CERTIFICATION:

I, Carol L. Anderson, City Clerk of the City of Torrington do hereby certify that the following is a true and correct copy of the resolution adopted by the Board of Councilman at its duly called and held meeting on _____ at which a quorum was present and acting throughout, and that the resolution has not been modified, rescinded, or revoked and is at present in full force and effect:

RESOLUTION #143-241

BY THE BOARD OF COUNCILMEN OF THE CITY OF TORRINGTON AUTHORIZING THE CITY OF TORRINGTON TO ENTER INTO A MASTER MUNICIPAL AGREEMENT FOR DESIGN PROJECTS WITH THE STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION

WHEREAS A MASTER MUNICIPAL AGREEMENT FOR DESIGN PROJECTS (**"**Master Agreement") is entered into by and between the STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION, (the "DOT"), and the City of Torrington, 140 Main Street Torrington, Connecticut 06790 ("Municipality").

WHEREAS, the Municipality undertakes, and may financially participate in, municipal projects to design improvements to locally-maintained roadways, structures, and transportation facilities that are eligible for government financial assistance from the DOT, the federal government, or both; and

WHEREAS, the DOT is the authorized entity responsible for distributing the state and federal government financial assistance with respect to these municipal projects; and

WHEREAS, on a project-by-project basis, the Municipality takes on the responsibility of administering the design phase of each municipal project; and

WHEREAS, the Commissioner is authorized to enter into this Master Agreement and distribute state and federal financial assistance to the Municipality for these projects pursuant to § 13a-98i or § 13a-165 of the Connecticut General Statutes; and

WHEREAS, the DOT and the Municipality wish to set forth their respective duties, rights, and obligations with respect to design projects that are undertaken pursuant to this Master Agreement.

NOW THEREFORE, BY THE BOARD OF COUNCILMEN OF THE CITY OF TORRINGTON:

BE IT RESOLVED, that the City of Torrington may enter into a Master Agreement with the STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION, and all such other papers, instruments, opinions, certificates, affidavits, and other documents, and to do or cause to be done any and all other acts and things which it deems necessary or proper for carrying out the terms and obligations of the Master Agreement.

BE IT FURTHER RESOLVED, that Elinor Carbone, as the Mayor of the City of Torrington, is authorized and directed to execute and deliver the Master Agreement and all such other papers, instruments, opinions, certificates, affidavits, and other documents, and to do or cause to be done any and all other acts and things which she deems necessary or proper for carrying out the terms and obligations of the Master Agreement.

IN WITNESS WHEREOF: The undersigned has executed this certificate this ____ day of _____.

_____

Carol L. Anderson, City Clerk

STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

2800 BERLIN TURNPIKE, P.O. BOX 317546
NEWINGTON, CONNECTICUT 06131-7546

May 4, 2023

The Honorable Elinor Carbone
Mayor
City of Torrington
140 Main Street
Torrington, Connecticut 06790
Elinor_Carbone@torringtonct.org

Dear Mayor Carbone:

Subject: Master Municipal Agreement for Preliminary Engineering Projects
Master Agreement No. 4.25-04(23)
CORE ID No. 23DOT0166AA

The Connecticut Department of Transportation (Department) is pleased to introduce a new way of doing business with the municipalities of Connecticut. The enclosed Master Municipal Agreement for Preliminary Engineering Projects (MMAPE) is the third in a series of agreements that will fundamentally improve how the Department conducts business, with its municipal partners by dramatically streamlining the agreement process.

It is anticipated that once an MMAPE is executed with your municipality, project specific information and monetary terms will be set forth in a Project Authorization Letter (PAL) issued by the Department to the municipality for individual preliminary engineering projects. PALs are expected to take only days to execute, as opposed to the numerous months that were previously required to execute individual project agreements.

This ten-year term MMAPE covers municipally administered design projects. The MMAPE includes standard terms, conditions and contracting “boiler plate” language, that should govern all municipal design projects involving the Department which are undertaken throughout the ten-year term.

Please sign the enclosed agreement and join the Department in this new and innovative way of doing business that will improve delivery of Department services to its customers.

Please process the MMAPE in accordance with the enclosed instructions and return the agreement and your authority to sign to Mr. Michael Cherpak, Highway Design-Local Roads, at the letterhead address. If you have any questions, please contact Mr. Cherpak at (860) 594-3155.

Very truly yours,

DocuSigned by:
Scott A. Hill, PE
52666A77E596402...

Scott A. Hill, P.E.
Chief Engineer
Bureau of Engineering and Construction

Enclosures

INSTRUCTIONS FOR PROCESSING MMAPE

Enclosed are two copies of the Master Municipal Agreement for Preliminary Engineering Projects (MMAPE) between the State of Connecticut and the Municipality.

Please do the following promptly:

1. Your signature should be affixed to the MMAPE. Please sign your name as it appears on the signatory page.

2. Return the signed MMAPE (must be signed within 30 days of the original council resolution) on or before June 1, 2023, so that the Department may process for State signatures. A fully executed copy of the MMAPE will be returned to you upon its completion.

MASTER MUNICIPAL AGREEMENT
FOR DESIGN PROJECTS

THIS MASTER MUNICIPAL AGREEMENT FOR DESIGN PROJECTS (**"**Master Agreement") is entered into by and between the STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION, (the "DOT"), and the City of Torrington, 140 Main Street Torrington, Connecticut 06790 ("Municipality"). The DOT or the Municipality may each be referred to individually as the "Party" and collectively may be referred to as the "Parties."

WHEREAS, the Municipality undertakes, and may financially participate in, municipal projects to design improvements to locally-maintained roadways, structures and transportation facilities that are eligible for government financial assistance from the DOT, the federal government, or both; and

WHEREAS, the DOT is the authorized entity responsible for distributing the state and federal government financial assistance with respect to these municipal projects; and

WHEREAS, on a project-by-project basis the Municipality takes on the responsibility of administering the design phase of each municipal project; and

WHEREAS, the Commissioner is authorized to enter into this Master Agreement and distribute state and federal financial assistance to the Municipality for these projects pursuant to § 13a-98i or § 13a-165 of the Connecticut General Statutes; and

WHEREAS, the DOT and the Municipality wish to set forth their respective duties, rights, and obligations with respect to design projects that are undertaken pursuant to this Master Agreement.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE THAT:

Article 1. Definitions. For the purposes of this Master Agreement, the following definitions apply:

1.1 "Administer," "Administering" or "Administration" of the Design Project means conducting and managing operations required to perform and complete the Design Project, including performing (or engaging a Consulting Engineer to perform) the Design Services and undertaking all of the administrative duties related to and required for the completion of the Design Project.

1.2 "Authorization to Proceed" means the written notice from the Authorized DOT Representative to the Designated Official authorizing the Municipality to perform its obligations for the Design Project under the Project Authorization Letter (PAL), including, but not limited to, entering into an agreement with the Consulting Engineer for performance of the Design Services, if applicable.

1.3 "Authorized Department of Transportation (DOT) Representative" means the individual, duly authorized by a written delegation of the Commissioner of the DOT pursuant to Section § 13b-17(a) of the Connecticut General Statutes, to sign PALs.

1.4 "Consulting Engineer" means the person or entity engaged by the Municipality to perform the Design Services, in whole or in part, for the Design Project.

1.5 "Cumulative Costs" means the total, collective expenditure by the Municipality and the DOT to complete the Design Project (defined in section 1.7).

1.6 "Demand Deposit" means an amount of money due to the DOT from the Municipality.

1.7 "Design Project" means the design phase activities undertaken by the Municipality to design improvements to be constructed on a locally or State-maintained roadways, structure or Transportation Alternative Facilities (defined in section 1.29), or any combination of the foregoing and in accordance with the PAL and this Master Agreement.

1.8 "Design Services" include, but are not limited to, providing the survey, preliminary engineering studies, preliminary design, final design for the Design Project, and engineering services during construction for the Design Project as specifically set forth in the PAL in accordance with the "Consultant Administration and Project Development Manual, Connecticut Department of Transportation (September 2008)." Design Services may be required for the construction phase of a Municipal Project.

1.9 "Designated Official" means the municipal official or representative designated by title, who is duly authorized by the Municipality to receive PALs issued by the DOT under this Master Agreement and who submits to the DOT a Written Acknowledgment of the PAL (defined in section 2.2) binding the Municipality to the terms and conditions of the PALs issued by the DOT under this Master Agreement.

1.10 "Disadvantaged Business Enterprise (DBE)" has the meaning defined in Schedule C.

1.11 "DOT-provided Services" means the work that the DOT performs for the Design Project, as specifically set forth in the PAL and may include, but is not necessarily limited to, providing material testing, administrative oversight, technical assistance in engineering reviews, property map reviews, title searches, cost estimate reviews, environmental reviews, public hearing assistance, recording and transcription, agreement development, fee review and negotiations, and liaison activities with other governmental agencies as may be necessary for proper development of the Design Project to ensure satisfactory adherence to State and federal requirements.

1.12 "Effective Date" means the date upon which the Master Agreement is executed by the DOT.

1.13 "Extra Work" means additional work that is beyond the original scope or limits of work of the Design Project, which Funds are set aside in the PAL, but the Funds cannot be expended without the approvals required in Section 7 of this Master Agreement.

1.14 "Funding" means funds from the state government, the federal government, or a combination of any of the foregoing, designated for a particular Design Project, as specified in the

Project Authorization Letter.

1.15 "Inspection Activities" means inspection of the work during the construction phase of the Municipal Project and associated administrative duties, including, but not limited to: inspection of grading, drainage, structure, pavement, Transportation Facilities (defined in section 1.3), and rail work if applicable; the required administrative functions associated with the construction phase of the Municipal Project including, but not limited to, preparation of correspondence, construction orders, periodic payment estimates, quantity computations, material sampling and testing, Equal Employment Opportunity and DBE monitoring, final documentation, DOT and Federal reporting, construction surveys, reviews and recommendations of all construction issues, and claims analysis support; and other related functions deemed necessary by the DOT.

1.16 "Municipal Project" means a project undertaken by the Municipality for improvements on locally or State-maintained roadways, structures, or Transportation Alternatives Facilities, or any combination of the foregoing, which generally includes three phases of activities: the design phase, rights-of-way phase, and construction phase.

1.17 "Official Notice" means notice given from one Party to the other in accordance with Article 21.

1.18 "Plans, Specifications, and Estimates (PS&E)" means the final engineering documents produced during the design phase of the Municipal Project, approved and accepted by the DOT in writing, that contain all of the construction details and will be made part of the bid and contract documents for the construction phase of the Municipal Project.

1.19 "Perform" means for purposes of this Master Agreement, the verb "to perform" and the performance of the work set forth in this Master Agreement which are referred to as "Perform," "Performance" and other capitalized variations of the term.

120 "Project Amount" means the total estimated cost for all work for the Design Project, as estimated at the time of the DOT's issuance of the PAL.

1.21 "Project Authorization Letter (PAL)" means the written document that authorizes the distribution of Funding to the Municipality for the particular Design Project during a specified period of time.

1.22 "Project Manager" means the DOT assigned engineer in responsible charge of the Design Project, as identified in the particular PAL associated with an individual Design Project.

1.23 "Small Business Enterprise (SBE)" has the meaning defined in Schedule D.

1.24 "Small Business Participation Pilot Program (SBPPP)" has the meaning defined in Schedule E.

1.25 "Special Provisions" means specifications applicable to the particular Design Project that are required by the DOT and made part of the bid documents and the contract with the Prime

Contractor.

1.26 "Standard Specifications" means, collectively, the publications entitled "Standard Specifications for Roads, Bridges, and Incidental Construction (Form 816)" Connecticut Department of Transportation (2004) and its supplemental specifications issued from time to time by the DOT, entitled the "Supplemental Specifications to the Standard Specification for Roads, Bridges, and Incidental Construction (Form 816)," Connecticut Department of Transportation (July 2010), as may be revised.

1.27 "Subconsultant" means any firm that is engaged by the Consulting Engineer to perform the Design Services, in whole or part, for the Design Project.

1.28 "Term" means the duration of this Master Agreement.

1.29 "Transportation Alternative Facilities" means the facilities provided as a result of transportation alternative activities (as defined by 23 U.S.C. § 101(a) (29), as revised).

1.30 "Transportation Facilities" means any roadway, structure, building, intangible rights or other associated facilities, including, but not limited to, traffic control signals and roadway illumination, Transportation Alternatives Facilities, including, but not limited to, pedestrian or bike trails, or any combination of the foregoing.

Article 2. Issuance and Acknowledgment of PALs for Design Projects.

2.1 The DOT shall issue to the Municipality a PAL for the applicable Design Project, in the form substantially similar to Schedule A, which will be addressed to the Designated Official and signed by the Authorized DOT Representative. PALs issued under this Master Agreement will address Design Projects and will not address construction phase or right-of-way acquisition phase activities of Municipal Projects. The issuance of the PAL itself is not final authorization for the Municipality to begin Performing work or entering into an agreement with the Consulting Engineer with respect to the Design Project. Additional required steps and approvals are set forth in this Master Agreement.

2.2 The PAL issued by the DOT to the Municipality shall set forth, at a minimum:

(a) the Funding source(s), the related government Funding authorization or program information, and the associated Funding ratio between the federal government, the DOT, and the Municipality, as applicable, for the Design Project;

(b) the maximum reimbursement to the Municipality under the PAL;

(c) an estimated cost break-down for all work under the Design Project. At DOT's discretion, the PAL will provide a line item category for Extra Work to set aside funds that may be requested later by the Municipality to fund the requested additional work if it is deemed, at the DOT's sole discretion and with the DOT's written approval, to be necessary for completion of the Design Project;

(d) the amount of the Demand Deposit(s) due to the DOT from the Municipality for the Municipality's proportionate share of applicable costs for work Performed by the DOT under the Design Project, as determined by the Funding ratio;

(e) a brief description of the Design Project; and

(f) any applicable affirmative action goal(s) assigned with respect to work on the Design Project, as follows:

(i) if the Design Project receives federal participation in Funding, the DBE goal assigned by the DOT applicable to the Consulting Engineer; or

(ii) if the Design Project receives DOT Funding, and no federal participation in Funding, the SBE goal assigned by the DOT applicable to the Consulting Engineer; or

(iii) regardless of the Funding source(s), the SBPPP goal assigned by the DOT applicable to the Consulting Engineer.

