

CITY OF NEWPORT

**RESOLUTION**

**OF THE**

**COUNCIL**

**No. 2011-158**

WHEREAS, the Council of the City of Newport, legally assembled this fourteenth day of December, 2011, would like to recognize City Manager, Edward F. Lavallee, for his many years of dedication and service to the City of Newport;

WHEREAS, Edward F. Lavallee began his employment with the City as a Research and Development Administrator with the Newport Police Department in 1978 and served with distinction in that capacity until 2005 when he became the Acting City Manager and shortly thereafter was chosen by the City Council to serve as Newport's 11th City Manager; and

WHEREAS, Edward F. Lavallee has always adhered to the highest standards of ethical conduct and has sought to lead by example to foster an environment of integrity, responsibility and commitment to municipal service; and

WHEREAS, as an involved parent, Edward F. Lavallee spent many years coaching local basketball, soccer and baseball teams and volunteering in various capacities in local sports programs; and

WHEREAS, as a highly regarded member of the community, Edward F. Lavallee has contributed his time to many local business and civic organizations, serving on the Boards of Directors of the People's Credit Union, the Robert Potter League for Animals, the 100 Club of Rhode Island and the Newport Substance Abuse Prevention Task Force; and

WHEREAS, Edward F. Lavallee is also recognized in the local religious community as a person with a strong sense of spiritual commitment serving as a deacon, church finance officer and Eucharistic Minister in local churches; and

CITY OF NEWPORT

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**No. 2011-158**

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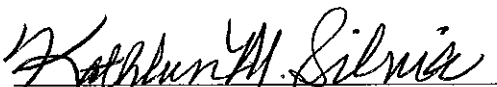
WHEREAS, Edward F. Lavallee has decided that, after thirty-three years of service to the City, it is time to retire and enjoy life and spending time with his family: his wife, Sharon; his sons, Ryan, Jared and Joseph and their families; his granddaughters, Caroline and Violet; and his relatives and friends pursuing activities and interests that he has heretofore had limited time to enjoy. NOW, THEREFORE, BE IT

RESOLVED: that the Council of the City of Newport hereby expresses its deep appreciation to Edward F. Lavallee for his many years of distinguished service with the City of Newport, for his commitment and dedication to the citizens of Newport, and wishes him well in his retirement and future endeavors.

THE NEWPORT CITY COUNCIL

IN COUNCIL

READ AND PASSED  
December 14, 2011

  
Kathleen M. Silvia  
City Clerk

CITY OF NEWPORT  

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**RESOLUTION**  
**OF THE**  
**COUNCIL**

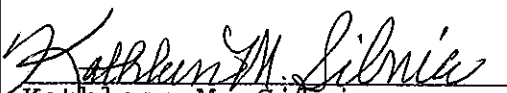
No. ....2011-159.....

RESOLVED: that the agreement for improvements to Queen Anne Square between the City of Newport and the Doris Duke Monument Foundation is hereby approved and the Mayor is authorized to enter into said Agreement on behalf of the City, subject to review of the City Solicitor's Office.

IN COUNCIL

READ AND PASSED

December 14, 2011

  
\_\_\_\_\_  
Kathleen M. Silvia  
City Clerk

## AGREEMENT

Agreement on this \_\_\_ day of December, 2011 between The **City of Newport**, a Rhode Island municipal corporation, having a place of business at 43 Broadway, Newport, Rhode Island ("**the City**") and **The Doris Duke Monument Foundation**, a non-profit Rhode Island corporation, having a place of business at 51 Touro Street in Newport, Rhode Island ("**DDMF**").

## RECITALS

1. The City is the owner of an area known as Queen Ann Square ("QAS") which is a public park located in the City of Newport and bounded westerly by Thames Street, northerly by Church Street, easterly by land of Trinity Church and southerly by Mill Street and land of the Newport Restoration Foundation.

2. DDMF is a non-profit 501(C)(3) corporation established to create and maintain a permanent memorial to Doris Duke.

3. Doris Duke was a Newport resident instrumental in the restoration and preservation of 18<sup>th</sup> century houses within the City of Newport, and both the City and DDMF desire to recognize the contribution of Doris Duke to the City of Newport.

4. Doris Duke, as part of her restoration efforts in the City of Newport, was also instrumental in establishing a public park on QAS.

5. DDMF has retained the services of Maya Lin, an internationally renowned artist to design a work of art, known as "The Meeting Room" as a part of the rehabilitation of QAS as depicted on Exhibit "A" which is attached and incorporated herein. The Meeting Room will enhance QAS to better serve the public needs and will serve as a tribute to Doris Duke in recognition of her extraordinary efforts in the preservation of historic Newport.

6. DDMF, at its sole cost and expense and as a gift to the City, shall refurbish, rehabilitate and modify QAS in compliance with **Exhibit "A"**. DDMF shall post with the

City a performance and payment bond in the amount of one and ½ times the estimate of construction cost guaranteeing the completion of said refurbishment, rehabilitation and modification of QAS in compliance with **Exhibit "A"**. DDMF shall be responsible as part of this gift for all costs of every kind and nature associated with the refurbishment, rehabilitation and modification of QAS, to include cost participation in any required or needed soil and/or ground water remediation due to the presence of contaminated soil and/or hazardous wastes, both as defined in federal, state or local environmental laws.

DDMF shall hold harmless, indemnify and defend the City and its members, directors, officers, employees, agents, contractors, and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from any injury to or death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the subject property during the refurbishment, rehabilitation or modification of QAS. The City will issue a Certificate of Completion of the project.

DDMF will be responsible for any claim or claims and pay any costs up to an initial \$175,000 and thereafter pay 55% of any claim, claims and costs, cumulatively of any kind and nature arising from the discovery, finding, transportation, storage and disposal of any oil, hazardous material, hazardous waste or hazardous substances or other contaminants on, beneath, above or under QAS as those terms are defined by any applicable law, rule or regulation, including without limitations, the Rhode Island Hazardous Waste Management Corporation Act, R.I.G.L. 23-19-1 *et seq.*, the Rhode Island Hazardous Substance Act, R.I.G.L. 23-24-1 *et seq.*, the Rhode Island Rules and Regulations for Hazardous Waste Generation, Transportation, Treatment, Storage and Disposal, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 *et seq.*, and the Resource Conservation and

Recovery Act as amended, 42 U.S.C. 9601 *et seq.*, as a result of work performed by DDMF on QAS.

In the event of any required remediation, the City will use all reasonable effort and diligence to obtain grant funding dedicated to said remediation.

DDMF shall be solely responsible for any costs associated with the testing of QAS for soil and/or groundwater contamination. The City reserves the right to terminate this Agreement as a result of the aforementioned testing indicating soil and/or groundwater contamination.

