicles

Workers Compensation

A. Limits of Liability

- 1) Statutory employee benefits
- 2) Employer's Liability \$100,000

B. Including

- 1) All States coverage (broad form)
- 2) Voluntary compensation

Comprehensive Catastrophe Liability (Umbrella)

A. Combined Single Limit:

- \$3,000,000 per occurrence
\$3,000,000 annual aggregate

3. Town's Liability Insurance. The Town shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect the Town against claims which may arise from operations under this Agreement.

4. Insurance to Protect Project. The Town shall purchase and maintain property insurance upon the entire Project for the full cost of replacement as of the time of any loss.

5. Trade Contractor's Insurance and Bonds. The Town shall require each trade contractor working on the Project to purchase and maintain insurance protecting the trade contractor and the Construction Manager similar in coverage and limits to the insurance to be maintained by the Construction Manager as described in paragraph 2 above and to furnish performance and labor and material payment bonds with respect to the work to be performed by each such trade contractor.

ARTICLE IX

Disputes

Any disputes arising out of, or relating to, this Agreement, except with respect to the Architect's decisions on matters relating to artistic effect, shall be initially submitted

to the Building Committee. If the dispute cannot be resolved by the Building Committee to the mutual satisfaction of the Town and the Construction Manager, such dispute shall then be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining. The award rendered in such arbitration proceeding shall be final and binding upon the parties and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. 487

ARTICLE X

Miscellaneous Provisions

1. All references in this Agreement to:
 - a) The "Building Committee" shall mean that Committee appointed by the Town as the Building Committee for the Project.
 - b) The "Contract Documents" shall mean all drawings, specifications and other documents which describe the construction work to be performed.
2. Payments due and unpaid under this Agreement more than 20 days after due date shall bear interest from the date payment is due at the rate of interest recoverable under Section 37-3a of the General Statutes in civil actions and arbitration proceedings.
3. In the event it shall become necessary for either party to retain an attorney to enforce any provisions of this Agreement, including the collection of delinquent payments hereunder, the losing party shall pay all costs relating thereto including reasonable attorney's fees.
4. The Town and the Construction Manager each binds itself, its successors, assigns, and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Town nor the Construction Manager shall assign, sublet or transfer its interest in this Agreement without the written consent of the other.
5. This Agreement may be terminated by the Town at any time in the event it elects not to proceed with or complete the Project and by either party upon seven days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating termination. In the event of termination, unless such termination shall be due to the fault of the Construction Manager, the Construction Manager shall be paid his Fee plus Reimbursable Costs for services performed to termination date.
6. This Agreement represents the entire and integrated agreement between the Town and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be superseded by provisions of contracts for construction and may be amended only by written Change Order or other instrument signed by both Town and Construction Manager.

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.