2.3 In order for the terms of the PAL to become effective and binding on both Parties, the Municipality shall return to the DOT a copy of the PAL signed by the Designated Official, hereinafter referred to as the "Written Acknowledgement of the PAL." The signature of the Designated Official on the Written Acknowledgement of the PAL constitutes the Municipality's agreement to be bound by the terms of the PAL and the Municipality's agreement to Perform the work on the Design Project in accordance with the terms of the PAL and this Master Agreement. The Municipality shall submit the Written Acknowledgement of the PAL to the Authorized DOT Representative by the deadline set forth in the PAL. By written notice to the Municipality, the DOT, in its discretion, may extend or waive the deadline set forth in the PAL for the Municipality to submit the Written Acknowledgement of the PAL. Such extension or waiver may be granted after the date set forth in the PAL for submission of the Written Acknowledgement of the PAL. Submission of the Written Acknowledgement of the PAL by facsimile or electronic transmission is acceptable. The Written Acknowledgement of the PAL shall be deemed delivered on the date of receipt by the DOT if on a business day (or on the next business day after delivery if delivery occurs after business hours or if delivery does not occur on a business day). The PAL becomes effective on the date that the Written Acknowledgement of the PAL is delivered to the DOT provided the Written Acknowledgement of the PAL is submitted by the deadline set forth in the PAL or by the date set forth by the DOT in any extension or waiver of the deadline.

2.4 The Municipality herein represents that the Mayor of Torrington, Connecticut is the Designated Official to whom the Municipality has granted the authority, throughout the Term of this Master Agreement, to sign and submit the Written Acknowledgement of the PAL(s) to the DOT on its behalf. The signature of the Designated Official shall bind the Municipality with respect to the terms of the PAL. Signature by the individual as the Designated Official upon any Written Acknowledgement of a PAL is a representation by such individual that he/she holds the title of the Designated Official as of the date of his/her signature. If at any time during the Term

the Municipality seeks to modify which municipal official or representative by title is the authorized Designated Official, the Parties must amend this section by mutual written agreement identifying by title the new Designated Official and signed by the authorized representatives of each Party.

2.5 Upon submission of the Written Acknowledgement of the PAL to the DOT, the Master Agreement and the PAL will be incorporated into one another in their entirety and contain the legal and binding obligations of the Municipality with respect to the Design Project. By submitting the Written Acknowledgement of the PAL, the Municipality acknowledges that it understands the obligations to which it is committing itself with respect to the Design Project. Further, the Municipality agrees to proceed with diligence to Perform its obligations to accomplish the Design Project and agrees to use the Funding to complete the same.

2.6 Any modification to the scope, the allowed Funding amount, or cost breakdown related to the Design Project must be approved by the DOT, at its sole discretion, and set forth in a subsequent PAL newly-issued by the Authorized DOT Representative, hereinafter referred to as the "Revised PAL." The Revised PAL shall be acknowledged by the Municipality in accordance with the procedure set forth in section 2.2, and the Revised PAL, once acknowledged in writing by the Municipality in accordance with the procedure set forth in section 2.3, will supersede the PAL or any previously issued Revised PAL for the Design Project and will control over the PAL and any previously issued Revised PAL.

Article 3. Authorization to Proceed.

3.1 The Municipality shall not commence to Administer the Design Project until it has received from the DOT an Authorization to Proceed Notice.

3.2 The Municipality shall not have the Consulting Engineer or the Municipality's staff commence the Design Services until the Municipality has received the Authorization to Proceed Notice.

3.3 The DOT has no responsibility and incurs no liability for payments to the Municipality for Administration of the Design Project or for any Design Services Performed by the Consulting Engineer or the Municipality's staff on the Design Project prior to the issuance of the Authorization to Proceed Notice.

Article 4. Municipality to Administer the Design Project.

4.1 Upon receipt of an Authorization to Proceed Notice, the Municipality shall Administer and Perform all activities associated with the Design Project in accordance with the PAL and this Master Agreement.

4.2 The Municipality, with prior written approval of the DOT, may elect to Perform all or any part of the Design Services with its own staff. In requesting approval from the DOT, the Municipality must demonstrate, to the DOT's satisfaction, that the municipal staff Performing the Design Services are sufficiently qualified, that there is sufficient manpower, equipment, and

resources available to the Municipality, and that it will be cost effective for the Municipality's staff to Perform the Design Services. The Municipality shall submit written documentation to the State indicating its criteria and/or procedures used in assigning existing municipal staff, or hiring of new municipal staff to Perform the Design Services. The Municipality shall assume responsibility for the accuracy of all products of its work generated by municipal staff Performing the Design Services, irrespective of the State's review and approval of the same, if any. The Municipality shall have its Designated Official sign the title sheet(s) of all plans and/or final work product documents generated by municipal staff in Performance of the Design Services, in addition to any applicable signing and/or sealing by professional engineers, land surveyors or architects required pursuant to State statute or regulation.

4.3 For Design Services that the Municipality does not elect to Perform with its own staff, the Municipality shall retain, using a qualifications based selection (QBS) process, a Consulting Engineer to undertake the Design Services, as more particularly described in Article 5.

4.4 With respect to any Design Project that receives federal participation in Funding, the Municipality acknowledges that any costs it incurs prior to the receipt of federal authorization for the Design Project are entirely ineligible for reimbursement with federal funds.

4.5 The Municipality agrees that it shall use the Funding for reimbursement of the Municipality's approved expenses incurred in the fulfillment of the Design Project as specified in the PAL and this Master Agreement and for no other purpose.

4.6 The Municipality shall conduct public involvement programs for the Design Project in compliance with applicable federal and State requirements and in accordance with the "Public Involvement Guidance Manual," Connecticut Department of Transportation (2009), as may be revised.

Article 5. Engaging a Consulting Engineer.

5.1 Where the Municipality retains a Consulting Engineer to Perform the Design Services, the Municipality shall use a QBS process, specifically as set forth in the current "Consultant Selection, Negotiation and Contract Monitoring Procedures for Municipally Administered Projects," Connecticut Department of Transportation (December 2011), as may be revised, which are hereinafter referred to as the "Consultant Selection Procedures" which is made a part of this Agreement and incorporated into it by reference.

5.2 The Municipality shall follow the Consultant Selection Procedures in carrying out the solicitation and selection of the Consulting Engineer and the negotiation of and entering into an agreement with the Consulting Engineer. The Municipality shall document its process for the solicitation, selection, negotiation, and contracting with any Consulting Engineer and provide such written documentation to the DOT, all in accordance with the Consultant Selection Procedures.

5.3 The Municipality shall not impose any local rules, policies, terms, conditions, or requirements on any potential Consulting Engineer in its QBS process, unless it has received prior written approval from the DOT and, if applicable, FHWA. If the Municipality imposes any local

rules, policies, terms, conditions, or requirements, without all required prior written approvals, the DOT may in its sole discretion deem such imposition to be a breach of this Master Agreement and the respective PAL and may result in the Municipality losing Funding for the Design Project.

5.4 The Municipality must receive the DOT's prior written approval in order to enter into an agreement with the Consulting Engineer, or to modify or supplement any such agreement with the Consulting Engineer, prior to incurring reimbursable costs in conjunction with the PAL. Without such written approval, costs incurred by the Municipality are ineligible for reimbursement under the PAL. DOT retains the authority, at its sole discretion, to review the Municipality's proposed agreements, and modifications and supplements thereto for compliance with applicable DOT and federal requirements prior to the DOT issuing any written approval.

5.5 The Municipality shall Perform contract monitoring of the Consulting Engineer in accordance with the Consultant Selection Procedures. The Municipality agrees to assist the DOT in rating the Consulting Engineer's Performance through the DOT's Consultant Evaluation System, in accordance with the Consultant Selection Procedures.

Article 6. Required Consulting Engineer Agreement Provisions

6.1 As a condition of receiving Funding under the PAL, the Municipality may be required, at the direction of the DOT or the federal government, to obtain certain assurances from and include certain contract provisions in its agreement with the Consulting Engineer.

6.2 The Municipality shall include the following requirements in its agreement with the Consulting Engineer:

(a) "Connecticut Required Specific Equal Employment Opportunity Responsibilities," (2012), attached at Schedule B; and

(b) the DBE goal, SBE goal, or SBPPP goal, as applicable, and associated requirements set forth in the PAL; and

(c) the "Special Provision, Disadvantaged Business Enterprises" (April 2012), the "Special Provision, Small Contractor and Small Contractor Minority Business Enterprises (Set-Aside)" (April 2012) or the "Special Provision, Small Business Participation Pilot Program" (April 2012), all as may be revised by DOT from time to time, current versions of which are attached at Schedules C, D & E, respectively (the "Affirmative Action (AA) Requirements"). The Municipality shall include a provision within its agreement with the Consulting Engineer requiring compliance with the AA Requirements and attach a copy of the applicable Schedule C, D, or E to such agreement.

6.3 The Municipality's failure to include the requirements of Article 6 in its agreement with, and to ensure compliance by, the Consulting Engineer may be deemed by DOT, at its sole discretion, to be a breach of this Master Agreement and the respective PAL, and may result in the Municipality's loss of Funding for the Design Project. Specifically, with respect to the Municipality's failure to comply with the DBE goal, SBE goal, or SBPPP goal, as applicable, as

required by section 6.2(b), DOT, at its sole discretion, may withhold reimbursement to the Municipality for the Design Project in an amount up to or equaling the goal shortfall, in addition to any other remedies the DOT may have under this Master Agreement or provided by law.

6.4 The Municipality shall include in its agreement with the Consulting Engineer a completion schedule for the Design Services that is acceptable to the State.

6.5 With respect to its agreement with the Consulting Engineer, the Municipality shall comply with Policy No. F&A-30, dated July 23, 2015 ("Maximum Fees for Architects, Engineers and Consultants"), attached at Schedule F. The Municipality shall utilize the guidelines stipulated in Policy No. EX.O.-33 dated June 25, 2015, attached at Schedule G, when applicable, in accordance with Policy No. F&A-30.

6.6 The Municipality shall include any Design Services that may be required during the pre-bid, bid and construction phases of the Municipal Project in the scope of Design Services to be Performed under the agreement entered into with the Consulting Engineer, for the purposes of advising the Municipality or the State, whichever is administering the construction phase of the Municipal Project. Such Design Services shall include, but not be limited to, providing interpretations of the plans and specification prepared by the Consulting Engineer, assisting the Municipality or State in answering pre-bid questions, attending meetings including the preconstruction meeting and progress meetings, conferring with and advising the Municipality or the State as to any changed or unanticipated field conditions that will impact the work during the construction phase, visiting the jobsite at appropriate intervals to monitor critical areas of work, and responding to questions, as needed.

6.7 The Municipality may engage the Consulting Engineer who Performed Design Services to Perform subsequent Inspection Activities during the construction phase of the Municipal Project, provided that Inspection Activities were included in the QBS process when selecting the Consulting Engineer for the Design Services. The State reserves the right in the future to bar the Municipality from engaging the Consulting Engineer who Performed Design Services to also Perform Inspection Activities during the construction phase, and the State will notify the Municipality of any such change in policy.

6.8 The Municipality shall require the Consulting Engineer to assume responsibility for the accuracy of its work generated in Performing the Design Services, irrespective of the State's review and approval of such work, if any, and shall include this requirement in its agreement with the Consulting Engineer. The Municipality shall have its Designated Official sign the title sheet(s) of all plans and/or final work product documents prepared by the Consultant Engineer, in addition to any applicable signing and/or sealing by professional engineers, land surveyors or architects required pursuant to state statute or regulation.

6.9 The Municipality may not impose any local rules, policies, terms, conditions, or requirements in its agreement with the Consulting Engineer unless the Municipality has received prior written State and/or federal approval. Imposition of local rules, policies, terms, conditions, or requirements by the Municipality may be deemed by the State in its sole discretion to be a

breach of the Master Agreement and the respective PAL, and may result in the Municipality's loss of Funding for the Design Project.

Article 7. Design Standards and Administrative Standards.

7.1 The Municipality shall Perform, or require its Consulting Engineer to Perform, all Design Services to standards acceptable to the State and, if federal Funding is involved, to standards acceptable to the Federal Highway Administration (FHWA), which are contained in the documents listed in Section 7.2 below, with all work being Performed within the designated time frame set forth in the PAL for the Design Project.

7.2 In Performing the Design Services, the Municipality shall comply with, and/or if engaging a Consulting Engineer, shall require the Consulting Engineer to comply with, the current version of the following engineering publications issued by the Connecticut Department of Transportation ("Engineering Publications"), as they may be revised and as they may be applicable to the Design Project:

(a) Bridge Design Manual (2003 Edition, with revisions through February 2011);
(b) Bridge Inspection Manual, Version 2.1 (2001, with revisions through March 2008);
(c) Consultant Administration & Project Development Manual (September 2008);
(d) Digital Design Environment Guide (2007);
(e) Digital Project Development Manual, Version 3.06 (July 2014);
(f) Drainage Manual (2000, including revisions through 2003);
(g) Geotechnical Engineering Manual (2005, including revisions through February 2009);
(h) Highway Design Manual (2003 Edition, including revisions to February 2013);
(i) Utility Accommodation Manual (2009);
(j) Public Service Facility Policy and Procedures for Highways in Connecticut (2008);
(k) Traffic Control Signal Design Manual (2009); and
(l) Pamphlet for Monitoring Consultant Performance and Payment Requests, Connecticut Department of Transportation (March 2014).

The Engineering Publications referenced in this section are incorporated and made a part of this Master Agreement by reference and the Municipality shall incorporate the Engineering Publications into each agreement it enters into with a Consulting Engineer for any Design Project undertaken pursuant to a PAL issued under this Master Agreement. The Engineering Publications shall govern the Performance of the Design Services.