7. Construction will commence in early spring, 2012 and proceed with due diligence until completion. The commencement, scheduling and coordination of any construction activity and any associated specifications or work (including the quality and type of materials being used) on QAS must be approved by the City Manager or designee. The City Manager or designee may suspend temporarily or terminate any construction activity during the course of construction. Any contactors or subcontractors or tradesmen hired or directed by DDMF to perform work on QAS must be approved by the City Manager or designee, consent not to be unreasonably withheld.

8. DDMF, at its sole cost and expense, agrees to maintain the improvements and landscaping installed in or on QAS pursuant to **Exhibit "A"** including, but not limited to, repair and maintenance of walls, fountains, footpaths, paving, lighting (including replacement of glass and bulbs). DDMF further agrees to remove graffiti and spray paint and the like from walls, foundations and paving. Any and all maintenance to QAS will be with the approval supervision of the City Manager or designee. In the event DDMF fails to maintain QAS to the reasonable satisfaction of the City, the City shall notify DDMF, in writing, of the maintenance deficiencies. If DDMF fails to remedy the deficient conditions within sixty (60) days after notification to the reasonable satisfaction of the City, then the City may assume the maintenance of QAS and, in such event, the cost of the maintenance performed by the City shall be paid by the Maintenance Trust hereinafter established.

9. DDMF will establish a separate maintenance trust that shall be known as the QAS Maintenance Trust. DDMF shall initially fund said Trust with \$500,000 to be used and administered by the Trustees exclusively for costs associated with the maintenance tasks specified in Paragraph 8 above, in a professional and workmanlike manner. Additionally, contributions may be made to the principal of the Trust from time to time. The Trustees shall use the interest income earned by the Trust fund and so much of the principal as may be required for the maintenance tasks set forth in Paragraph 8, provided however, if the City changes the use of QAS or substantially alters the improvements to QAS made by DDMF or assumes all or a portion of the maintenance tasks, otherwise the responsibilities of DDMF under this Agreement, the Trust shall terminate and then the principal and earned income shall be paid over to DDMF and this Agreement and all obligations of either party shall cease.

10. The Trustees of said Trust shall be comprised of two designees appointed by DDMF and the City shall appoint one designated Trustee. The Trust hereof is a Rhode Island trust and its validity, construction, effort and administration shall be determined and governed by the laws of said state. The Trustees are authorized to exercise all powers conferred on them by any Rhode Island statute existing at the time of the execution hereof and may exercise all powers otherwise conferred by law. The Trustees shall not be required to furnish any bond or surety. The Trustees and any successor Trustees shall not be required to qualify in any court and are relieved of the filing of any document and accounting in any court. The term "Trustee" and pronouns referring thereto shall refer to the Trustee or Trustees from time to time acting and, if more than one Trustee is acting, shall include the plural and appropriate genders.

If at any time this Trust, created hereunder, shall be in the aggregate principal value of Fifty Thousand Dollars (\$50,000.00) or less, the Trust shall terminate and the assets in the Trustee's possession shall be paid over to the City.

11. City agrees to maintain and mow the grass and provide snow removal from all walkways and trash removal in a professional manner.

12. If requested by the City, DDMF agrees to install and maintain no fewer than two (2) surveillance cameras. The monitoring of surveillance cameras shall be the responsibility of the City.

13. DDMF to be responsible for the payment of utility bills during construction for all improvements shown on **Exhibit "A"**, and upon completion of the project, the utility bills shall be considered a maintenance cost.

#### **MISCELLANEOUS PROVISIONS**

14. DDMF shall obtain and maintain a comprehensive liability insurance policy in the amount of \$2,000,000.00 and name the City as an additional insured during the period of construction, and thereafter during the course of DDMF maintenance responsibilities.

15. The rehabilitation of QAS and the installation of the walls, fountains, pathways, lighting and other improvements are deemed to be a gift to the City of Newport from DDMF and nothing in this Agreement shall be interpreted or construed to infringe upon the fee simple ownership by the City of the land and of the improvements thereon made pursuant to this Agreement. While the City recognizes the intrinsic value of Maya Lin's design of QAS and endorses The Meeting Room as a desirable addition to the City, nothing herein shall be construed to limit the right of the City in the future to alter, change or assume the maintenance of any and all of the improvements made pursuant to **Exhibit "A"**.

16. Any refurbishment, rehabilitation and/or modification of QAS shall be compliant with all federal, state and local statutes, ordinances, rules and regulations.

17. Arbitration. Any dispute arising out of this Agreement or its implementation shall be resolved by arbitration. Arbitration shall be in accordance with the rules and procedures promulgated by the American Arbitration Association (the "AAA"). A single arbitrator shall be appointed by the AAA.

IN WITNESS WHEREOF, the parties hereto have set our hand this \_\_\_\_ day of  
December, 2011.

WITNESS:

\_\_\_\_\_

CITY OF NEWPORT

By \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_

DORIS DUKE MONUMENT  
FOUNDATION

By \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF NEWPORT

**RESOLUTION**

**OF THE**

**COUNCIL**

**No.** 2011-160

WHEREAS, business stability and growth are vital to the well-being of the City of Newport; and

WHEREAS, the national economic downturn has had a negative impact on many local businesses and

WHEREAS, it would be of benefit to the City as a whole and her residents and businesses for the Council to establish an Economic Advisory Working Group to evaluate Newport's current outreach to local business and Newport's ability to entice new business opportunities; and

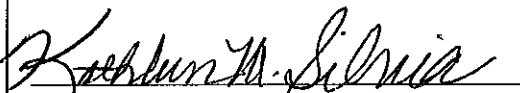
WHEREAS, the Economic Advisory Working Group would work with and solicit input from various business associations and districts throughout the City, including Lower Thames, Upper Thames, Broadway, Bellevue, and the North End. NOW, THEREFORE, BE IT

RESOLVED: that the Council hereby establishes an Economic Advisory Working Group, which shall be comprised of five to seven members, representing local businesses and the general public, as well as representatives from each of the following: the RI Economic Development Corporation, City staff, and the City Council. AND BE IT FURTHER

RESOLVED: that the Economic Advisory Working Group shall provide to the Council within 90 to 120 days, a report of their preliminary findings and recommended action items that the City of Newport may implement to promote a healthy business environment, respectful of Newport's historic character.

