

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2017-254

Council Meeting Date: 10-10-2017

Date Adopted: 10-10-2017

TITLE: RESOLUTION AUTHORIZING AGREEMENT BETWEEN THE BOROUGH OF NEW PROVIDENCE AND HART HALSEY LLC DBA EXTRA DUTY SOLUTIONS FOR EXTRA DUTY ADMINISTRATIVE SERVICES

Councilperson Kapner submitted the following resolution, which was duly seconded by Councilperson Madden.

BE IT RESOLVED by the Mayor and Council of the Borough of New Providence, in the County of Union and State of New Jersey, that they do hereby approve and authorize an agreement between Hart Halsey LLC dba Extra Duty Solutions and the Borough of New Providence for extra duty administrative services, in the form attached hereto.

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of New Providence in the County of Union and State of New Jersey, that they do further authorize and direct the Borough Administrator and Borough Clerk to execute same on behalf of the Borough of New Providence.

APPROVED, this 10th day of September, 2017.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO			X	
GENNARO	X			
KAPNER	X			
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 10th day of September, 2017.

Wendi B. Barry, Borough Clerk



INDEPENDENT ADMINISTRATIVE SERVICES AGREEMENT

This Professional Services Agreement (this “Agreement”) is entered into as of the ___ day of _____, 201_ (hereinafter the “Effective Date”), by and between Hart Halsey LLC dba Extra Duty Solutions, with principal office at 101 Merritt Blvd, Suite 209, Trumbull CT 06611 (hereinafter “Company”), and _____, with principal offices at _____ (hereinafter “Client” or “City”).

W I T N E S S E T H:

WHEREAS, the Client desires to retain the Company to provide certain services to the Client on the terms and conditions hereinafter set forth, and the Company desires to continue to perform such services on such terms and conditions;

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

1. Administrative Services.

- a) Subject to the terms and conditions hereof, the Client hereby engages and appoints the Company to administrate the Client’s extra duty program. This will entail:
 - I. Engaging with individuals and representatives of companies, organizations and institutions who wish to hire officers to work extra duty details (hereinafter “Customers”) via phone, website interaction or email to explain program rules and rates, vet new customers per department’s guidelines, execute the new customer process, receive requests for extra duty details, confirm extra duty details and to gather and communicate any related pertinent information and feedback.

- II. Scheduling extra duty details with department personnel in a manner consistent with department rules. Communicate as needed with department personnel to confirm detail assignment scheduling and details worked.
- III. Invoicing Customers and following-up on invoice collections in a manner agreed upon with department leadership.
- IV. Manage officer payment process in conjunction with the Client's existing pay roll process. Company will provide payroll files and direct deposit payments covering all details the Company's administrative fee (stated in Section 3) has been charged on to the Client in a cadence consistent with Client's existing pay roll process periods. Alternatively, the Company will pay Client officers directly as 1099 contractors. The chosen method is at the discretion of the Client.
- V. Collect, from Customers, and pay to the Client within payments detailed in Section 1.IV, any Client administrative fees at a level specified by the Client.
- VI. Manage the feedback loop i.e. initiate and field feedback from customers (good and bad) then share with the appropriate parties in a timely manner
- VII. Provide department leadership with appropriate reporting and transparency into the program on an on-going basis.
- VIII. Accept all Customer credit risk and finance, at sole cost to the Company, all financing "float" costs associated with invoicing Customers. Invoice remittance timing will not effect the time of pay roll and administrative fee payments Company must pay Client under Sections 1.IV and 1.V. See appendix A for operational details.

2. Term

The term of the engagement shall commence on the Effective Date and continue month-to-month unless terminated by either party for a period of two years. Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party. If the Company should breach a material obligation under this Agreement, the Client shall give the Company written notice of such breach and provide the Company an opportunity to remedy such breach within thirty (30) days of such notice. Failure to remedy any such breach within this time period will constitute sufficient grounds for termination without any further notice. Material obligations shall include, but not be limited to, the filing of bankruptcy or similar procedure due to insolvency, any unapproved assignment of, or repeated non-performance of Company's obligations under this Agreement; any breach of Company's representations and warranties; or termination or lapse of any insurance coverage or policy obligations.

3. Payment and Invoicing Terms.

In consideration for any and all services which the Company shall render to the Client pursuant to this Agreement, the Company shall charge the Customer an administration fee of 7.5%. The administration fee will be added to any extra duty revenue including, but not limited to, officer pay, cruiser fees, K9 fees, flare fees, etc.