7.3 With respect to Design Projects that receive federal Funding, the Municipality shall comply with, or require its Consulting Engineer to comply with, all applicable federal requirements as may be applicable to the Design Project including, but not limited to:

(a) 23 USC § 112, invoking the Brooks Act (40 USC §§ 1101-1104).
(b) 23 CFR Part 172, Administration of Engineering and Design Related Service Contracts;
(c) 48 CFR Part 31, Federal Acquisition Regulations, addressing contract cost principles and procedures and audit requirements;

(d) 49 CFR § 18.42, Records Retention Requirements.

Article 8. Additional Administration Responsibilities.

8.1 The Municipality shall Perform all other work which becomes necessary to properly Administer the Design Project in order to ensure compliance with the applicable design standards and the Municipality's contract with the Consulting Engineer. Any work Performed by the DOT in order to assist with the Municipality's Administration responsibilities for the Design Project and any associated expenses will be funded in accordance with the PAL.

8.2 The Municipality shall maintain and secure all Records for the Design Project at a single location for the DOT's review, use and approval at all times.

8.3 The Municipality shall submit to the DOT for review the PS&E and other information developed by the Municipality's staff or the Consulting Engineer, as applicable, for the Design Project, in accordance with the current Consultant Administration and Project Development Manual. Upon completion of the Design Project, the Municipality shall notify the DOT, in writing, of the completion and, upon request by the DOT, shall provide the DOT copies of the final PS&E, in the format requested by the DOT.

8.4 The Municipality shall cooperate fully with the DOT and permit the DOT, FHWA, or other federal authority, as applicable, to review all activities Performed by the Municipality with respect to any PAL issued under this Master Agreement at any time during the Design Project. Upon request of the DOT, the Municipality shall timely furnish all documents related to the Design Project so that the DOT may evaluate the Municipality's activities with respect to the Design Project, including, but not limited to, its use of the Funding as required by the PAL, this Master Agreement, and applicable law.

8.5 The Municipality may not make changes to the Design Project that will increase the cost or alter the character or scope of the Design Services without prior written approval from the Authorized DOT Representative. In addition, the Municipality shall not extend the term of any agreement with its Consulting Engineer without prior written approval from the Authorized DOT Representative. Such written approval may take the form of a Revised PAL issued by the DOT with respect to the Design Project.

8.6 If, at any time during the Design Project, the DOT in its sole discretion determines that the Administration by the Municipality is not adequate, the DOT may deem the Municipality to be in breach of this Agreement, and the DOT, in its sole discretion, may assume responsibility for or supplement the Administration of the Design Project. The additional costs associated with the DOT's Administration of the Design Project will be considered part of the Design Project costs for DOT-provided Services and will be funded in accordance with the proportionate cost sharing set forth in the PAL. Furthermore, the DOT's assumption or supplementing of the Administration of a Design Project does not waive any of the DOT's remedies under this Master Agreement, nor relieve the Municipality from any liability related to its breach.

Article 9. DOT-provided Services.

9.1 If the Design Project requires DOT-provided Services, such services shall be set forth in the PAL and funded in accordance with the proportionate cost sharing for work on the Design Project as set forth in the PAL. The DOT reserves the right to inspect all aspects of the work related to the Design Project at all times, and such inspections shall be deemed DOT-provided Services.

9.2 The PAL will specify Municipality's proportionate share of the estimated cost of the DOT-provided Services. The DOT will bill the Municipality the amount of the Municipality's proportionate share of such estimated costs in a Demand Deposit, and the Municipality shall forward to the DOT that amount in accordance with the PAL. The DOT is not required to Perform the DOT-provided Services until the Municipality pays the Demand Deposit in full.

Article 10. Costs and Reimbursement.

10.1 The Municipality shall expend its own funds to pay for costs of Administering the Design Project and then shall seek reimbursement from the DOT for approved costs.

10.2 The Municipality shall document all expenses it incurs and maintain all Records related to the Design Project costs, including, but not limited to:

(a) its payments to the Consulting Engineer;

(b) its payroll hours on time sheets for municipal staff working directly on the Design Project. Reimbursable municipal payroll costs are limited to the actual municipal payroll for work on the Design Project and fringe benefits associated with payroll;

(c) material purchases made by the Municipality; and

(d) reimbursement due to the Municipality for use of Municipality-owned or rented equipment. Rates of reimbursement for use of Municipality-owned or rented equipment will be based on an existing municipal audit, if available, completed no more than three (3) years before acknowledgment of the PAL, and provided the rates are acceptable to the DOT. In the absence of acceptable rates, or if there is no current municipal audit, the equipment rental rate will be established in accordance with Section 1.09.04(d) of the Standard Specifications, as may be revised.

10.3 If the Municipality fails to adequately record expenses and maintain all related Records for any Design Project or promptly submit any Records to the DOT, the DOT in its sole discretion may deem such failure to be a breach by the Municipality, and the DOT may deem certain expenses to be non-eligible costs of the respective Design Project for which the Municipality will not be eligible for reimbursement pursuant to the proportional cost sharing established by the PAL. Furthermore, the DOT's determination of certain costs to be non-eligible costs of the Design Project does not waive any of the DOT's remedies for the breach by the Municipality of its obligations under this Master Agreement with respect to the respective Design Project, nor relieve the Municipality from any liability related to its breach.

10.4 The Municipality shall seek reimbursement from the DOT for the Municipality's expenditures, which have been approved by the DOT for eligible Design Project costs. Reimbursement of DOT approved expenditures will be made in the following manner:

(a) On a monthly basis, the Municipality shall submit to the DOT using the DOT-required voucher form entitled "Invoice Summary and Processing (ISP) Form" ("Voucher"), as may be revised, with supporting data, the cost of services rendered and expenses incurred for the prior month. With respect to any work that is Performed in-house by the Municipality's staff, the Municipality's reimbursable costs shall be limited to the actual payroll, fringe benefits associated with payroll, and approved direct cost charges for the staff's Performance of Design Services.

(b) Upon review and approval of the Voucher by the DOT, payment of the reimbursement portion of said costs and expenses shall be made to the Municipality, in accordance with the proportional cost sharing established by the PAL.

10.5 Notwithstanding the above, the DOT may offset any reimbursable amounts due to the Municipality with any amounts due to the DOT for DOT-provided Services.

Article 11. Extra Work.

11.1 If the PAL provides a line item category for Extra Work and the Municipality wishes to pursue any Extra Work, it must request approval in writing from the DOT's Project Manager for the type and scope of the Extra Work and the associated costs prior to the Municipality authorizing Performance of the Extra Work by the Municipality's staff or the Consulting Engineer, as applicable.

11.2 Once approved in writing by the DOT, the Extra Work will be funded as follows:

(a) If the Extra Work results in a Cumulative Cost less than or equal to the Project Amount specified in the PAL, it will be funded according to the proportional cost sharing set forth in the PAL.

(b) If the Extra Work results in a Cumulative Cost greater than the Project Amount specified in the PAL, and the DOT determines that the appropriate federal or state government funding is available for the increased costs of the Design Project, then the DOT will issue a Revised PAL to provide for the cost increase to the Design Project for this Extra Work. If federal or state government funding is not available, the Municipality will be responsible for 100% of the additional cost.

Article 12. Funding of Additional DOT-Approved Costs upon Final Audit.

12.1 If, upon final audit by the DOT, additional costs, including, but not limited to, those resulting from Extra Work, delays, or other cost over-runs, result in a Cumulative Cost less than the original Project Amount identified in the PAL, the additional costs, if approved by the DOT, shall be funded in accordance with the PAL.

12.2 If, upon final audit by the DOT, additional costs, including, but not limited to, those resulting from Extra Work, delays, or other cost over-runs, result in a Cumulative Cost greater than the original Project Amount identified in the PAL, the DOT, at its discretion, may issue a Revised PAL in order to fund these additional costs, provided that additional Funding is available.

12.3 If, pursuant to section 12.1, the additional costs are not approved by the DOT or if, pursuant to section 12.2, a Revised PAL is not issued, the Municipality will be responsible for 100% of the additional cost.

12.4 If, during the course of the final audit, the Municipality or DOT discovers that the Municipality had been reimbursed for improper or unauthorized costs or expenses, then the Municipality shall return the amount of such improper or unauthorized costs or expenses to the DOT.

Article 13. No DOT Obligation to Third Parties. Nothing contained in this Master Agreement shall be deemed to directly or indirectly create any obligation of the DOT to creditors or employees of the Municipality or to the Municipality's Parties.

Article 14.Suspension, Postponement, or Termination of the Design Project.

14.1 Suspension, Postponement, or Termination by the DOT.

(a) For Convenience. The DOT, at its sole discretion, may suspend, postpone, or terminate a particular Design Project and its respective PAL for convenience by giving the Municipality thirty (30) days Official Notice, and such action shall in no event be deemed a breach of the Master Agreement by the DOT.

(b) For Cause. As a result of the Municipality's breach of the PAL or failure of the Municipality, or its Consulting Engineer to Perform the work required on any particular Design Project to the DOT's satisfaction in accordance with the respective PAL, the DOT may suspend, postpone or terminate the particular Design Project and its respective PAL for cause by giving the Municipality ten (10) days Official Notice, provided that the Municipality fails to cure, or begin to cure, the breach or failure, to the satisfaction of the DOT in its sole discretion, within the cure period that the DOT may, in its sole discretion, set forth in such Official Notice. Such Official Notice shall specify the extent to which Performance of work under the PAL is being suspended, postponed or terminated and the date upon which such action shall be effective.

14.2 Termination by the Municipality, with prior DOT approval.

(a) The Municipality may request termination of the Design Project, and if determined by the DOT in its sole discretion to be in the best interests of the Parties, the DOT may agree to the request. Additionally, with respect to Design Projects receiving federal participation in Funding, receipt of written concurrence from FHWA (or other applicable federal authority) may be required prior to the DOT's approval of the request.

(b) Once any required federal concurrence is received, the DOT will send approval of termination by giving Official Notice to the Municipality specifying the extent to which Performance of work under the PAL is terminated and the date upon which termination is effective.

14.3 Upon suspension, postponement, or termination in accordance with section 14.1 or termination in accordance with section 14.2, the DOT at its sole discretion may provide the Municipality with Funding in part for its expenditures, if any, up to the percentage of acceptable work completed as of the approved date of termination, provided that the DOT finds the work to be acceptable.

14.4 If the DOT and/or FHWA (or other applicable federal authority),deems any of the work that the Municipality itself Performed, or engaged the Consulting Engineer to Perform on its behalf, to be unacceptable, then upon demand by the DOT and/or FHWA (or other applicable federal authority), the Municipality shall promptly return, in whole or in part, to the DOT and/or FHWA (or other applicable federal authority), the State or federal Funding that was disbursed to the Municipality prior to the effective date of termination to fund that unacceptable work.

14.5 If the Municipality terminates the Design Project without the DOT's prior approval, the Municipality shall incur all costs related to the Design Project without reimbursement from the DOT or FHWA (or other applicable federal authority) and shall pay the DOT for any DOT-provided Services Performed prior to termination. With respect to federal or state government Funding that was disbursed to the Municipality prior to the effective date of termination, the Municipality shall promptly return any federal or state government Funding upon demand by the DOT or FHWA (or other applicable federal authority).

14.6 Termination of a specific Design Project shall not relieve the Municipality or its Consulting Engineer of its responsibilities for the work completed as of the termination date, nor shall it relieve the Municipality or any contractor or its surety of its obligations concerning any claims arising out of the work Performed on the Design Project prior to the termination date or any obligations existing under bonds or insurance required by the Connecticut General Statutes or by this Master Agreement or any other agreement with the DOT or the Municipality.

Article 15. Utilities Relocation and Access to Highway Right-of-Way.

15.1 Where the Design Project requires readjustment or relocation of a utility facility in, or removal of a utility facility from, the state highway right-of-way or a Municipality-owned highway right-of way, the Parties shall comply with the following provisions:

(a) With respect to any utility facility located within the Municipality-owned highway right-of-way, the Municipality shall issue an appropriate order to any utility to readjust or relocate in the right-of-way, or remove from the right-of-way, its utility facility as is deemed necessary by the Municipality or by the DOT, and the Municipality shall take all necessary legal action to enforce compliance with the issuance of such order.

(b) With respect to any utility located within the state highway right-of-way, the DOT shall issue an appropriate order to any utility to readjust or relocate in the right-of-way, or remove from the right-of-way, its utility facility as is deemed necessary by the Municipality and by the DOT.

(c) With respect to a Municipality-owned utility, whether located in the state highway right-of-way or Municipality-owned highway right-of way, the Municipality shall promptly readjust or relocate in the right-of-way, or remove from the right-of-way, its utility facilities impacted by the Design Project.

15.2 With respect to any work on the Design Project that requires access to the state highway right-of-way or Municipality-owned highway right-of way, the Party with jurisdiction over the applicable right-of-way is responsible for reviewing the request and granting to the other Party, Consulting Engineer, or any Subconsultant thereof, as applicable, the right to enter into, pass over and utilize the right-of-way in accordance with all applicable requirements on a case by case basis. Nothing in this section 15.2 shall be construed as waiving any requirements under State of Connecticut laws or regulations relating to access to the highway right-of way, including but not limited to, applying for and obtaining an encroachment permit.

Article 16. Disbursement of Grant Funds.

16.1 With respect to each Design Project undertaken pursuant to this Master Agreement, the DOT shall disburse the Funding to the Municipality according to a method determined at the DOT's sole discretion, and in accordance with any applicable state or federal laws, regulations, and requirements.

16.2 The Municipality agrees that with respect to PALs that include federal participation in Funding, no PAL issued by the DOT is effective until all required federal approvals are received by the DOT for the Design Project.

16.3 Final payment to the Municipality will be based on a post-engineering final audit Performed by the DOT using the cost sharing percentages and funding procedures set forth in the respective PAL.