IN COUNCIL  
READ AND PASSED  
December 14, 2011

NAOMI NEVILLE  
STEPHEN C. WALUK  
HENRY F. WINTHROP  
CHARLES Y. DUNCAN  
JEANNE-MARIE NAPOLITANO

  
Kathleen M. Silvia  
City Clerk

CITY OF NEWPORT, RHODE ISLAND

**RESOLUTION  
OF THE  
COUNCIL**

No. 2011-161

Page 1 of 2

WHEREAS: the need for clean and renewable energy has led communities throughout the United States to encourage citizens to install wind turbines as a means of lowering energy bills, saving fossil fuels, reducing dependence on oil-producing nations and preserving our natural environment; and

WHEREAS: the size, height, operating noise, and other physical attributes of modern wind turbines require careful regulation to balance the need to develop such facilities with the protection and well-being of neighboring property-owners and the community as a whole; and

WHEREAS: the City of Newport Zoning Ordinance does not have any provisions designed to regulate wind turbines other than general regulations regulating buildings and other structures commonly found on private properties; and

WHEREAS: the interest in the installation of wind turbines is expected to increase among residents and businesses alike; and NOW  
THEREFORE, BE IT

RESOLVED: the Planning Board and City staff are charged with the task of diligently studying the issues involved in drafting special zoning legislation for wind turbines and to present a draft of a comprehensive wind turbine zoning amendment to the City Council and to consider, among other issues, regulations regarding :

- a) setbacks from neighboring property-owners
- b) flicker effect on neighboring property-owners
- c) ice throw
- d) blade shear
- e) impacts on natural resources

CITY OF NEWPORT, RHODE ISLAND

**RESOLUTION  
OF THE  
COUNCIL**

No. 2011-161

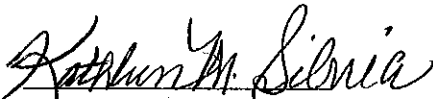
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- f) propriety of wind turbines in certain neighborhoods to include density consideration
  - g) impacts on aesthetics and neighboring property-owners in general
  - h) noise
  - i) safety
- and be it further

**RESOLVED:** that the Building Officials of the City of Newport shall not grant any building permit for wind turbines to be installed on any private property, either free-standing or attached as part of any structure; and be it further

**RESOLVED:** that this moratorium on the installation of wind turbines shall be in effect until the City Council of the City of Newport shall have acted on a comprehensive amendment to the Zoning Ordinances governing wind turbines or until nine (9) months have elapsed since the date of this resolution, whichever comes first.

IN COUNCIL  
READ AND PASSED  
December 14, 2011



Kathleen M. Silvia  
City Clerk

**CITY OF NEWPORT, RHODE ISLAND**

**RESOLUTION**

**OF THE  
COUNCIL**  
No. 2011-162

**RESOLVED:** That the attached Employment Agreement between the City of Newport and Jane Howington for the position of City Manager is hereby approved and the Mayor is authorized to sign said Agreement on behalf of the City of Newport subject to favorable review by the City Solicitor.

**IN COUNCIL  
READ AND PASSED**  
December 14, 2011



Kathleen M. Silva  
City Clerk

**Employment Agreement**  
**Between**  
**The City of Newport and Jane Howington**

This Agreement, made and entered into this \_\_\_ day of January 2012, by and between the **CITY OF NEWPORT**, STATE OF RHODE ISLAND, a municipal corporation (hereinafter referred to as the "**CITY**"), as party of the first part, and **Jane Howington** (hereinafter referred to as the "**EMPLOYEE**"), as party of the second part, both of whom understand as follows:

**WITNESSETH:**

WHEREAS, the CITY desires to employ the services of said Jane Howington as City Manager of the City of Newport, as provided by the City Charter; and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set working conditions of said EMPLOYEE; and

WHEREAS, it is the desire of the City Council to: (1) secure and retain the services of EMPLOYEE and to provide inducement for her to remain in such employment; (2) to make possible full work productivity by assuring the EMPLOYEE'S morale and peace of mind with respect to future security; (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of the EMPLOYEE; and (4) to provide a just means for terminating the EMPLOYEE'S services if the CITY so desires; and

WHEREAS, the EMPLOYEE desires to accept employment as City Manager of said CITY;

NOW THEREFORE, in consideration of the mutual covenants of the parties herein contained, the parties hereto agree as follows:

**SECTION I. DUTIES**

The CITY hereby agrees to employ said Jane Howington as City Manager of said CITY to perform the functions and duties specified by said City Charter of the CITY, and to perform such other legally permissible and proper duties and functions as the City Council shall, from time to time, assign, consistent with the Charter of the City of Newport as well as promulgated City ordinances and resolutions.

**SECTION II. TERM**

- A) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of the EMPLOYEE at any time, subject to the provisions set forth in Section 5-2 of the Charter of the City of Newport, as well as the provisions set forth in Section III.
- B) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the EMPLOYEE to resign at any time from her position with the CITY, subject only to the provision set forth in Section III.
- C) The EMPLOYEE agrees to remain in the exclusive employ of the CITY until either resignation or termination, and neither to accept nor to become employed by any other employer, until such termination or resignation date, unless said termination or resignation date is affected as hereinafter provided.
- D) The term of this Employment Agreement shall be for a term commencing on **January 9, 2012** and concluding on **January 8, 2015**. Unless previously countermanded by a vote of the City Council no less than ninety (90) days prior to the anniversary date of its original execution, this Agreement in its entirety will extend an additional year on each anniversary of its inception.

**SECTION III. TERMINATION AND SEVERANCE PAY**

In the event the EMPLOYEE is terminated by the CITY and during that time the EMPLOYEE is willing and able to perform her duties under this Agreement, then in that event the CITY agrees to pay EMPLOYEE a lump-sum cash payment equal to four

(4) months aggregate salary. The CITY also agrees to continue the EMPLOYEE'S health, dental, disability and life insurance coverage at its current level for a maximum period of six (6) months beyond termination of employment, or until similar coverage is provided to Jane Howington by a subsequent employer (and is in full force and effect) whichever comes first. Said continuation of group health insurance coverage shall be in addition to any protection afforded EMPLOYEE by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Coverage under COBRA shall begin on the date of all coverage extended under the severance provisions herein expire.

- A) However, in the event the EMPLOYEE is terminated because of her conviction of any illegal act involving personal gain, misfeasance or malfeasance, the CITY shall have no obligation to pay the severance provisions designated in this paragraph. Notwithstanding this paragraph, the payment of severance is subject further to Section 5.2 of the Charter of the City of Newport.
- B) Should the EMPLOYEE resign following a formal suggestion by the City Council that she resign, then in that event the EMPLOYEE shall be deemed to be "terminated" within the meaning and context of the herein severance pay provision.
- C) For purposes of complying with Section III of this Agreement, appropriations held as unencumbered fund balances in any fund or account of the CITY shall be deemed to be available and authorized for transfer to the appropriate salary and benefit expenditure accounts to insure fulfillment of this provision of the Employment Agreement.
- D) In the event EMPLOYEE is terminated by the CITY, any computer, printer/fax, cell phone and any other property provided for EMPLOYEE'S use elsewhere in this Agreement will be returned to the CITY.
- E) In the event the EMPLOYEE voluntarily resigns her position within the CITY, then the EMPLOYEE shall give the CITY thirty (30) days' notice in advance, unless the parties otherwise agree. Failure of said EMPLOYEE to provide said thirty (30)

days' notice in advance will result in a pro-rata reduction in any accrued benefits due EMPLOYEE as of the date of resignation.