No fees will be charged to the Client at any time.

4. Changes

Client may, with approval of the Company, change the scope of services to be offered. Such changes shall be made in writing and accepted by the Company in writing.

5. Standard of Care

- I. Company shall work closely with Client's personnel to the extent required and, if necessitated by the nature of the services under the Agreement. Company agrees to use its best reasonable efforts in its performance and agrees that completion of the services within the agreed upon time period is an essential term of this Agreement. Client will provide reasonable working space and access to Client's facility as may be reasonably required for the performance of such services. Company shall make available to Client periodically upon request, work products and other information as may be necessary to enable Client to verify that Company is proceeding in accordance with any general specifications.
- II. While at the facilities of Client, Company and its staff shall observe and follow the work rules, policies and standards of Client including but not limited to Client's rules, policies and standards relating to security of and access to Client's facilities; telephone information and intellectual property.
- III. Company shall appoint a member of its staff to be the single primary responsible individual for delivering Company's services to Client under this Agreement.
- IV. Company shall keep complete and systematic records of all services purchased by Client. Such records shall include any records relevant to any costs, expenses, or payments incurred or made by Company on behalf of Client, any financial records, procedures and such other documentation pertaining to Company's performance under this Agreement. Company shall preserve all such records for the longest of the following two periods: (i) a term of 5 years after termination of this Agreement or (ii) in accordance with the record retention period mandated by any applicable law. In the event that a legal matter arises requiring preservation of certain records, Company shall suspend destruction of such records as requested by Client or any governmental body. During the term of this Agreement and, thereafter, in accordance with the applicable record retention period, Client shall have the right to inspect, copy and audit those records identified in this Section 5.b.iv during regular business hours. THIS

RIGHT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE RIGHT TO INSPECT, COPY AND AUDIT ANY RECORDS THAT MAY PERTAIN TO INVOICE RECORDS, CONTRACTS WITH THIRD PARTIES, PAYMENTS RELATING TO THIS AGREEMENT, AND CORRESPONDENCE.

6. Independent Contractor

Client acknowledges that the Company is an independent contractor and, as such, shall be responsible for all taxes and other expenses attributable to the rendering of its administrative services hereunder to Client. This Agreement is not intended to, and shall not be construed to; create a joint venture, partnership, or employer/employee relationship as between the parties. Neither the Company nor its employees or agents shall look to Client for vacation pay, sick leave, retirement benefits, Social Security, disability or unemployment insurance benefits, or other employee benefits; nor shall the Client, or their respective employees or agents look to Company for the same. Neither Company nor Client shall be or become liable or bound by any representation, act, or omission whatsoever of the other made contrary to the provisions of this Agreement. Client acknowledges that its officers shall at no time be considered to be employees of Company.

7. Limitation of Liability.

Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other for any special, indirect consequential, lost profits or punitive damages.

8. Indemnification.

EACH PARTY ("INDEMNIFYING PARTY") SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER ("INDEMNIFIED PARTY"), ITS AGENTS, SERVANTS, EMPLOYEES, OFFICERS, DIRECTORS, ATTORNEYS, SUBSIDIARIES AND ASSIGNS FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, LOSSES, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS) ARISING AS A RESULT OF ANY NEGLIGENCE, ILLEGALITY OR WRONGDOING OF ANY KIND RELATED TO SERVICES PROVIDED ALLEGED OR ACTUAL ON THE PART OF THE INDEMNIFYING PARTY PROVIDED SUCH CLAIMS, LOSSES, DAMAGES AND LIABILITIES WERE NOT CAUSED IN WHOLE OR INPART, DIRECTLY OR INDIRECTLY, BY ANY ACT OR OMISSION OF THE INDEMNIFIED PARTY. IN ADDITION, THE INDEMNIFIED PARTY MUST PROMPTLY NOTIFY THE INDEMNIFYING PARTY IN WRITING OF ANY SUCH CLAIM AND THE INDEMNIFYING PARTY IS PERMITTED TO CONTROL FULLY THE DEFENSE AND ANY SETTLEMENT OF SUCH CLAIM AS LONG AS SUCH DEFENSE OR SETTLEMENT SHALL NOT INCLUDE AN ADMISSION OF GUILT BY OR FINANCIAL OBLIGATION ON THE INDEMNIFIED PARTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE ANY TERMINATION, EXPIRATION, OR CANCELLATION OF THIS AGREEMENT.