16.4 If the Municipality fails to commence and complete the Design Project as set forth in the respective PAL in a timely fashion to the satisfaction of the DOT and in accordance with all applicable federal, state, and local laws, regulations, ordinances, or requirements, then:

(a) the DOT has no obligation to reimburse the Municipality for its expenses incurred;

(b) to the extent any Funding already has been disbursed to the Municipality, the Municipality shall return any disbursed funds and any interest earned to date to the DOT within ten (10) business days of receipt of a request from the DOT; and

(c) the DOT may recover from the Municipality the DOT's costs for the DOT-provided Services Performed on the Design Project. Upon receipt of written demand from the

DOT, the Municipality shall provide payment for the DOT-provided Services within thirty (30) days.

16.5 Unless otherwise indicated in the respective PAL, in the event that the Municipality does not commence the subsequent phase related to the Design Project (i.e., the right-of-way acquisition phase or the construction phase of the respective Municipal Project) by the close of the tenth (10th) federal fiscal year following the federal fiscal year in which the Design Project was authorized by the DOT, regardless of the funding source of those phases, upon request by the DOT, the Municipality shall reimburse the DOT for all State and federal funding that was disbursed to the Municipality and for all expenses incurred by the DOT on the Design Project under the respective PAL, or the DOT, at its sole discretion, may assume responsibility for or supplement the Administration of the commencement and/or completion of the subsequent phase, as set forth in section 8.6.

Article 17. Records and Audit.

17.1 The Municipality shall make all of its Records and accounting procedures and practices relevant to any Funding received under this Master Agreement available for examination by the DOT and the State of Connecticut and its agents including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and the Chief State's Attorney and their respective agents for a period of time in accordance with all applicable state or federal audit requirements.

17.2 With respect to each Design Project undertaken under this Master Agreement, the Municipality shall maintain and secure all Records for a period of three (3) years after the final payment has been made to the Consulting Engineer or the termination of any litigation related to the Design Project, or three (3) years after the date of DOT's issuance of the CON-100 form, as may be revised, whereby the construction phase activities have been deemed to be substantially complete, whichever is later, or for such longer time as instructed by the DOT, the State of Connecticut and its agents, or the federal government.

Article 18. Costs Resulting from Errors or Omissions.

18.1 The Municipality shall reimburse the DOT for one hundred percent (100%) of all Municipal Project costs and costs of DOT-provided Services, which costs are the result of errors or omissions of the Municipality, the Consulting Engineer or its Subconsultant(s), including, but not limited to, errors or omissions with respect to the PS&E, inadequate provision of the Design Services by the Municipality, the Consulting Engineer or its Subconsultant(s), or inadequate Administration by the Municipality, as applicable.

18.2 In order to determine the total cost of DOT-provided Services that were attributable to the errors and omissions of the Municipality, a percentage(s) will be derived from the ratio of the total cost of all DOT-provided Services to the total actual Design Project cost, as determined by a final audit, and this percentage will be multiplied by the amount attributable to the Municipality's error or omission, as determined by the DOT, to determine the cost of DOT-provided Services incurred as a result of the errors or omissions which the Municipality must reimburse to the DOT.

18.3 This Article 18 will survive the expiration of the PAL, the final acceptance of the PS&E, the termination of the Master Agreement, and the expiration of the Term.

Article 19. Additional Mandatory Requirements.

19.1 With respect to each PAL issued and acknowledged under this Master Agreement, the Municipality shall comply with the "Mandatory State and Federal Requirements," attached at Schedule H, as may be revised from time to time to reflect changes in law. With respect to any agreements that the Municipality enters into in order to fulfill its obligations for a particular Design Project, the Municipality agrees to pass down to its Consulting Engineer the applicable requirements set forth in the Mandatory State and Federal Requirements.

19.2 With respect to each PAL issued and acknowledged under this Master Agreement that involves Funds originating from any agency or office of the federal government, including, but not limited to the FHWA, the Municipality shall comply with that agency's contracting requirements, directives, and policies that are in place at the time the respective PAL is in effect, except to the extent that the DOT and the respective federal agency may permit otherwise in writing.

19.3 While this Master Agreement and the attached Schedules include applicable State of Connecticut and FHWA requirements (that the Municipality must comply with and must require its Consulting Engineer to comply with), the Municipality hereby acknowledges that such requirements are subject to revision by the DOT, FHWA, or other authorized federal agency, from time to time during the Term and that by accepting federal or State Funding under this Master Agreement, the Municipality agrees to be subject to such revised requirements and changes of law as in effect at any given time and, as a result thereof, shall Perform any additional obligations with respect to the particular Design Project, throughout the Term of this Master Agreement.

Article 20. Conflict & Revisions to Manuals.

20.1 In case of a conflict between the provisions of any particular PAL, the Master Agreement, the Mandatory State and Federal Requirements, or any specification, guide, manual, policy, document, or other publication referenced in the Master Agreement, the provision containing additional details or more stringent requirements will control. In case of the Municipality's inability to determine the controlling provision or where it is not possible to comply with the requirements of multiple provisions, the DOT shall have the right to determine, in its sole discretion, which provision applies. The Municipality shall promptly request in writing the DOT's determination upon the Municipality's inability to determine the controlling provision or upon becoming aware of any such conflict. This provision shall survive the expiration or termination of this Master Agreement.

20.2 With respect to any specification, guide, manual, policy, document, or other publication referenced throughout the Master Agreement and noted to be subject to revision throughout the

Term of this Master Agreement by way of the phrase "as may be revised," for the particular Design Project the Municipality agrees to comply with the version of the document or publication that is in effect on the date of the Written Acknowledgement of the PAL for the Design Project.

Artile 21. **Term and Termination of the Master Agreement.**

21.1 The Term commences on the Effective Date and continues for ten (10) years, unless terminated earlier in accordance with this Article.

21.2 The DOT may terminate this Master Agreement for convenience, at its sole discretion, upon providing thirty (30) days Official Notice to the Municipality.

21.3 As a result of the Municipality's breach of the Master Agreement or a particular PAL or the failure of the Municipality, its Consulting Engineer, or both, to Perform the work required on any particular Design Project to the DOT's satisfaction in accordance with the respective PAL, the DOT may terminate this Master Agreement for cause by giving the Municipality ten (10) days Official Notice, provided that the Municipality fails to cure, or begin to cure, the breach or failed Performance, to the satisfaction of the DOT in its sole discretion, within the notice period that the DOT may, in its sole discretion, set forth in such Official Notice. Termination for cause by the DOT will not prejudice the right of the DOT to pursue any of its remedies for breach, including recovery of any Funding paid to the Municipality prior to termination for cause.

21.4 Upon expiration of the Term or the DOT's earlier termination for convenience of the Master Agreement, any issued PAL for a Design Project that is still in-progress will remain in full force and effect and will continue through completion and final acceptance by the DOT of the respective Design Project, and the Municipality shall be subject to all applicable terms and conditions of the PAL and this Master Agreement, unless the respective PAL is itself terminated in accordance with section 14.1.

21.5 Upon the DOT's termination of this Master Agreement for cause, any PALs in-progress at the time will automatically terminate, unless the DOT provides Official Notice stating otherwise. The DOT, at its sole discretion, will determine and state in such Official Notice to the Municipality, if any in-progress PALs will remain in effect, and in such case, the Municipality agrees that it must complete Performance of such in-progress PAL(s) through completion and final acceptance by the DOT of the respective Design Project in compliance with all applicable terms and conditions of the PAL and this Master Agreement.

Article 22.Official Notice. Any Official Notice from one Party to the other Party, in order for such notice to be binding thereon, shall:

22.1 Be in writing (as a printed hard copy or electronic or facsimile copy) addressed to:

(a) When the DOT is to receive Official Notice:

Commissioner of Transportation
Connecticut Department of Transportation
2800 Berlin Turnpike
P.O. Box 317546
Newington, Connecticut 06131-7546;

(b) When the Municipality is to receive Official Notice:

Mayor
City of Torrington
140 Main Street
Torrington, Connecticut 06790;

22.2 Be delivered to the address recited herein in person or be mailed by United States Postal Service with return receipt requested by mail, electronic means, or any other methods of receiving the return receipt as identified by the Mailing Standards of the U.S. Postal Service, as may be revised, or by electronic transmission, including facsimile and email, provided delivery is confirmed electronically; and

22.3 Contain complete and accurate information in sufficient detail to properly and adequately identify and describe the subject matter thereof.

Article 23. Insurance.

23.1 With respect to the activities on the particular Design Project that the Municipality Performs or that the Municipality engages a Consulting Engineer to Perform, and also those that are Performed by Subconsultants of the Consulting Engineer, on the Design Project, the Municipality shall carry, and shall require its Consulting Engineer (i) to carry and (ii) to impose on its Subconsultants the requirement to carry, for the duration of the Design Project, the following insurance:

(a) Commercial General Liability Insurance, including Contractual Liability Insurance, providing for a total limit of One Million Dollars ($1,000,000) per occurrence for all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all damages arising out of injury to or destruction of property in any one accident or occurrence, and, subject to that limit per accident, an aggregate limit of Two Million Dollars ($2,000,000) for all damages arising out of bodily injuries to or death of all persons in all accidents or occurrences and out of injury to or destruction of property during the policy period, with the DOT being named an additional insured party;

(b) Automobile Liability Insurance with respect to the operation of all motor vehicles, including those hired or borrowed, used in connection with the Design Project, providing for a total limit of One Million Dollars ($1,000,000) per occurrence for all damages

arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all damages arising out of injury to or destruction of property in any one accident or occurrence, with the DOT being named an additional insured party. In cases where an insurance policy shows an aggregate limit as part of the automobile liability coverage, the aggregate limit must be at least Two Million Dollars ($2,000,000);

(c) Railroad Protective Liability Insurance (when the Design Project requires work within fifty (50) feet of the railroad right-of-way or DOT-owned rail property) with coverage limits of not less than Two Million Dollars ($2,000,000) for each accident or occurrence resulting in damages from (1) bodily injury to or death of all persons and/or (2) injury to or destruction of property, and subject to that limit per accident or occurrence, an aggregate coverage of at least Six Million Dollars ($6,000,000) for all damages during the policy period, and with all entities falling within any of the following listed categories named as insured parties: (i) the owner of the railroad right-of-way, (ii) the owner of any railcar licensed or permitted to travel within that affected portion of railroad right-of-way, (iii) the operator of any railcar licensed or permitted to travel within that affected portion of the railroad right-of-way (iv) the State, and (v) any other party with an insurable interest. If such insurance is required, the Municipality shall obtain and submit evidence of the minimum coverage indicated above to the DOT prior to commencement of the rail related work and/or activities and shall maintain coverage until the work and/or activities is/are accepted by the DOT;

(d) Valuable Papers Insurance, with coverage maintained until the work has been completed and accepted by the DOT, and all original documents or data have been returned to the DOT, providing coverage in the amount of Fifty Thousand Dollars ($50,000) regardless of the physical location of the insured items. This insurance will assure the DOT that all Records, papers, statistics and other data or documents will be re-established, recreated or restored if made unavailable by fire, theft, or any other cause. The Municipality, the Consulting Engineer, or Subconsultant, as applicable, shall retain in its possession duplications of all products of its work under the contract if and when it is necessary for the originals to be removed from its work under the contract, and if and when necessary for the originals to be removed from its possession during the time that this policy is in force.

(e) Workers' Compensation Insurance, and, as applicable, insurance required in accordance with the U.S. Longshore and Harbor Workers' Compensation Act, in accordance with the requirements of the laws of the State of Connecticut, and of the laws of the United States respectively; and

(f) Professional Liability Insurance for errors and omissions in the minimum amount of Two Million Dollars ($2,000,000), with the appropriate and proper endorsement to its Professional Liability Policy to cover the work Performed by the Municipality, Consulting Engineer, or Subconsultant, as applicable. The Municipality, Consulting Engineer, or Subconsultant may, at its election, obtain a policy containing a maximum Two Hundred Fifty Thousand Dollars ($250,000) deductible clause, but if it should obtain a policy containing such a deductible clause the Municipality, Consulting

Engineer, or Subconsultant shall be liable, as stated above herein, to the extent of the deductible amount. The Municipality, Consulting Engineer, or Subconsultant shall, and shall continue this liability insurance coverage for a period of three (3) years from the date of acceptance of the completed design or work subject to the continued commercial availability of such insurance. It is understood that the above insurance may not include standard liability coverage for pollution or environmental impairment. However, the Municipality, Consulting Engineer, or Subconsultant shall acquire and maintain pollution and environmental impairment coverage as part of this Professional Liability Insurance, if such insurance is applicable to the work Performed by the Municipality, Consulting Engineer, or Subconsultant under the PAL for the Design Project

23.2 In the event the Municipality, Consulting Engineer, or Subconsultant, as applicable, secures excess/umbrella liability insurance to meet the minimum coverage requirements for Commercial General Liability or Automobile Liability Insurance coverage, the DOT must be named as an additional insured on that policy.

23.3 For each Design Project, the required insurance coverage of the types and minimum limits as required by the Master Agreement must be provided by an insurance company or companies, with each company, or if it is a subsidiary then its parent company, authorized, pursuant to the Connecticut General Statutes, to write insurance coverage in the State of Connecticut and/or in the state in which it, or in which the parent company, is domiciled. In either case, the company must be authorized to underwrite the specific line coverage. Solely with respect to work Performed directly and exclusively by the Municipality, the Municipality may request that the DOT accept coverage provided under a municipal self-insurance program as more particularly described in section 23.7.

23.4 The Municipality shall provide to the DOT evidence of all required insurance coverages by submitting a Certificate of Insurance on the form(s) acceptable to the DOT fully executed by an insurance company or companies satisfactory to the DOT.

23.5 The Municipality shall produce, and require its Consulting Engineer or any Subconsultant, as applicable, to produce, within five (5) business days, a copy or copies of all applicable insurance policies when requested by the DOT. In providing said policies, the Municipality, Consulting Engineer or Subconsultant, as applicable, may redact provisions of the policy that are proprietary. This provision shall survive the suspension, expiration or termination of the PAL and the Master Agreement. The Municipality agrees to notify the DOT with at least thirty (30) days prior notice of any cancellation or change in the insurance coverage required under this Master Agreement.