#### **SECTION IV. SALARY**

The CITY agrees to pay the EMPLOYEE for her services rendered pursuant hereto, an annual salary of ONE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$135,000.00) payable in installments at the same time as other employees of the CITY are paid.

In addition, the CITY agrees to increase the base salary and/or other benefits of the EMPLOYEE in such amounts and to such an extent as the City Council may determine is desirable on the basis of a salary review of said EMPLOYEE from time to time.

#### **SECTION V. PERFORMANCE EVALUATION**

The CITY shall review and evaluate the performance of the EMPLOYEE at least once annually. Said review and evaluation shall be in accordance with specific criteria developed jointly by the CITY and the EMPLOYEE. The CITY shall provide the EMPLOYEE with a written summary statement of its findings and provide an adequate opportunity for the EMPLOYEE to discuss her evaluation with the CITY.

The CITY shall review and evaluate the performance of the EMPLOYEE no later than December 31<sup>st</sup> of each year and provide a reasonable opportunity to discuss said evaluation and performance expectations for the next evaluation period with the CITY.

Annually, the City Council and the City Manager shall jointly define such goals and performance objectives that they determine necessary for the proper operation of the City of Newport and, in the attainment of the City Council's policy objectives, shall further establish a relative priority among those various goals and objectives to be reduced to writing.

**SECTION VI. OUTSIDE ACTIVITIES**

EMPLOYEE agrees to remain in the exclusive employ of the CITY during the term of this Agreement.

**SECTION VII. AUTOMOBILE**

The EMPLOYEE'S duties require that she shall have exclusive and unrestricted use, at all time during her employment with the CITY, of an automobile provided to her by the CITY. The CITY shall be responsible for paying all insurance coverage, operation, maintenance and repairs, and regular replacement of said automobile including, but not limited to, liability, property damage and comprehensive insurance.

**SECTION VIII. HEALTH, DISABILITY AND LIFE INSURANCE BENEFITS**

- A) The CITY agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the EMPLOYEE and her dependents equal to that which is provided to all other employees of the City of Newport. The CITY agrees to pay the plan premiums for EMPLOYEE and her dependents not to exceed 80% of the annual medical insurance premiums. The EMPLOYEE shall pay 20% as a cost share towards all health care premiums.
- B) The EMPLOYEE may elect to submit once per calendar year to a complete physical examination, including a cardio-vascular examination, by a qualified physician selected by the EMPLOYEE, the cost of which shall be paid by the CITY.
- C) The CITY shall pay the amount of premium due for term life insurance in the amount of one and one-half (1.5) times the EMPLOYEE'S annual base salary, including all increases in the base salary during the life of this Agreement. The EMPLOYEE shall name the beneficiary of the life insurance policy.

**SECTION IX. DEFERRED COMPENSATION**

The CITY agrees to execute all necessary agreements provided by the International City Management Association Retirement Corporation (ICMA-RC) for the EMPLOYEE'S participation in said ICMA Retirement Corporation retirement plan and, in addition to the base salary paid by the CITY to EMPLOYEE, the CITY agrees to pay EMPLOYEE annual deferred compensation in an amount of FIVE THOUSAND DOLLARS (\$5,000.00). Said deferred compensation shall be paid into the ICMA-RC or any other retirement fund or funds designated by the EMPLOYEE in monthly installments. The CITY agrees to transfer ownership to succeeding employers in the event of EMPLOYEE'S resignation or discharge.

**SECTION X. GENERAL BUSINESS EXPENSES**

- A) The CITY agrees to budget for and to pay for professional dues and subscriptions of the EMPLOYEE necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the EMPLOYEE'S continued professional participation, growth, and advancement, and for the good of the CITY.
- B) The CITY agrees to budget for and to pay for travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings, and occasions to adequately continue the professional development of EMPLOYEE and to pursue necessary official functions for the CITY, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which EMPLOYEE serves as a member.
- C) The CITY also agrees to budget for and to pay for travel and subsistence expenses of EMPLOYEE for short courses, institutes, and seminars that are necessary for the EMPLOYEE'S professional development and for the good of the CITY.
- D) The CITY recognizes that certain expenses of a non-personal but job-related nature are incurred by EMPLOYEE, and agrees to reimburse or to pay said general expenses. The Finance Director is authorized to disburse such moneys

upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

#### **SECTION XI. DISABILITY**

If the EMPLOYEE is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks, or over forty (40) days over a sixty (60) working day period, the CITY shall have the option to terminate this Agreement, subject to the severance pay requirements of Section III.

#### **SECTION XII. INDEMNIFICATION**

The CITY shall defend, save harmless and indemnify EMPLOYEE against any tort, professional liability claim or demand, or other non-criminal legal, equitable or administrative action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE'S duties as City Manager, other than an action filed against the CITY by the EMPLOYEE. The CITY will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement, to provide full and complete protection to Jane Howington and or the estate of Jane Howington, by the City of Newport, as described herein, for any acts undertaken or committed in her capacity as City Manager, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following the City Manager's employment with the CITY.

#### **SECTION XIII. BONDING**

The CITY shall bear the cost of any fidelity or other bonds required of the EMPLOYEE under any law or ordinance.

#### **SECTION XIV. NO REDUCTION IN BENEFITS**

In the event the CITY at any time reduces the salary, compensation or other benefits of the City Manager in a greater amount than an applicable across-the-board

reduction for all employees of the CITY, or in the event the CITY refuses to comply with any other provision benefiting the City Manager herein, or the City Manager resigns following a formal suggestion by the City Council that she resign, then in that event EMPLOYEE may, at her option, be deemed to be terminated as provided herein.

**SECTION XV. OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

- A) The CITY and EMPLOYEE may establish other terms and conditions of employment as they may, from time to time, agree upon relating to the performance or the EMPLOYEE, provided such terms and conditions are not inconsistent with or in conflict with the provisions of the City Charter or any other law of the State of Rhode Island.
- B) EMPLOYEE'S terms and conditions of employment are governed strictly by this Agreement. All provisions of the Codified Ordinances of the City of Newport relating to vacation and sick time and other fringe benefits, as they now exist or hereinafter may be amended, shall not apply to said EMPLOYEE.
- C) The EMPLOYEE shall be entitled to Twenty (20) days vacation (annual leave) annually, and sick leave at the rate of Thirty (30) days annually to be effective as of \_\_\_\_\_ 2012. Sick leave time may not accrue from year to year, nor is Employee entitled to any cash buyout of sick leave in the event of termination or resignation. Annual leave may not accrue from year to year.
- D) Relocation Expenses. The CITY shall pay directly for the expenses of moving the EMPLOYEE, her family and personal property from Kalispell, Montana to Newport, Rhode Island, said moving expenses to include packing, moving, unpacking and insurance charges, and other reasonably related traveling expenses relative to the relocation otherwise approved by the CITY. The EMPLOYEE agrees to secure at least three (3) bids from reputable moving companies for such services and shall use the lowest responsible bidder which shall be approved by the CITY consent not to be unreasonably withheld.