9. Severability.

Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. Any provision shall nevertheless remain in full force and effect in all other circumstances.

10. Insurances.

Both parties specifically agree to maintain adequate insurance coverage for the services in this Agreement.

- a) At all times during performance of the Services, Hart Halsey LLC d/b/a Extra Duty Solutions (“Company”) shall secure and maintain in effect insurance to protect the City and the Company from and against all claims, damages, losses, and expenses arising out of or resulting from the Company’s performance of the Services under this Contract. Company shall provide and maintain in force insurance in limits no less than that stated below, as applicable.
- b) Commercial Liability Insurance. Before this Contract is fully executed by the parties, Company shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence combined single limit bodily injury and property damage, and Three Million Dollars (\$3,000,000.00) general aggregate. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract. The insurance shall be with an insurance company or companies rated A-VII or higher in Best’s.
- c) Professional Liability Insurance. Before this Contract is fully executed by the parties, Company shall provide the City with a certificate of insurance as evidence of Professional Errors and Omissions Liability Insurance with coverage of at least Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate limit of at least Three Million Dollars (\$3,000,000.00). The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. The insurance shall be with an insurance company or companies rated A-VII or higher in Best’s Guide.
- d) City employees will not be covered under the Company’s worker’s compensation insurance. Client shall be responsible for determining what, if any, worker’s compensation coverage shall be required for officers while on extra duty and Client and/or Customer shall be responsible for obtaining and

keeping in force any such worker's compensation insurance coverage that is required.

11. Survival.

Sections 2 through 19, inclusive, of this Agreement shall survive the expiration or termination of this Agreement in accordance with their terms.

12. Notice.

Any notice required or permitted to be given under this Agreement shall be in writing and deemed effective if either delivered in person or by overnight courier, facsimile or first class mail, certified with return receipt requested, or email. Notices to the Client shall be delivered to:

Attention: _____
Email: _____

Notices to the Company shall be delivered to:

Hart Halsey LLC
101 Merritt Blvd
Trumbull CT 06611
Attention: Rich Milliman
Email: RMilliman@HartHalsey.com

13. Assignment.

The Agreement is not assignable or transferable by Client. This Agreement is not assignable or transferable by the Company without the written consent of Client, which consent shall not be unreasonably withheld or delayed.

14. Entire Agreement; Modification.

This Agreement constitutes the entire understanding between the parties hereto with respect to the subject of the Company's engagement by the Client, as provided for herein, and supersedes any and all other understandings, negotiations or agreements relating thereto, and no modification to this Agreement, nor any waiver of any rights, shall be effective unless agreed to in writing by the party to be charged.

15. Section Headings.

The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

16. Choice of Law.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Connecticut without regard to the principles of conflicts of laws.

17. Review of Agreement

It is acknowledged that the Client has had ample opportunity to review and consider the terms of this Agreement and to review this Agreement with Client's counsel and has voluntarily agreed to the terms presented, including, without limitation, freely choosing that Connecticut law shall govern this Agreement and all matters dealt with herein, and to waive any other rights it may have, in consideration of the agreements set forth herein.

18. Counterparts.

Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This agreement may be executed in counterparts by original or electronic signature, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

19. Force Majeure.

Neither party shall be responsible for delays or failures (including any delay to make progress in the prosecution of any Services) if such delay arises out of causes beyond its control. Such causes may include, but are not restricted to, acts of God or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight, embargoes, earthquakes, electrical outages, and severe weather.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the date first set forth above.

COMPANY:

HART HALSEY LLC

By: _____

Name:

Title:

Date: _____

CLIENT:

By: _____

Name:

Title:

Date: _____

APPENDIX A: FINANCIAL RISK MITIGATION

All credit-worthy customers are offered net 45 payment terms on all extra duty details. Company accepts credit risk on all such customers and finances the financial float associated with payment terms.

Company has the right to deem particular customers non-credit-worthy and require pre-payment from such customers. Company agrees to not designate any customer as non-credit-worthy, which has been a recurring customer, in consistent good standing, with the Client's extra duty program for at least one year. Company further agrees to inform Client prior to designating any individual customer non-credit-worthy.

Customers deemed to be non-credit-worthy, and customers wishing not to be invoiced for serviced rendered, will have the option of pre-paying via check, credit card, or escrow account. Company may impose a 4% financing fee for any credit card payments.

Company reserves the right to charge a late fee of 1.5% per month on invoice amounts aged 90 days or more.