23.6 The Municipality acknowledges and agrees that the minimum insurance coverage limits set forth in this Master Agreement are subject to increase by the DOT, at its sole discretion, from time to time during the Term of this Master Agreement. The DOT will provide the Municipality with the updated minimum insurance coverage limit requirements as applicable to the particular Design Project. Upon issuance of a PAL by the DOT, and submission of the Written Acknowledgment of the PAL by the Municipality, the Municipality shall comply with the updated minimum insurance coverage limit requirements as specified by the DOT for the particular Design Project.

23.7 Self-insurance.

(a) With respect to activities Performed directly and exclusively by the Municipality with Municipal forces or staff on a particular Design Project, the Municipality may request that the DOT accept coverage provided under a self-insurance program in lieu of the specific insurance requirements set forth in section 23.1. The Municipality shall submit to the DOT a notarized statement, by an authorized representative:

(1) certifying that the Municipality is self-insured;

(2) describing its financial condition and self-insured funding mechanism;

(3) specifying the process for filing a claim against the Municipality's self-insurance program, including the name, title and address of the person to be notified in the event of a claim; and

(4) agreeing to indemnify, defend and save harmless the State of Connecticut, its officials, agents, and employees, and if the particular Design Project requires work within, upon, over or under the right of way of the National Railroad Passenger Corporation (Amtrak) also indemnify, defend and save harmless Amtrak from all claims, suits, actions, damages, and costs of every name and description resulting from, or arising out of, activities Performed by the Municipality under the PAL issued for the Design Project.

(b) If requested by the DOT, the Municipality must provide any additional evidence of its status as a self-insured entity.

(c) If the DOT, in its sole discretion, determines that such self-insurance program is acceptable, then the Municipality shall assume any and all claims as a self-insured entity.

(d) If the DOT accepts a Municipality's particular self-insurance coverage, the Municipality will not be required to obtain from an insurance company the respective insurance requirement(s) displaced by that particular self-insurance coverage.

(e) If the DOT does not approve the Municipality's request to provide coverage under a self-insurance program for the particular activities, the Municipality must comply with the respective insurance requirement(s) stated in the Master Agreement, including but not limited to, the type of coverage and minimum limits applicable to the coverage.

Article 24. Indemnification.

24.1 For the purposes of this Article, the following definitions apply.

(a) Claims: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.

(b) Municipality's Parties: A Municipality's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Municipality is in privity of oral or written contract and the Municipality intends for such other person or entity to Perform under the Master Agreement or the PAL in any capacity.

(c) Records: All working papers and such other information and materials as may have been accumulated by the Municipality Contractor or Consulting Engineer, as applicable, in Performing the Master Agreement or the PAL, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

(d) State: The State of Connecticut, including the DOT and any office, department, board, council, commission, institution or other agency or entity of the State.

24.2 The Municipality shall:

(a) Indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns and if the particular Design Project requires work within, upon, over or under the right of way of Amtrak also indemnify, defend and hold harmless Amtrak from and against any and all (1) Claims arising, directly or indirectly, in connection with the Master Agreement, including the acts of commission or omission (collectively, the "Acts") of the Municipality or Municipality Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Master Agreement. The Municipality shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Municipality's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Municipality's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

(b) The Municipality shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.

(c) The Municipality shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Municipality or any Municipality Parties. The State shall give the Municipality reasonable notice of any such Claims.

(d) The Municipality's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Agreement, without being lessened or compromised in any way, even where the Municipality is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

(e) The Municipality shall carry and maintain at all times during the term of the Master Agreement, and during the time that any provisions survive the term of the Master Agreement, sufficient general liability insurance to satisfy its obligations under this Master Agreement. The Municipality shall name the State as an additional insured on the policy and shall provide a copy of the policy the DOT prior to the effective date of the Master Agreement. The Municipality Contractor or Consulting Engineer, as applicable, shall not begin performance until the delivery of the policy to the DOT. The DOT shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the DOT or the State is contributorily negligent.

(f) This section shall survive the termination of the Master Agreement and shall not be limited by reason of any insurance coverage.

Article 25. Sovereign Immunity. Nothing in this Master Agreement or any PAL issued hereunder shall be construed as a modification, compromise or waiver by the DOT of any rights or defenses of any immunities provided by federal law or the laws of the State of Connecticut to the DOT or any of its officers and employees, which they may have had, now have or will have with respect to matters arising out of this Master Agreement. To the extent that this section conflicts with any other section, this section shall govern.

Article 26. Defense of Suits by the Municipality. Nothing in this Master Agreement shall preclude the Municipality from asserting its Governmental Immunity rights in the defense of third party claims. The Municipality's Governmental Immunity defense against third party claims, however, shall not be interpreted or deemed to be a limitation or compromise of any of the rights or privileges of the DOT, at law or in equity, under this Master Agreement, including, but not limited to, those relating to damages.

Article 27. Governing Law. The Parties deem the Master Agreement to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Master Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by federal law or the laws of the State of Connecticut do not bar an action against the DOT, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Municipality waives any objection which it may now have or will have to the laying of venue of any claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding. Nothing contained in the terms or provisions of this Master

Agreement shall be construed as waiving any of the rights of the DOT under the laws of the State of Connecticut.

Article 28. Obligate the DOT. Nothing contained in this Master Agreement shall be construed to directly or indirectly obligate the DOT to creditors or employees of the Municipality or to the Municipality's Parties.

Article 29. Amendment. This Master Agreement may be amended by mutual written agreement signed by the authorized representative of each Party and conditioned upon approval by the Attorney General of the State of Connecticut, and any additional approvals required by law.

Article 30.Severability. If any provision of this Master Agreement or application thereof is held invalid, that invalidity shall not affect other provisions or applications of the Master Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Master Agreement are severable.

Article 31.Waiver. The failure on the part of the DOT to enforce any covenant or provision herein contained does not waive the DOT's right to enforce such covenant or provision, unless set forth in writing. The waiver by the DOT of any right under this Master Agreement or any PAL, unless in writing, shall not discharge or invalidate such covenant or provision or affect the right of the DOT to enforce the same.

Article 32.Remedies are Nonexclusive. No right, power, remedy or privilege of the DOT shall be construed as being exhausted or discharged by the exercise thereof in one or more instances, and it is agreed that each and all of said rights, powers, remedies or privileges shall be deemed cumulative and additional and not in lieu or exclusive of any other right, power, remedy or privilege available to the DOT at law or in equity.

Article 33. Entire Agreement. This Master Agreement, when fully executed and approved as indicated, constitutes the entire agreement between the Parties and shall supersede all previous communications, representations, or agreements, either oral or written, between the Parties hereto with respect to the subject matter hereof; and no agreement or understanding varying or extending the same shall be binding upon either Party hereto unless in writing signed by both Parties hereto.

The Parties have executed this Master Agreement by their duly authorized representatives on the day and year indicated, with full knowledge of and agreement with its terms and conditions.

STATE OF CONNECTICUT
Department of Transportation
Garrett T. Eucalitto, Commissioner

By _____

Scott A. Hill, P.E.
Bureau Chief
Bureau of Engineering and Construction

Date:_____

CITY OF TORRINGTON

By _____
The Honorable Elinor Carbone, Mayor

Date: _____

Schedule A

[Addressee – Designated Municipal Official] Local Roads

Dear [Addressee – Designated Municipal Official]:

Subject: Project Authorization Letter
For the [Project Description] (Design Project)

State Project No.
Federal Project No.
Master Agreement No.

On [date] the State of Connecticut, Department of Transportation (DOT) and the [City/Town] of [NAME OF CITY/TOWN] (Municipality) entered into the Master Municipal Agreement for Design Projects (Master Agreement) noted above. This Project Authorization Letter (PAL) is issued pursuant to the Master Agreement. The capitalized terms used in this PAL are the same as those used in the Master Agreement.

The Design Project is to provide [ENTER DESCRIPTION], beginning at a point [ ] and ending at [ ], a distance of [ ] feet.

Funding for the Design Project is provided under [identify the Federal and or State program and associated funding ratio between F/S/T] and payment will be on a reimbursement basis. The maximum reimbursement to the Municipality under this PAL is $[ENTER AMOUNT] . In addition, any reimbursement for actual expenditures will be in accordance with the terms of the Master Agreement. Costs contained in this PAL shall not be exceeded without first obtaining written permission from the DOT. Attached is an estimated engineering cost break down for Design Project activities. A Demand Deposit in the amount of $[ENTER AMOUNT] is due the DOT for [identify the purpose of the deposit, i.e. their share of DOT costs, non-federal cost of sidewalks etc.]

This Design Project has been assigned a [ENTER CORRECT DESIGNATION DBE/SBE/SBPPP] goal of [_____]% and the Municipality shall comply with the requirements pertaining to the goal as stipulated in the Master Agreement.

The issuance of the PAL itself is not an authorization for the Municipality to begin performing work with respect to the Design Project. The Municipality may advance or begin work on the Design Project only after it has received from the DOT an Authorization to Proceed Notice.

Please indicate your concurrence with the PAL by signing below on or before [date] and returning a copy to the DOT's Authorized Representative. The signature of the Designated Municipal Official evidences the Municipality's concurrence with the PAL and constitutes the Written Acknowledgement of the PAL. You may submit the Written Acknowledgement of the

Schedule A

PAL to the DOT's Authorized Representative in hard copy or by facsimile or electronic transmission. The Master Agreement and the PAL will be incorporated into one another in their entirety and contain the legal and binding obligations of the Municipality with respect to the Design Project.

If you have any questions please contact [Mr./Ms._____], the Project Manager at (860) 594-[xxxx].

Very truly yours,

Authorized DOT Representative

MUNICIPALITY'S ACKNOWLEDGEMENT OF PAL

Concurred By_____ Date_____

Print Name:
Designated Municipal Official

Schedule A

PAL ATTACHMENT
STATE PROJECT NO.XXX
FEDERAL PROJECT NO.XXXX
ESTIMATED Design COSTS

A. Municipal Design Project Cost - Consultant Services $

B. Municipal Design Project Cost – Municipal Forces $

C. Extra Work Allowance (+/-10% of A+B) – in accordance with Section 11 of the Master Agreement. $

D. Total Municipal Cost (A+B+C) $

E. DOT-provided Services – Design $

F. DOT-provided Services – Administrative Oversight $

G. DOT-provided Services – Audits $

H. Extra Work Allowance – DOT Forces (+/-10% of E+F+G) $

I. Total Design Cost – DOT Forces (E+F+G+H) $

J. Total Design Cost (D+I) $

K. Federal Proportionate Share of the Total Design Cost (80% of J) $

L. DOT Proportionate Share of the Total Design Cost (X% of J) $

M. Maximum Amount of Reimbursement to the Municipality (X% of D) $

N. Demand Deposit Required from the Municipality $

(NOTE: Depending on the federal program the cost sharing between the parties will vary and this attachment will be adjusted accordingly by the initiating unit.)

CONNECTICUT REQUIRED
SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES
(2010)

1. General:

a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by federal Executive Order 11246, federal Executive Order 11375 are set forth in Required Contract Provisions (Form PR-1273 or 1316, as appropriate) and these special provisions which are imposed pursuant to Section 140 of Title 23 U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these special provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b) "Company" refers to any entity doing business with the Connecticut Department of Transportation and includes but is not limited to the following:

Contractors and Subcontractors
Consultants and Subconsultants
Suppliers of Materials and Vendors (where applicable)
Municipalities (where applicable)
Utilities (where applicable)

c) The Company will work with the Connecticut Department of Transportation (ConnDOT) and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

d) The Company and all his/her subcontractors or Subconsultants holding subcontracts not including material suppliers, of $10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of federal Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The Company will include these requirements in every subcontract of $10,000 or more with such modification of language as necessary to make them binding on the subcontractor or Subconsultant.

2. Equal Employment Opportunity Policy:

Companies with contracts, agreements or purchase orders valued at $10,000 or more will develop and implement an Affirmative Action Plan utilizing the ConnDOT Affirmative Action Plan Guideline. This Plan shall be designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive continuation program.

3. Subcontracting:

a) The Company will use his/her best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female

representation among their employees. Companies shall obtain lists of minority-owned construction firms from the Division of Contract Compliance.

b) The Company will use its best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

4. Records and Reports:

a) The Company will keep such Records as are necessary to determine compliance with equal employment opportunity obligations. The Records kept by the Company will be designed to indicate:

1. The number of minority and non-minority group members and women employed in each classification on the project;
2. The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force);
3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
4. The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b) All such Records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of ConnDOT and the Federal Highway Administration.

c) The Company will submit an annual report to ConnDOT each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision," the Company will be required to furnish Form FHWA 1409.

Schedule C

SPECIAL PROVISION
DISADVANTAGED BUSINESS ENTERPRISES
AS SUBCONTRACTORS AND MATERIAL SUPPLIERS OR MANUFACTURERS
FOR FEDERAL FUNDED PROJECTS

Revised – April 2012

NOTE: Certain of the requirements and procedures stated in this Special Provision are applicable prior to the award and execution of the Contract document.

I. ABBREVIATIONS AND DEFINITIONS AS USED IN THIS SPECIAL PROVISION

A. "Administrative Agency" means the agency responsible for awarding the contract.

B. "ConnDOT" means the Connecticut Department of Transportation.

C. "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration ("FHWA"), the Federal Transit Administration ("FTA"), and the Federal Aviation Administration ("FAA").

D. "Broker" means a party acting as an agent for others in negotiating Contracts, Agreements, purchases, sales, etc., in return for a fee or commission.

E. "Contract," "Agreement" or "subcontract" means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For the purposes of this provision, a lease for equipment or products is also considered to be a Contract.

F. "Contractor," means a consultant, second party or any other entity doing business with the Administrative Agency or, as the context may require, with another Contractor.

G. "Disadvantaged Business Enterprise" ("DBE") means a small business concern:

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock of which is owned by one or more such individuals; and

2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

3. Certified by ConnDOT under 49 CFR Part 26 or 23.

H. "DOT-assisted Contract" means any Contract between a recipient and a Contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees.