**SECTION XVI. GENERAL PROVISIONS**

- A) The text herein shall constitute the entire Agreement between the parties.

- B) This Agreement shall be construed by the laws of the State of Rhode Island.
- C) This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Jane Howington.
- D) This Agreement shall become effective upon adoption and approval by the City Council of the City of Newport.
- E) If any provision or any portion thereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement or any portion thereof shall be deemed severable, shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have affixed their hands on the aforementioned day and year.

Signed in the presence of:

CITY OF NEWPORT, RHODE ISLAND

\_\_\_\_\_

\_\_\_\_\_  
Stephen C. Waluk, Mayor

\_\_\_\_\_

\_\_\_\_\_  
Jane Howington

Attested to by:

Approved as to Form:

\_\_\_\_\_

\_\_\_\_\_  
Joseph J. Nicholson, Jr., City Solicitor

CITY OF NEWPORT

**RESOLUTION  
OF THE  
COUNCIL**

**No.** 2011-163

WHEREAS, Section 42-46-6 of the Rhode Island General Laws requires that regularly-scheduled meetings of the Council are to be posted at the beginning of the calendar year, notice of which shall include the dates, times and places of meetings; and

WHEREAS, under the Rules of the Council, meetings are held on the second and fourth Wednesdays of each month; and

WHEREAS, it has been the practice of the Council to alter the regularly scheduled meets for the months of November and December because of the holiday season. NOW, THEREFORE, BE IT

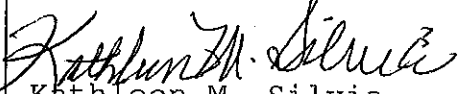
RESOLVED: that the regularly-scheduled meetings of the Council of the City of Newport shall be held in the Council Chambers of City Hall at 6:30 p.m., with pre-meetings held in the second-floor Conference Room at 6:20 p.m., on the following Wednesdays in the year 2012:

January 11	June 27
January 25	July 11
February 8	July 25
February 22	August 8
March 14	August 22
March 28	September 12
April 11	September 26
April 25	October 10
May 9	October 24
May 23	November 14
June 13	December 12

AND BE IT FURTHER RESOLVED: that, as noted above, there shall be only one regularly-scheduled meeting during the months of November and December 2012.

IN COUNCIL  
READ AND PASSED

December 14, 2011

  
Kathleen M. Silvia  
City Clerk

CITY OF NEWPORT

**R E S O L U T I O N**

**OF THE**

**C O U N C I L**

**No.** 2011-164

- WHEREAS, the City outsources the operation and management of the parking meter system to a private vendor; and,
- WHEREAS, the contract for the current parking meter management plan expires October 31, 2011; and
- WHEREAS, the City requested proposals for the management of the parking meter system under a new multi-year plan that incorporates the upgrading of parking meters to a "smart meter design," capable of accepting conventional credit cards as well as cash for meter payment charges; and
- WHEREAS, the City operated a pilot program last year to test the public response to the use of customer-friendly smart meters and received overwhelming approval of the smart meter design; and
- WHEREAS, the proposals received included the provision of new smart meters to replace the existing conventional meter heads; and
- WHEREAS, the use of "smart meters" incorporates additional charges for wireless transmission of credit card data, bank charges, and associated management fees; and
- WHEREAS, the City's solicitation mandates the replacement of meters with new meter heads to reduce the risk of failure and increase customer convenience; and
- WHEREAS, the addition of the capital cost for the provision of new meters and the "back room" charges associated with the wireless smart meter technology increase the City's cost of operation, and to cover said costs the current meter rate should be increased by \$.25 per hour; and
- WHEREAS, based on a comparison of the proposals submitted, the lowest bid and best offering to the City was submitted by Central Parking Systems, with prices for years one (1) through three (3) to be \$194,412.50 per year; and reducing the annual cost to \$186,369.50 for year four (4); and to \$171,432.50 for year five (5), and

CITY OF NEWPORT

**RESOLUTION**

**OF THE**

**COUNCIL**

**No.** 2011-164

(Page 2)

WHEREAS, Central Parking is the current vendor managing the city's parking meter system and has performed acceptably under provisions of their existing contract. NOW, THEREFORE, BE IT

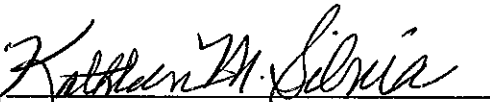
RESOLVED: that the Council award a contract for three years to Central Parking Systems, with a two-year option at the discretion of the City. AND BE IT FURTHER

RESOLVED: that Section 10.20.210 of the Codified Ordinances be amended to increase the parking meter rates by \$.25 per hour.

IN COUNCIL

READ AND PASSED

December 14, 2011



Kathleen M. Silvia  
City Clerk

THE CITY OF NEWPORT

**RESOLUTION**

**OF THE  
COUNCIL**

No.2011-165.

WHEREAS, the City of Newport is designated as a Certified Local Government and is therefore eligible to be awarded 50 percent matching grants as a local government whose municipal historic preservation program has been certified by the Rhode Island Historical Preservation and Heritage Commission and

WHEREAS, the Comprehensive Land Use Plan (2003) for the City of Newport recognizes the need for historic surveys that address information gaps, as stated on p. 5-25: "Because documentation of Newport's historical resources will also provide justification for regulations enacted in their defense, another step toward protecting Newport's historic resources will be to increase documentation for those areas in which more information is needed;" and

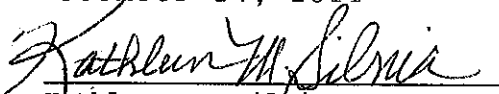
WHEREAS, the historic designed-landscape features along the edges of properties in Newport, including fences, walls, gates, and hedges are important community-character-defining elements whose significance has been largely overlooked in surveys of historic resources, including those for historic buildings and historic landscapes;  
NOW THEREFORE BE IT

RESOLVED: that the City Council supports the grant application for funding through the Rhode Island Historical Preservation and Heritage Commission's Certified Local Government Grant Program with The Preservation Society of Newport County acting as sub-grantee to provide support for a preliminary survey that will identify significant, representative historic street-edge designed-landscape features in Newport worthy of protection and begin the assessment needed for effective preservation planning for said street-edge features, and that the Mayor is authorized to sign any documents deemed necessary for said award, on behalf of the City

IN COUNCIL

READ AND PASSED

December 14, 2011

  
Kathleen M. Silvia  
City Clerk

THE CITY OF NEWPORT

**RESOLUTION**

OF THE

**COUNCIL**

No. 2011-166

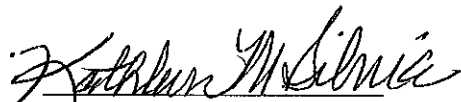
WHEREAS: proposals were requested from overhead door companies for fabrication and installation of heavy duty aluminum garage doors at Easton's Beach Rotunda building; and

WHEREAS: award has been recommended to the firm of Gibson Technology, LLC of Middletown, RI, meeting all specifications for providing the City of Newport with a total of three (3) Haas model CA-220 Heavy Duty Aluminum Sectional Garage Doors at Easton's Beach in the amount of \$6,800.00. NOW THEREFORE BE IT

RESOLVED: that the proposal of Gibson Technology, LLC is hereby accepted and that the Mayor is authorized to sign the contract for same, upon review by the City Solicitor's Office, on behalf of the City.

IN COUNCIL

READ AND PASSED  
December 14, 2011

  
Kathleen M. Silvia  
City Clerk

THE CITY OF NEWPORT

**RESOLUTION**

**OF THE  
COUNCIL**

No. 2011-167....

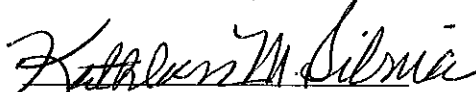
WHEREAS: Public Service advertised for design/build proposals for repair/replace services associated with New HVAC Units - Easton's Beach, Bid #12-027 at Easton's Beach Rotunda Facility and sealed bids were received on 22 November 2011; and

WHEREAS: The current HVAC system is no longer functional. The Rotunda is regularly used for special events, i.e. weddings and receptions, and requires climate controls to function as such throughout the year; and

WHEREAS: City personnel have reviewed and ranked eight (8) submitted proposals and recommends award to the highest ranking contractor who incorporates each criteria for evaluation at their bid prices for a total not to exceed \$27,700.00.

NOW, THEREFORE, BE IT RESOLVED: that the bid of Regan Heating & Air Conditioning of Providence, RI is hereby accepted at a total not to exceed the cost of \$27,700.00 and the Mayor is authorized to sign said contract on behalf of the City, subject to favorable review by the City Solicitor and the total project cost of \$27,700.00 is hereby approved.

COUNCIL  
READ AND PASSED  
December 14, 2011

  
Kathleen M. Silvia  
City Clerk

THE CITY OF NEWPORT

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**RESOLUTION**

**OF THE  
COUNCIL**

No. 2011-168....

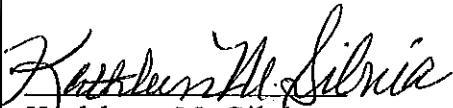
WHEREAS: The City of Newport participates in the RI League of Cities and Towns' (RILCT) RI Energy Aggregate Program (REAP) with Nextera Energy Services in accordance with RIGL 45.55.13.2 which expires in December, 2011; and

WHEREAS: The RILCT has secured a new municipal energy aggregate agreement with Direct Energy Business, LLC (aka Direct Energy) for REAP members which allows for an approximate 30% reduction in electricity supply pricing for member municipalities;

NOW THEREFORE BE IT RESOLVED: that the Newport City Council authorizes participation in the REAP electricity aggregate program with Direct Energy in accordance with RIGL 45.55.13.2 and authorizes the Mayor to sign the said contract upon review by the city solicitor.

IN COUNCIL  
READ AND PASSED

December 14, 2011

  
Kathleen M. Silvia  
City Clerk

**CITY OF NEWPORT**

**RESOLUTION**

**OF**

**THE COUNCIL**

**NO. 2011-169**

WHEREAS, the Regional Fire Department Grant Partner's (Newport, Middletown, Portsmouth, and Little Compton) Fire Life Safety Trailer and Sparky the Fire Dog Robot are no longer in service and beyond repair; and

WHEREAS, the loss of these educational aides has greatly reduced the ability of the Regional Fire Department Grant Partners to deliver their Fire Prevention Programs; and

WHEREAS, there are excess funds available through the 2009 Assistance to Firefighters Grant that could be utilized for Fire Prevention purposes; and

WHEREAS, the Regional Fire Department Grant Partners have applied for and have been granted authorization by FEMA to purchase a new Sparky & Pumper Super Motors Package, the Animated Sparky the Fire Dog Costume at a cost of \$14,822.50, and (4) ZVW515 Smoke Makers (with fluid) at a cost of \$4,477.00 for a cost of \$19,299.50; and

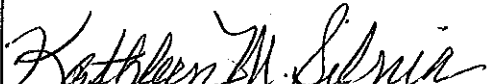
WHEREAS, the acquisition of these educational tools will greatly assist in restoring the Regional Fire Department Grant Partner's ability to convey their Fire Life Safety message; and

WHEREAS, the City of Newport's 20% match cost for the purchase of the equipment will be \$964.98. NOW THEREFORE BE IT

RESOLVED: that the City of Newport approves the purchase of the aforementioned equipment, for a total price not to exceed \$19,299.50, and the Mayor is authorized to sign the required documents for same on behalf of the City, subject to favorable review by the City Solicitor.

IN COUNCIL

READ AND PASSED  
December 14, 2011

  
Kathleen M. Silvia  
City Clerk

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**RESOLUTION**

**OF THE  
COUNCIL**

No. 2011-170...

WHEREAS: the former Carey School property (Plat 40, Lot 15-4) was relinquished by the School Department for disposition and redevelopment, and

WHEREAS: the Planning and Development Department developed and issued an RFP, met with developers, and reviewed proposals, and

WHEREAS: the City Council reviewed the development proposal submitted by Arch Street Development LLC, and

WHEREAS: the City Council directed the Administration to finalize a Purchase and Sale (P&S) Agreement for their review and approval, and NOW THEREFORE, BE IT

RESOLVED: the City of Newport approves the Purchase and Sale (P&S) Agreement between Arch Street Development LLC. and the City of Newport for the city-owned property located at 32 Carey Street (Plat 40, Lot 15-4), formerly known as the Carey School.

IN COUNCIL

READ AND PASSED

December 14, 2011



Kathleen M. Silvia  
City Clerk

THE CITY OF NEWPORT

**RESOLUTION**

**OF THE  
COUNCIL**

No. 2011-171.....