I. "Good Faith Efforts" means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Refer to Appendix A of 49 Code of Federal Regulation ("CFR") Part 26 – "Guidance Concerning Good Faith Efforts," a copy of which is attached to this provision, for guidance as to what constitutes Good Faith Efforts.

J. “Small Business Concern” means, with respect to firms seeking to participate as DBEs in DOT-assisted Contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration (“SBA”) regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26, Section 26.65(b).

K. “Socially and Economically Disadvantaged Individuals” means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

1. Any individual who ConnDOT finds on a case-by-case basis to be a socially and economically disadvantaged individual.

2. Any individuals in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

i. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

ii. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

v. “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

vi. Women;

vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

II. GENERAL REQUIREMENTS

A. The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the Administrative Agency and ConnDOT deem appropriate.

B. The Contractor shall cooperate with the Administrative Agency, ConnDOT and DOT in implementing the requirements concerning DBE utilization on this Contract in accordance with Title 49 of the Code of Federal Regulations, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs" ("49 CFR Part 26"), as revised. The Contractor shall also cooperate with the Administrative Agency, ConnDOT and DOT in reviewing the Contractor's activities relating to this Special Provision. This Special Provision is in addition to all other equal opportunity employment requirements of this Contract.

C. The Contractor shall designate a liaison officer who will administer the Contractor's DBE program. Upon execution of this Contract, the name of the liaison officer shall be furnished in writing to the Administrative Agency.

D. For the purpose of this Special Provision, DBEs to be used to satisfy the DBE goal must be certified by ConnDOT's Division of Contract Compliance for the type(s) of work they will perform.

E. If the Contractor allows work designated for DBE participation required under the terms of this Contract and required under III-B to be performed by other than the named DBE organization without the approval of the Administrative Agency, the Contractor may not be eligible for payment for those items of work.

F. In the event a DBE firm that was listed in the award documents is unable or unwilling to perform the work assigned; the Contractor shall notify the Administrative Agency immediately and make efforts to obtain a release of work from the firm. The Contractor shall use the DBE Directory to identify and contact firms certified to perform the type of work that was assigned to the unable or unwilling DBE firm. If the Contractor is unable to find a DBE replacement, then the Contractor should identify other contracting opportunities and solicit DBE firms in an effort to meet the Contract DBE goal requirement.

G. At the completion of all Contract work, the Contractor shall submit a final report to the Administrative Agency indicating the work done by, and the dollars paid to DBEs. If the Contractor does not achieve the specified Contract goals for DBE participation, the Contractor shall also submit written documentation to the Administrative Agency detailing the Good Faith Efforts made during the performance of the Contract to satisfy the goal. Documentation is to include, but not be limited to, the following:

1. A detailed statement of the efforts made to replace an unable or unwilling DBE firm, and a description of any additional subcontracting opportunities that were identified and offered to DBE firms in order to increase the likelihood of achieving the stated goal.

A detailed statement, including documentation of the efforts made to contact and solicit bids from certified DBEs, including the names, addresses, and telephone numbers of each DBE firm contacted; the date of contact and a description of the information provided to each DBE

regarding the scope of services and anticipated time schedule of work items proposed to be subcontracted and the response from firms contacted.

2. Provide a detailed statement for each DBE that submitted a subcontract proposal which the Contractor considered not to be acceptable stating the reasons for this conclusion.

3. Provide documents to support contacts made with the Administrative Agency requesting assistance in satisfying the specified Contract goal.

4. Provide documentation of all other efforts undertaken by the Contractor to meet the defined goal.

H. Failure of the Contractor, at the completion of all Contract work, to have at least the specified percentage of this Contract performed by DBEs as required in III-B will result in the reduction in Contract payments to the Contractor by an amount determined by multiplying the total Contract value by the specified percentage required in III-B and subtracting from that result, the dollar payments for the work actually performed by DBEs and verified by the Administrative Agency. In instances where the Contractor can adequately document or substantiate its Good Faith Efforts made to meet the specified percentage to the satisfaction of the Administrative Agency, no reduction in payments will be imposed.

I. All Records must be retained for a period of three (3) years following acceptance by the Administrative Agency of the Contract and shall be available at reasonable times and places for inspection by authorized representatives of the Administrative Agency, ConnDOT (when the Administrative Agency is other than ConnDOT) and Federal agencies. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the Records shall be retained until all litigation, claims, or audits findings involving the Records are resolved.

III. SPECIFIC REQUIREMENTS:

In order to increase the participation of DBEs, the Administrative Agency requires the following:

A. The Contractor shall assure that certified DBEs will have an opportunity to compete for subcontract work on this Contract, particularly by arranging solicitations and time for the preparation of proposals for services to be provided so as to facilitate the participation of DBEs regardless if a Contract goal is specified or not.

B. The DBE goal percentage will be provided as part of the Project Authorization Letter. The goal shall be based upon the total Contract value. Compliance with this provision may be fulfilled when a DBE or any combination of DBEs perform work under the Contract in accordance with 49 CFR Part 26.55 Only work actually performed by and/or services provided by DBEs which are certified for such work and/or services can be counted toward the DBE goal. Supplies and equipment a DBE purchases or leases from the prime Contractor or its affiliate cannot be counted toward the goal.

If the Contractor does not document commitments, by subcontracting and/or procurement of material and/or services that at least equal the goal, it must document the good faith efforts that outline the steps it took to meet the goal in accordance with VII.

C. Within 7 days after the bid opening, the low bidder shall indicate in writing to the Administrative Agency, on the forms provided, the DBE(s) it will use to achieve the goal indicated in III-B. The submission shall include the name and address of each DBE that will participate in this Contract, a

description of the work each will perform, the dollar amount of participation, and the percentage this is of the bid amount. This information shall be signed by the named DBE and the low bidder. The named DBE shall be from a list of certified DBEs available from ConnDOT. In addition, the named DBE(s) shall be certified to perform the type of work they will be contracted to do.

D. The prime Contractor shall submit to the Administrative Agency all requests for subcontractor approvals on the standard forms provided by the Administrative Agency.

If the request for approval is for a DBE subcontractor for the purpose of meeting the Contract DBE goal, a copy of the legal Contract between the prime contractor and the DBE subcontractor must be submitted along with the request for subcontractor approval. Any subsequent amendments or modifications of the Contract between the prime and the DBE subcontractor must also be submitted to the Administrative Agency with an explanation of the change(s). The Contract must show items of work to be performed, unit prices and, if a partial item, the work involved by all parties.

In addition, the following documents are to be attached:

1. An explanation indicating who will purchase material.

2. A statement explaining any method or arrangement for renting equipment. If rental is from a prime contractor, a copy of the rental agreement must be submitted.

3. A statement addressing any special arrangements for manpower.

E. The Contractor is required, should there be a change in a DBE they submitted in III-C, to submit documentation to the Administrative Agency which will substantiate and justify the change (i.e., documentation to provide a basis for the change for review and approval by the Administrative Agency) prior to the implementation of the change. The Contractor must demonstrate that the originally named DBE is unable or unwilling to perform in conformity to the scope of service, or is in default of its Contract. The Contractor's ability to negotiate a more advantageous Agreement with another subcontractor is not a valid basis for change. Documentation shall include a letter of release from the originally named DBE indicating the reason(s) for the release.

F. Contractors subcontracting with DBEs to perform work or services as required by this Special Provision shall not terminate such firms without advising the Administrative Agency in writing, and providing adequate documentation to substantiate the reasons for termination if the DBE has not started or completed the work or the services for which it has been contracted to perform.

G. When a DBE is unable or unwilling to perform, or is terminated for just cause, the Contractor shall make Good Faith Efforts to find other DBE opportunities to increase DBE participation to the extent necessary to at least satisfy the goal required by III-B.

H. In instances where an alternate DBE is proposed, a revised submission to the Administrative Agency together with the documentation required in III-C, III-D, and III-E, must be made for its review and approval.

I. Each quarter after execution of the Contract, the Contractor shall submit a report to the Administrative Agency indicating the work done by, and the dollars paid to the DBE for the current quarter and to date.

J. Each contract that the Administrative Agency signs with a Contractor and each subcontract the Contractor signs with a subcontractor must include the following assurance: *The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*

IV. MATERIAL SUPPLIERS OR MANUFACTURERS

A. If the Contractor elects to utilize a DBE supplier or manufacturer to satisfy a portion or all of the specified DBE goal, the Contractor must provide the Administrative Agency with:

1. Substantiation of payments made to the supplier or manufacturer for materials used on the project.

B. Credit for DBE suppliers is limited to 60% of the value of the material to be supplied, provided such material is obtained from a regular DBE dealer. A regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products, need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as material suppliers or manufacturers.

C. Credit for DBE manufacturers is 100% of the value of the manufactured product. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Administrative Agency, or Contractor.

V. NON-MANUFACTURING OR NON-SUPPLIER DBE CREDIT:

A. Contractors may count towards their DBE goals the following expenditures with DBEs that are not manufacturers or suppliers:

1. Reasonable fees or commissions charged for providing a bona fide service such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies necessary for the performance of the Contract, provided that the fee or commission is determined by the Administrative Agency to be reasonable and consistent with fees customarily allowed for similar services.

2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is a DBE but is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fees are determined by the Administrating Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services.

3. The fees or commissions charged for providing bonds or insurance specifically required for the performance of the Contract, provided that the fees or commissions are determined by the Administrative Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services.

VI. BROKERING

A. Brokering of work by DBEs who have been approved to perform subcontract work with their own workforce and equipment is not allowed, and is a Contract violation.

B. Firms involved in the brokering of work, whether they are DBEs and/or majority firms who engage in willful falsification, distortion or misrepresentation with respect to any facts related to the project shall be referred to the U.S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U.S. Code, Section 10.20.

VII. REVIEW OF PRE-AWARD GOOD FAITH EFFORTS

A. If the Contractor does not document pre-award commitments by subcontracting and/or procurement of material and/or services that at least equal the goal stipulated in III-B, the Contractor must document the Good Faith Efforts that outline the specific steps it took to meet the goal. The Contract will be awarded to the Contractor if its Good Faith Efforts are deemed satisfactory and approved by the Administrative Agency. To obtain such an exception, the Contractor must submit an application to the Administrative Agency, which documents the specific Good Faith Efforts that were made to meet the DBE goal. An application form entitled "Review of Pre-Award Good Faith Efforts" is attached hereto.

The application must include the following documentation:

1. A statement setting forth in detail which parts, if any, of the Contract were reserved by the Contractor and not available for bid by subcontractors;

2. A statement setting forth all parts of the Contract that are likely to be sublet;

3. A statement setting forth in detail the efforts made to select subcontracting work in order to likely achieve the stated goal;

4. Copies of all letters sent to DBEs;

5. A statement listing the dates and DBEs that were contacted by telephone and the result of each contact;

6. A statement listing the dates and DBEs that were contacted by means other than telephone and the result of each contact;

7. Copies of letters received from DBEs in which they declined to bid;

8. A statement setting forth the facts with respect to each DBE bid received and the reason(s) any such bid was declined;

9. A statement setting forth the dates that calls were made to ConnDOT's Division of Contract Compliance seeking DBE referrals and the result of each such call; and

10. Any information of a similar nature relevant to the application.

The review of the Contractor's Good Faith Efforts may require an extension of time for award of the Contract. In such a circumstance, and in the absence of other reasons not to grant the extension or make the award, the Administrative Agency will agree to the needed extension(s) of time for the award of the Contract, provided the Contractor and the surety also agree to such extension(s).

B. Upon receipt of the submission of an application for review of pre-award Good Faith Efforts, the Administrative Agency will review the documents and determine if the package is complete, accurate and adequately documents the Contractor's Good Faith Efforts. Within fourteen (14) days of receipt of the documentation, the Administrative Agency shall notify the Contractor by mail of the approval or denial of its Good Faith Efforts.

C. If the Contractor's application is denied, the Contractor shall have seven (7) days upon receipt of written notification of denial to request administrative reconsideration. The Contractor's request for administrative reconsideration should be sent in writing to the Administrative Agency. The Administrative Agency will forward the Contractor's reconsideration request to the ConnDOT Division of Contract Compliance for submission to the DBE Screening Committee. The DBE Screening Committee will schedule a meeting within fourteen (14) days from receipt of the Contractor's request for administrative reconsideration and advise the Contractor of the date, time and location of the meeting. At this meeting, the Contractor will be provided with the opportunity to present written documentation and/or argument concerning the issue of whether it made adequate Good Faith Efforts to meet the goal. Within seven (7) days following the reconsideration meeting, the chairperson of the DBE Screening Committee will send the Contractor, a written determination on its reconsideration request, explaining the basis of finding either for or against the request. The DBE Screening Committee's determination is final. If the reconsideration is denied, the Contractor shall indicate in writing to the Administrative Agency within fourteen (14) days of receipt of the written notification of denial, the DBEs it will use to achieve the goal indicated in III-B.

D. Approval of pre-award Good Faith Efforts does not relieve the Contractor from its obligation to make continuous good faith efforts throughout the duration of the project to achieve the DBE goal.

Schedule C

Connecticut Department of Transportation
Application for Review of Pre-award Good Faith Efforts

Directions: A Contractor who is unable to meet the percentage goals set forth in the Special Provisions Disadvantaged Business Enterprises as Subcontractors and Material Suppliers or Manufacturers - Part III-B shall submit the attached application requesting a review of its Good Faith Efforts to meet the goal.

The Contractor must show that it took all necessary and reasonable steps to achieve the DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation. Appendix A of 49 CFR Part 26 - "Guidance Concerning Good Faith Efforts" will be generally but not exclusively, utilized in evaluating Good Faith Efforts. All applications must be in writing, signed and dated and include the following:

1. a statement setting forth in detail which parts, if any, of the contract were reserved by the contractor and not available for bid from subcontractors;

2. a statement setting forth all parts of the contract that are likely to be sublet;

3. a statement setting forth in detail the efforts made to select subcontracting work in order to likely achieve the stated goal;

4. copies of all letters sent to DBEs;

5. a statement listing the dates and DBEs that were contacted by telephone and the result of each contract;

6. a statement listing the dates and DBEs that were contacted by other means other than telephone and the result of each contact;

7. copies of letters received from DBEs in which they declined to bid;

8. a statement setting forth the facts with respect to each DBE bid received and the reason(s) any such bid was declined;

9. a statement setting forth the dates that calls were made to ConnDOT's Division of Contract Compliance seeking DBE referrals and the result of each such call; and

10. any information of a similar nature relevant to the application.