WHEREAS: The City of Newport recognizes the need to provide safety enhancements to the city rights-of-way for the general health, safety and welfare its citizens; and

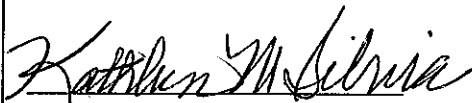
WHEREAS: The City of Newport has been engaged in collaborative efforts with the Rhode Island Department of Transportation (RIDOT) for purposes of funding both the design and construction of streetscape improvements to Broadway between Bliss Road and Farewell Street; and

WHEREAS: The RIDOT requires official endorsement of the project for purposes of utilizing state and federal construction funding for the project.

NOW THEREFORE, BE IT RESOLVED: That the Newport City Council endorses the Broadway Streetscape project's conceptual design improvements, and directs City Administration to draft a letter of support to RIDOT stating its endorsement thereof.

IN COUNCIL  
READ AND PASSED

December 14, 2011



Kathleen M. Silvia  
City Clerk

THE CITY OF NEWPORT

**RESOLUTION**

**OF THE  
COUNCIL**

No.2011-172.....

WHEREAS: The Newport City Council approved the Design-Build Public Boating Visitor Center; and

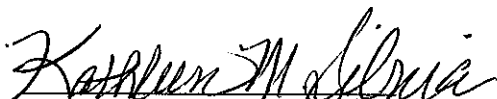
WHEREAS: The city administration received recommendations from a civil engineer regarding on site stormwater infiltration and management; and

WHEREAS: The city administration has received pre-approval from RIDEM allowing the installation of drill hall gutters as a reimbursable boating grant expense; and

WHEREAS: The lowest most qualified bidder is Alhambra Building Company of Warwick, RI, to furnish and install new copper gutters, downspouts and flashing.

NOW THEREFORE, BE IT RESOLVED: The Newport City Council hereby approves Contract 12-024, associated with the Harbor Center Gutter Replacement Project, with Alhambra Building Company of Warwick, RI in the amount of \$78,800 and authorizes the Mayor to sign said contract on behalf of the City, subject to favorable review by the City Solicitor.

IN COUNCIL  
READ AND PASSED  
December 14, 2011



Kathleen M. Silvia  
City Clerk

THE CITY OF NEWPORT

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**RESOLUTION**

**OF THE  
COUNCIL**

No. ...2011-173..

NOW THEREFORE, BE IT RESOLVED: That the Newport City Council approves amending the existing contract (# with Narragansett Improvement Co. for roadway improvements in the amount of \$20,316.32 for a new contract not to exceed total of \$1,042,522.67 thru the transfer of unused funds from PO 19199 to PO 19404 for purposes of completing road repairs to Waites Wharf in anticipation of 2012 events.

IN COUNCIL  
READ AND PASSED  
December 14, 2011



Kathleen M. Silvia  
City Clerk

THE CITY OF NEWPORT

**RESOLUTION**

**OF THE  
COUNCIL**

No. 2011-174...


WHEREAS: The Newport City Council approved Contract No. 11-058 for Historic Paving Program - Washington Square Phase 3, in partnership with the Rhode Island Department of Transportation (RIDOT), via Resolution 2011-059, dated April 13, 2011; and

WHEREAS: The Department of Public Services recommends extending the existing contract prices via a supplemental agreement per Section XI of the existing contract in order to efficiently advance the objectives of the city's infrastructure improvement program.

NOW, THEREFORE, BE IT RESOLVED: that the City Council authorizes an increase to the existing contract in the amount of \$160,000 for a new not to exceed total of \$1,182,200 under the existing contract 11-058 with Manuel R. Pavao Contractors Incorporated and extends the performance date to June 30, 2012 plus an additional \$15,000 for police details.

AND BE IT FURTHER RESOLVED: That the Mayor is authorized to sign on behalf of the City a supplemental agreement, upon favorable review by the City Solicitor's Office with Manuel R. Pavao Contractors Incorporated, of Rehoboth, MA in order to incorporate additional work locations and associated funds to the existing contract.

IN COUNCIL  
READ AND PASSED  
December 14, 2011

  
Kathleen M. Silvia  
City Clerk

THE CITY OF NEWPORT

**RESOLUTION**

**OF THE  
COUNCIL**

No. 2011-175....

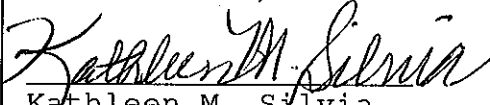
WHEREAS: The Newport City Council approved Contract No. 11-034 for Sidewalk Restoration via Resolution 2011-028, dated February 23, 2011; and

WHEREAS: The Department of Public Services recommends extending the existing contract prices via a supplemental agreement per Section XI of the existing contract in order to efficiently advance the objectives of the city's infrastructure improvement program.

NOW, THEREFORE, BE IT RESOLVED: that the City council authorizes an increase to the existing contract in the amount of \$200,000 for a new not to exceed total of \$434,821 under the existing contract 11-034 with Manuel R. Pavao Contractors Incorporated and extends the performance date to June 21, 2012 plus an additional \$20,000 for police details.

AND BE IT FURTHER RESOLVED: That the Mayor is authorized to sign on behalf of the City a supplemental agreement, upon favorable review by the City Solicitor's Office with Manuel R. Pavao Contractors Incorporated, of Rehoboth, MA in order to incorporate additional work locations and associated funds to the existing contract.

IN COUNCIL  
READ AND PASSED  
December 14, 2011

  
Kathleen M. Silvia  
City Clerk

THE CITY OF NEWPORT

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**RESOLUTION**

**OF THE  
COUNCIL**

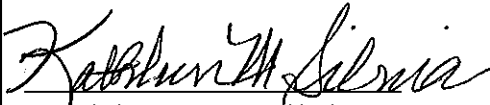
No. 2011-176...

NOW THEREFORE, BE IT RESOLVED: That the Newport City Council approves the agreement by and between Waste Management and the City of Newport to provide the following services for the period from January 1, 2012 through June 30, 2013 and authorizes the Mayor to sign said agreement upon review and approval of the city solicitor:

Use of the Waste Management North Halsey Street waste transfer station by Newport residents with the cost of two (2) five hundred (500) pound loads per year to be paid for by the City of Newport.

Use of the Waste Management North Halsey Street waste transfer station by Newport residents at a 30 percent discounted rate for all loads above the two loads paid for through the City funded program.

IN COUNCIL  
READ AND PASSED  
December 14, 2011

  
Kathleen M. Silvia  
City Clerk

THE CITY OF NEWPORT

**RESOLUTION**

**OF THE**

**COUNCIL**

No. 2011-177.