All applications shall be submitted to the Manager of Contracts. Upon receipt of the submission requesting a review of pre-award Good Faith Efforts, ConnDOT's Manager of Contracts shall submit the documentation to the Division of Contract Compliance who will review the documents and determine if the package is complete and accurate and adequately documents the Contractor's Good Faith Efforts. Within fourteen (14) days of receipt of the documentation, the Division of Contract Compliance shall notify the Contractor by certified mail of the approval or denial of its Good Faith Efforts.

If the Contractor's application is denied, the Contractor shall have seven (7) days upon receipt of written notification of denial to request administrative reconsideration. The Contractor's request for administrative reconsideration should be sent in writing to: Manager of Contracts, P.O. Box 317546, Newington, CT 06131-7546. The Manager of Contracts will forward the Contractor's reconsideration request to the DBE Screening Committee. The DBE Screening Committee will schedule a meeting within fourteen (14) days from receipt of the Contractors request for administrative reconsideration and advise the Contractor of the date, time and location of the meeting. At this meeting, the Contractor will be provided with the opportunity to present written documentation and/or argument concerning the issue of whether it made adequate good faith efforts to meet the goal. Within seven (7) days following the reconsideration meeting, the chairperson of the DBE Screening Committee will send the contractor, via certified mail, a written determination on its reconsideration request, explaining the basis of finding either for or against the request. The DBE Screening Committee's determination is final.

Schedule C

Connecticut Department of Transportation
Application for Review of Pre-award Good Faith Efforts

Name of Company: _____

Address: _____

Project# _____

Contract goal as set forth in Special Provisions Part III-B._____ %

Total DBE commitments obtained, by subcontracting and/or procurement of material and/or services. (Attach DBE Participation Approval Request(s)) $ _____ _____ % of Total Contract

1. Items of Contract not available for subletting. (Attach additional sheets, if necessary.)

Item #	Description of Item	$ Bid Amount	% of Total Contract

Schedule C

2. Items of Contract likely to be sublet. (Attach additional sheets, if necessary)

Item #	Description of Item	$ Bid Amount	% of Total Contract

Schedule C

3. Items of Contract DBEs solicited to bid. If partial item, indicate work, materials, and/or services bids were solicited for. (Attach additional sheets, if required.)

Item #	Description of Item	$ Bid Amount	% of Total Contract

Schedule C

4. Names of DBEs contacted. (Attach additional sheets, if necessary. Attach copies of all correspondence.)

Name of DBE	Items Contacted for	Date of Contact	Phone/Cert.Mail Other	Result

5. Names of DBEs who were quoted on contract (be very specific and include items and amounts; attach documentation).

Name of DBE	Item of Work Quoted	Date of Quote	Reason(s) for Rejection of Bid

Schedule C

6. Names of DBEs contacted who did not bid. (Attach copies of all supporting correspondence and phone logs.)

Name of DBE	Items of Work	Date DBE Declined	Reason for Refusal to Bid

7. Date(s) contractor contacted ConnDOT Division of Contract Compliance seeking DBE referrals. (Provide complete documentation, including phone logs.)

Date and Name of Contact: _____

_____

_____

Name of DBE Referred by ConnDOT

Schedule C

8. Any additional information that should be considered in this application.

_____
Contractor Signature

_____
Title

Date: _____

Schedule D

SPECIAL PROVISION
SMALL CONTRACTOR AND SMALL CONTRACTOR MINORITY BUSINESS ENTERPRISES (SET-ASIDE)

April, 2012

NOTE: Certain of the requirements and procedures stated in this Special Provision are applicable prior to the execution of the Contract.

I. GENERAL

A. The municipality shall cooperate with the Connecticut Department of Transportation (ConnDOT) in implementing the required contract obligations concerning Small Contractor and Small Contractor Minority Business Enterprises utilization on this Contract in accordance with Section 4a-60g of the Connecticut General Statutes, as revised. References, throughout this Special Provision, to Small Contractor are also implied references to Small Contractor Minority Business Enterprises as both relate to Section IIA of these provisions. The municipality shall also cooperate with ConnDOT in reviewing the contractor's activities relating to this provision. This Special Provision is in addition to all other equal opportunity employment requirements of this Contract.

B. For the purpose of this Special Provision, the Small Contractor named to satisfy the set-aside requirements must be certified by the Department of Administrative Services, Supplier Diversity Program (860)713-5236; www.das.state.ct.us as a Small Contractor as defined by Section 4a-60g of the Connecticut General Statutes, as revised, and is subject to approval by ConnDOT to do the work for which it is nominated.

C. Contractors who allow work which they have designated for Small Contractor participation in the pre-award submission required under Section IIC to be performed by other than the approved Small Contractor organization and prior to concurrence by ConnDOT, will not be paid for the value of the work performed by organizations other than the Small Contractor designated.

D. If the contractor is unable to achieve the specified contract goals for Small Contractor participation, the contractor shall submit written documentation to the municipality indicating his/her good faith efforts to satisfy set-aside requirements. Documentation is to include but not be limited to the following:

1. A detailed statement of the efforts made to select additional subcontract opportunities for work to be performed by each Small Contractor in order to increase the likelihood of achieving the stated goal.

2. A detailed statement, including documentation of the efforts made to contact and solicit contracts with each Small Contractor, including the names, addresses, dates and telephone numbers of each Small Contractor contacted, and a

description of the information provided to each Small Contractor regarding the scope of services and anticipated time schedule of items proposed to be subcontracted and the nature of response from firms contacted.

3. For each Small Contractor that placed a subcontract quotation which the contractor considered not to be acceptable, provide a detailed statement of the reasons for this conclusion.

4. Documents to support contacts made with the municipality and/or ConnDOT requesting assistance in satisfying the Contract specified or adjusted Small Contractor dollar requirements.

5. Document other special efforts undertaken by the contractor to meet the defined set-aside requirement.

E. Failure of the contractor to have at least the specified dollar amount of this Contract performed by a Small Contractor as required in Section IIA of this Special Provision will result in the reduction in the Contract payment to the contractor by an amount equivalent to that determined by subtracting from the specific dollar amount required in Section IIA, the dollar payments for the work actually performed by each Small Contractor. The deficiency in Small Contractor achievement, will therefore, be deducted from the final Contract payment. However, in instances where the contractor can adequately document or substantiate its good faith efforts made to meet the specified or adjusted dollar amount to the satisfaction of ConnDOT, no reduction in payments will be imposed.

F. All Records must be retained for a period of three (3) years following completion and acceptance of the work performed under the Contract and shall be available at reasonable times and places for inspection by authorized representatives of ConnDOT or the United States Department of Transportation.

G. Nothing contained herein, is intended to relieve any contractor or subcontractor from compliance with all applicable Federal and State legislation or provisions concerning equal employment opportunity, affirmative action, nondiscrimination and related subjects during the term of this Contract.

II. SPECIFIC REQUIREMENTS

In order to increase the participation of Small Contractors, ConnDOT requires the following:

A. The Small Business Enterprise (SBE) set-aside percentage will be provided as part of the Project Authorization Letter. Compliance with this provision may be fulfilled when a SBE or any combination of SBEs perform work. Not less than the set-aside percentage assigned to the project shall be subcontracted to and performed by, and/or supplied by, manufactured by and paid to Small Contractors and/or Small Contractors

Minority Business Enterprises.

B. The contractor shall assure that each Small Contractor will have an equitable opportunity to compete under this Special Provision, particularly by arranging solicitations, time for the preparation of fee proposals, scope of work, and delivery schedules so as to facilitate the participation of each Small Contractor.

C. The contractor shall provide to the municipality within seven (7) days after the bid opening the following items:

1. Certification (Exhibit I) signed by each named Small Contractor [subcontractor listing a description of the work and] certifying that the dollar amount of all contract(s) and/or subcontract(s) that have been awarded to him/her for the current State Fiscal Year (July 1 - June 30) does not exceed the Fiscal Year limit of $15,000,000.00.

2. A certification of work to be subcontracted (Exhibit I) signed by both the contractor and the Small Contractor listing the work items and the dollar value of the items that the nominated Small Contractor is to perform on the project to achieve the minimum percentage indicated in Section IIA above.

3. It is the responsibility of the contractor to ensure that the Small Contractor and Small Contractor Minority Business Enterprises named are qualified to perform the designated scope of work.

D. After the contractor signs the Contract, the contractor will be required to meet with the municipality to review the following:

1. What is expected with respect to the Small Contractor set aside requirements.

2. Failure to comply with and meet the requirement can and will result in monetary deductions from payment.

3. Each quarter after the start of the Small Contractor the contractor shall submit a report to the municipality indicating the work done by, and the dollars paid to each Small Contractor to date.

4. What is required when a request to sublet to a Small Contractor is submitted.

E. The contractor shall submit to the municipality all requests for subcontractor approvals on standard forms provided by the municipality.

If the request for approval is for a Small Contractor subcontractor for the purpose of meeting the Contract required Small Contractor percentage stipulated in Section IIA, a copy of the legal agreement between the contractor and the Small Contractor subcontractor must also be submitted at the same time. Any subsequent amendments

or modifications of the contract between the contractor and the Small Contractor subcontractor must also be submitted to the municipality with an explanation of the change(s). The contract must show items of work to be performed, phases/tasks and, if a partial item, the work involved by both parties.

In addition, the following documents are to be attached, if applicable:

(1) A statement explaining any method or arrangement for renting equipment. If rental is from a contractor, a copy of rental agreement must be submitted.

(2) A statement addressing any special arrangements for manpower.

F. In instances where a change from the originally approved named Small Contractor (see Section IB) is proposed, the contractor is required to submit, in a reasonable and expeditious manner, a revised submission, comprised of the documentation required in Section IIC, Paragraphs 1 and 2 and Section IIE together with documentation to substantiate and justify the change (i.e., documentation to provide a basis for the change) to the municipality for its review and approval prior to the implementation of the change. The contractor must demonstrate that the originally named Small contractor is unable to perform in conformity to specifications, or unwilling to perform, or is in default of its contract, or is overextended on other jobs. The contractor's ability to negotiate a more advantageous contract with another Small Contractor is not a valid basis for change. Documentation shall include a letter of release from the originally named Small Contractor indicating the reason(s) for the release.

G. Contractors subcontracting with a Small Contractor to perform work or services as required by this Special Provision shall not terminate such firms without advising the municipality, in writing, and providing adequate documentation to substantiate the reasons for termination if the designated Small Contractor firm has not started or completed the work or the services for which it has been contracted to perform.

III. BROKERING

For the purpose of this Special Provision, a Broker is one who acts as an agent for others in negotiating contracts, purchases, sales, etc., in return for a fee or commission. Brokering of work by a Small Contractor is not allowed and is a Contract violation.

IV. PRE-AWARD WAIVERS:

If the contractor's submission of the Small Contractor listing, as required by Section IIC, indicates that it is unable, by subcontracting to obtain commitments which at least equal the amount required by Section IIA, it may request, in writing, a waiver of up to 50% of the amount required by Section IIA. To obtain such a waiver, the contractor must submit a completed "Application for Waiver of Small Contractor Goals" to the municipality which must also contain the following documentation:

Schedule D

A. Information described in Section IVB.

B. For each Small Contractor contacted but unavailable, a statement from each Small Contractor confirming its unavailability.

Upon receipt of the submission requesting a waiver, the municipality shall submit the documentation to the Manager of Contract Compliance who shall review it for completeness. After completion of the Director of Contract Compliance's review, he/she should write a narrative of his/her findings of the application for a waiver, which is to include his/her recommendation. The Manager of Contract Compliance shall submit the written narrative to the Chairperson of the Screening Committee at least five (5) working days before the scheduled meeting. The contractor shall be invited to attend the meeting and present his/her position. The Screening Committee shall render a determination on the waiver request within five (5) working days after the meeting. The Screening Committee's determination shall be final. Waiver applications are available from ConnDOT.

Schedule E

SPECIAL PROVISION
SMALL BUSINESS PARTICIPATION PILOT PROGRAM SBPPP
AS SUBCONTRACTORS AND MATERIAL SUPPLIERS OR MANUFACTURERS
Revised – April, 2012

NOTE: Certain of the requirements and procedures stated in this Special Provision are applicable prior to the award and execution of the Contract document.

I. ABBREVIATIONS AND DEFINITIONS AS USED IN THIS SPECIAL PROVISION

A. "ConnDOT" means the Connecticut Department of Transportation.

B. "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration ("FHWA"), the Federal Transit Administration ("FTA"), and the Federal Aviation Administration ("FAA").

C. "Broker" means a party acting as an agent for others in negotiating Contracts, Agreements, purchases, sales, etc., in return for a fee or commission.

D. "Contract," "Agreement" or "Subcontract" means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For the purposes of this provision, a lease for equipment or products is also considered to be a Contract.

E. "Contractor," means a consultant, second party or any other entity doing business with the Municipality or, as the context may require, with another Contractor.

F. "Disadvantaged Business Enterprise" ("DBE") means a small business concern:

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock of which is owned by one or more such individuals; and

2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

G. "DOT-assisted Contract" means any Contract between a recipient and a Contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees.

H. "Good Faith Efforts" means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Refer to Appendix A of 49 Code of Federal Regulation ("CFR") Part 26 – "Guidance Concerning Good Faith Efforts," a copy of which is attached to this provision, for guidance as to what constitutes good faith efforts.

I. "Small Business Concern" means, with respect to firms seeking to participate as DBEs in DOT-assisted Contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration ("SBA") regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26, Section

26.65(b).