WHEREAS, the City of Newport has a contractual agreement with Complus Data Innovations for the management of the City's parking ticket system; and

WHEREAS, the contract is programmed to expire in the middle of the City's summer season; and

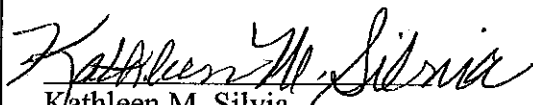
WHEREAS, it would be disruptive and costly to change vendors and replace the existing computerized ticket management network during the City's heaviest period of ticket issuance. NOW THEREFORE BE IT

RESOLVED: that the Newport City Council authorizes the extension of an agreement with Complus Data Innovations to continue the current service for an additional six months, thereby causing the agreement to expire on December 31, 2012.

IN COUNCIL

READ AND PASSED

December 14, 2011

  
Kathleen M. Silvia  
City Clerk

**CITY OF NEWPORT**  
**ORDINANCE**  
**OF THE**  
**COUNCIL**

**NO.** 2011-030

AN ORDINANCE OF THE CITY OF NEWPORT APPROVING THE FINANCING OF IMPROVEMENTS TO THE NEWPORT WATER SYSTEM INCLUDING, BUT NOT LIMITED TO, THE CONSTRUCTION AND EQUIPPING OF A NEW TREATMENT PLANT, INCLUDING DEMOLITION OF THE EXISTING TREATMENT PLANT, AND CONSTRUCTION OF LONG-TERM CAPITAL IMPROVEMENTS TO A SECOND WATER TREATMENT PLANT AND ALL ATTENDANT EXPENSES AND APPROVING THE ISSUANCE OF WATER REVENUE BONDS AND NOTES THEREFOR IN AN AMOUNT NOT TO EXCEED \$85,000,000

Be it Ordained by the City of Newport that:

SECTION 1. The sum of Eighty-Five Million Dollars (\$85,000,000) is appropriated for the purpose of financing of improvements to the Newport water system including, but not limited to, the construction and equipping of a new treatment plant, including demolition of the existing treatment plant, and construction of long-term capital improvements to a second treatment plant and all attendant expenses (collectively, the "Project").

SECTION 2. In accordance with Chapter 46-12.8 of the Rhode Island General Laws, the Director of Finance and the Mayor are hereby authorized to borrow an amount not exceeding Eighty-Five Million Dollars (\$85,000,000) from the Rhode Island Clean Water Finance Agency, and to evidence such loan, such officers are hereby authorized to issue and refund on behalf of the City, in an amount not exceeding Eighty-Five Million Dollars (\$85,000,000) water revenue bonds (the "Bonds") of the City, at one time, or from time to time in order to meet the foregoing appropriation.

SECTION 3. The said officers from time to time may issue and refund not exceeding \$85,000,000 interest bearing or discounted water revenue notes (the "Notes") in anticipation of the issue of said Bonds.

SECTION 4. The Bonds and Notes shall be payable solely from revenues of the Newport water system. The City may issue bonds, notes, or other obligations on a parity with these Bonds. The manner of sale, amount, denominations, maturities, conversion or registration privileges, interest rates, medium of payment, and other terms, conditions and details of the Bonds or Notes may be fixed by the officers authorized to sign the Bonds or Notes.

SECTION 5. Pending the issuance of the Bonds under Section 2 hereof or pending or in lieu of the issue of Notes under Section 3 hereof, the Director of Finance, at the

**CITY OF NEWPORT  
ORDINANCE  
OF THE  
COUNCIL**

**NO.** 2011-030

(Page 2)

written direction of the City Council, may expend funds from the General Fund or Water Fund of the City for the purposes specified in Section 1 hereof. Any advances made under this section shall be repaid without interest from the proceeds of the Bonds or Notes issued hereunder or from the proceeds of applicable federal or state assistance or from other available funds.

SECTION 6. The Director of Finance and the Mayor are also authorized, empowered and directed, on behalf of the City, to: (i) execute, acknowledge and deliver a Supplemental Indenture (the "Supplemental Indenture") amending and supplementing the Trust Indenture dated March 7, 2007 by and between the City and Wells Fargo Bank, N.A., as trustee (as amended, the "Trust Indenture"), and any and all other loan agreements, documents, certificates or instruments necessary to effectuate such borrowing; (ii) amend, modify or supplement the Trust Indenture, the Bonds or Notes and any and all other loan agreements, documents, certificates or instruments at any time and from time to time, in such manner and for such purposes as such officers shall deem necessary, desirable or advisable; (iii) direct the Trustee with regard to investments of trust funds pursuant to the Trust Indenture; and (iv) do and perform all such other acts and things deemed by such officers to be necessary, desirable or advisable with respect to any matters contemplated by this Ordinance in order to effectuate said borrowing and the intent hereof.

SECTION 7. The Director of Finance and the Mayor are hereby authorized to deliver the Bonds or Notes to the purchaser and said officers are hereby authorized and instructed to take all actions, on behalf of the City, necessary to ensure that interest on the Bonds or Notes will be excludable from gross income for federal income tax purposes and to refrain from all actions which would cause interest on the Bonds or Notes to become subject to federal income taxes.

SECTION 8. This Ordinance is an affirmative action of the City Council of the City toward the issuance of the Bonds and Notes in accordance with the purposes of the laws of the State. This Ordinance constitutes the City's declaration of official intent, pursuant to Treasury Regulation §1.150-2, to reimburse the City's General Fund or the City's Water Fund for certain capital expenditures for the Project paid on or after the date which is sixty (60) days prior to the date of this Ordinance but prior to the issuance of the Bonds or Notes. Such amounts to be reimbursed shall not exceed Eighty-Five Million Dollars (\$85,000,000) and shall be reimbursed not later than eighteen (18) months after the later of (a) the date on which the expenditure is paid or (b) the date on which the Project is placed in service or abandoned but in no event later than three (3) years after the date on which the expenditure is paid.

**CITY OF NEWPORT  
ORDINANCE  
OF THE  
COUNCIL**

**NO.** 2011-030

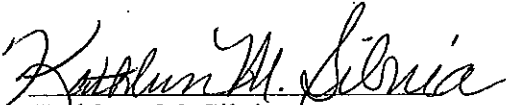
(Page 3)

SECTION 9. The Director of Finance and the Mayor are authorized to take all actions necessary to comply with federal tax and securities laws including Rule 15c2-12 of the Securities and Exchange Commission (the "SEC Rule") and to execute and deliver a Continuing Disclosure Certificate in connection with the Bonds or Notes in the form as shall be deemed advisable by the Director of Finance and the Mayor in order to comply with the SEC Rule. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate, as it may be amended from time to time. Notwithstanding any other provision of this Ordinance or the Bonds or Notes, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an event of default; however, any Bondholder or Noteholder may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Section and under the Continuing Disclosure Certificate.

IN COUNCIL

READ AND PASSED

December 14, 2011

  
Kathleen M. Silvia  
City Clerk