J. “Small Business Participation Pilot Program” (“SBPPP”) means small businesses certified as a Disadvantaged Business Enterprise (DBE) firm by ConnDOT; or firms certified as a Small Business Enterprise or Minority Business Enterprise by the Connecticut Department of Administrative Services; or firms certified by the United States Small Business Administration (USSBA) as an 8(a) or SDB or HUBZone firm; or firms that are a current active recipient of a United States Small Business Administration Loan (loan must be documented).

K. “Socially and Economically Disadvantaged Individuals” means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

1. Any individual who ConnDOT finds on a case-by-case basis to be a socially and economically disadvantaged individual.

2. Any individuals in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

i. “Black Americans,” which includes persons having origins in any of the black racial groups of Africa;

ii. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

iii. “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

v. “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

vi. Women;

vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

II. GENERAL REQUIREMENTS

A. The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this

Contract or such other remedy, as the Municipality and ConnDOT deem appropriate.

B. The Contractor shall cooperate with the Municipality, ConnDOT and DOT in implementing the requirements concerning SBPPP utilization on this Contract. The Contractor shall also cooperate with the Municipality, ConnDOT and DOT in reviewing the Contractor's activities relating to this Special Provision. This Special Provision is in addition to all other equal opportunity employment requirements of this Contract.

C. The Contractor shall designate a liaison officer who will administer the Contractor's SBPPP program. Upon execution of this Contract, the name of the liaison officer shall be furnished in writing to the Municipality.

D. For the purpose of this "Special Provision", the SBPPP contractor(s) named to satisfy the requirements must meet one of the following criteria;

1. Certified as a Disadvantaged Business Enterprise (DBE) firm by ConnDOT;
2. Certified as a Small Business Enterprise or Minority Business Enterprise by the Connecticut Department of Administrative Services;
3. Certified by the USSBA as an 8(a) or SDB firm;
4. Certified by the USSBA as a HUBZone firm; or
5. A current active recipient of a United States Small Business Administration Loan (loan documentation required).

E. If the Contractor allows work designated for SBPPP participation required under the terms of this Contract and required under III-B to be performed by other than the named SBPPP firm without concurrence from the Municipality, the Municipality will not pay the Contractor for the value of the work performed by firms other than the designated SBPPP.

F. In the event a SBPPP firm that was listed in the award documents is unable or unwilling to perform the work assigned; the Contractor shall notify the Municipality immediately and make efforts to obtain a release of work from the firm. If the Contractor is unable to find a SBPPP replacement, then the Contractor should identify other contracting opportunities and solicit SBPPP firms in an effort to meet the contract SBPPP goal requirement.

G. At the completion of all Contract work, the Contractor shall submit a final report to the Municipality indicating the work done by, and the dollars paid to SBPPPs. If the Contractor does not achieve the specified Contract goals for SBPPP participation, the Contractor shall also submit written documentation to the Municipality detailing its good faith efforts to satisfy the goal throughout the performance of the Contract. Documentation is to include, but not be limited to the following:

1. A detailed statement of the efforts made to select additional subcontracting opportunities to be performed by SBPPPs in order to increase the likelihood of achieving the stated goal.

2. A detailed statement, including documentation of the efforts made to contact and solicit bids with SBPPPs, including the names, addresses, dates and telephone numbers of each SBPPP contacted, and a description of the information provided to each SBPPP regarding the scope of services and anticipated time schedule of work items proposed to be subcontracted and nature of response from firms contacted.

3. Provide a detailed statement for each SBPPP that submitted a subcontract proposal, which the Contractor considered not to be acceptable stating the reasons for this conclusion.

4. Provide documents to support contacts made with ConnDOT requesting assistance in satisfying the Contract specified goal.

5. Provide documentation of all other efforts undertaken by the Contractor to meet the defined goal.

H. Failure of the Contractor, at the completion of all Contract work, to have at least the specified percentage of this Contract performed by SBPPPs as required in III-B will result in the reduction in Contract payments to the Contractor by an amount determined by multiplying the total Contract value by the specified percentage required in III-B and subtracting from that result, the dollar payments for the work actually performed by SBPPPs. However, in instances where the Contractor can adequately document or substantiate its good faith efforts made to meet the specified percentage to the satisfaction of the Municipality and ConnDOT, no reduction in payments will be imposed.

I. All Records must be retained for a period of three (3) years following acceptance by the Municipality of the Contract and shall be available at reasonable times and places for inspection by authorized representatives of the Municipality, ConnDOT and or Federal agencies. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the Records shall be retained until all litigation, claims, or audits findings involving the Records are resolved.

J. Nothing contained herein, is intended to relieve any Contractor or subcontractor or material supplier or manufacturer from compliance with all applicable Federal and State legislation or provisions concerning equal employment opportunity, affirmative action, nondiscrimination and related subjects during the term of this Contract.

III. SPECIFIC REQUIREMENTS:

In order to increase the participation of SBPPPs, the Municipality requires the following:

A. The Contractor shall assure that certified SBPPPs will have an opportunity to compete for subcontract work on this Contract, particularly by arranging solicitations and time for the preparation of proposals for services to be provided so as to facilitate the participation of SBPPPs regardless if a Contract goal is specified or not.

B. The SBPPP goal percentage will be provided as part of the Project Authorization Letter. The goal shall be shall be based upon the total contract value. Compliance with this provision may be fulfilled when a SBPPP or any combination of SBPPPs perform work. Only work actually performed by and/or services provided by SBPPPs which are certified for such work and/or services can be counted toward the SBPPP goal. Supplies and equipment a SBPPP purchases or leases from the prime Contractor or its affiliate cannot be counted toward the goal.

If the Contractor does not document commitments, by subcontracting and/or procurement of material and/or services that at least equal the goal, it must document the good faith efforts that outline the steps it took to meet the goal in accordance with VII.

C. Within seven (7) days after the bid opening, the low bidder shall indicate in writing to the Municipality, on the forms provided, the SBPPPs it will use to achieve the goal indicated in III-B. The submission shall include the name and address of each SBPPP that will participate in this Contract, a description of the work each will perform, the dollar amount of participation, and the percentage this is of the bid amount. This information shall be signed by the named SBPPP and the low bidder.

D. The prime Contractor shall submit to the Municipality all requests for subcontractor approvals on the standard forms provided by the Municipality.

If the request for approval is for a SBPPP subcontractor for the purpose of meeting the Contract SBPPP goal, a copy of the legal contract between the prime and the SBPPP subcontractor must be submitted along with the request for subcontractor approval. Any subsequent amendments or modifications of the contract between the prime and the SBPPP subcontractor must also be submitted to the Municipality with an explanation of the change(s). The contract must show items of work to be performed, unit prices and, if a partial item, the work involved by all parties.

In addition, the following documents are to be attached:

1. An explanation indicating who will purchase material.

2. A statement explaining any method or arrangement for renting equipment. If rental is from a prime, a copy of the rental agreement must be submitted.

3. A statement addressing any special arrangements for manpower.

4. Requests for approval to issue joint checks.

E. The Contractor is required, should there be a change in a SBPPP they submitted in III-C, to submit documentation to the Municipality which will substantiate and justify the change (i.e., documentation to provide a basis for the change for review and approval by the Municipality) prior to the implementation of the change. The Contractor must demonstrate that the originally named SBPPP is unable to perform in conformity to the scope of service or is unwilling to perform, or is in default of its contract, or is overextended on other jobs. <u>The Contractor's ability to negotiate a more advantageous contract with another subcontractor is not a valid basis for change.</u> Documentation shall include a letter of release from the originally named SBPPP indicating the reason(s) for the release.

F. Contractors subcontracting with SBPPPs to perform work or services as required by this Special Provision shall not terminate such firms without advising the Municipality in writing, and providing adequate documentation to substantiate the reasons for termination if the SBPPP has not started or completed the work or the services for which it has been contracted to perform.

G. When a SBPPP is unable or unwilling to perform, or is terminated for just cause, the Contractor shall make good faith efforts to find other SBPPP opportunities to increase SBPPP participation to the extent necessary to at least satisfy the goal required by III-B.

H. In instances where an alternate SBPPP is proposed, a revised submission to the Municipality together with the documentation required in III-C, III-D, and III-E, must be made for its review and approval.

I. Each quarter after execution of the Contract, the Contractor shall submit a report to the Municipality indicating the work done by, and the dollars paid to, the SBPPP for the current quarter and to date.

J. Each contract that the Municipality signs with a Contractor and each Subcontract the Contractor signs with a subcontractor must include the following assurance*: The contractor, sub recipient or*

subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

IV. MATERIAL SUPPLIERS OR MANUFACTURERS

A. If the Contractor elects to utilize a SBPPP supplier or manufacturer to satisfy a portion or all of the specified SBPPP goal, the Contractor must provide the Municipality with substantiation of payments made to the supplier or manufacturer for materials used on the project.

B. Credit for SBPPP suppliers is limited to 60% of the value of the material to be supplied, provided such material is obtained from a regular SBPPP dealer. A "regular dealer" is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products, need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as material suppliers or manufacturers.

C. Credit for SBPPP manufacturers is 100% of the value of the manufactured product. A "manufacturer" is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Municipality, ConnDOT or Contractor.

V. NON-MANUFACTURING OR NON-SUPPLIER SBPPP CREDIT:

A. Contractors may count towards their SBPPP goals the following expenditures with SBPPPs that are not manufacturers or suppliers:

1. Reasonable fees or commissions charged for providing a bona fide service such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies necessary for the performance of the Contract, provided that the fee or commission is determined by the Municipality to be reasonable and consistent with fees customarily allowed for similar services.

2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is a SBPPP but is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fees are determined by the Municipality to be reasonable and not excessive as compared with fees customarily allowed for similar services.

3. The fees or commissions charged for providing bonds or insurance specifically required for the performance of the Contract, provided that the fees or commissions are determined by the Municipality to be reasonable and not excessive as compared with fees customarily allowed for similar services.

VI. BROKERING

A. Brokering of work by SBPPPs who have been approved to perform Subcontract work with their

own workforce and equipment is not allowed, and is a Contract violation.

B. SBPPPs involved in the brokering of Subcontract work that they were approved to perform may be decertified.

C. Firms involved in the brokering of work, whether they are SBPPPs and/or majority firms who engage in willful falsification, distortion or misrepresentation with respect to any facts related to the project shall be referred to the U.S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U.S. Code, Section 10.20.

VII. REVIEW OF PRE-AWARD GOOD FAITH EFFORTS

A. If the Contractor does not document pre-award commitments by subcontracting and/or procurement of material and/or services that at least equal the goal stipulated in III-B, the Contractor must document the good faith efforts that outline the specific steps it took to meet the goal. The Contract will be awarded to the Contractor if its good faith efforts are deemed satisfactory and approved by ConnDOT. To obtain such an exception, the Contractor must submit an application to the Municipality, which documents the specific good faith efforts that were made to meet the SBPPP goal. An application form entitled "Review of Pre-Award Good Faith Efforts" is attached hereto.

The application must include the following documentation:

1. A statement setting forth in detail which parts, if any, of the Contract were reserved by the Contractor and not available for bid by subcontractors;

2. A statement setting forth all parts of the Contract that are likely to be sublet;

3. A statement setting forth in detail the efforts made to select subcontracting work in order to likely achieve the stated goal;

4. Copies of all letters sent to SBPPPs;

5. A statement listing the dates and SBPPPs that were contacted by telephone and the result of each contact;

6. A statement listing the dates and SBPPPs that were contacted by means other than telephone and the result of each contact;

7. Copies of letters received from SBPPPs in which they declined to bid;

8. A statement setting forth the facts with respect to each SBPPP bid received and the reason(s) any such bid was declined;

9. A statement setting forth the dates that calls were made to ConnDOT's Division of Contract Compliance seeking SBPPP referrals and the result of each such call; and

10. Any information of a similar nature relevant to the application.

The review of the Contractor's good faith efforts may require an extension of time for award of the

Contract. In such a circumstance, and in the absence of other reasons not to grant the extension or make the award, the Municipality will agree to the needed extension(s) of time for the award of the Contract, provided the Contractor and the surety also agree to such extension(s).

B. Upon receipt of the submission of an application for review of pre-award good faith efforts, the Municipality shall submit the documentation to ConnDOT's initiating unit for submission to the ConnDOT Division of Contract Compliance. The ConnDOT Division of Contract Compliance will review the documents and determine if the package is complete, accurate and adequately documents the Contractor's good faith efforts. Within fourteen (14) days of receipt of the documentation, the ConnDOT Division of Contract Compliance shall notify the Contractor by certified mail of the approval or denial of its good faith efforts.

C. If the Contractor's application is denied, the Contractor shall have seven (7) days upon receipt of written notification of denial to request administrative reconsideration. The Contractor's request for administrative reconsideration should be sent in writing to the Municipality. The Municipality will forward the Contractor's reconsideration request to the ConnDOT initiating unit for submission to the Screening Committee. The Screening Committee will schedule a meeting within fourteen (14) days of receipt of the Contractor's request for administrative reconsideration and advise the Contractor of the date, time and location of the meeting. At this meeting, the Contractor will be provided with the opportunity to present written documentation and/or argument concerning the issue of whether it made adequate good faith efforts to meet the goal. Within seven (7) days following the reconsideration meeting, the chairperson of the Screening Committee will send the Contractor, via certified mail, a written determination on its reconsideration request, explaining the basis of finding either for or against the request. The Screening Committee's determination is final. If the reconsideration is denied, the Contractor shall indicate in writing to the Municipality within fourteen (14) days of receipt of the written notification of denial, the SBPPPs it will use to achieve the goal indicated in III-B.

D. Approval of pre-award good faith efforts does not relieve the Contractor from its obligation to make additional good faith efforts to achieve the SBPPP goal should contracting opportunities arise during actual performance of the Contract work.

CONNECTICUT DEPARTMENT OF TRANSPORTATION

POLICY STATEMENT

POLICY NO. F&A-30

July 23, 2015

SUBJECT: Maximum Fees for Architects, Engineers, and Consultants

It is Department policy that maximum fees for architects, engineers, and consultants shall be in accordance with the provisions of Chapter 11 of United States Code Title 40, Part 36 of Title 48 of the Code of Federal Regulations (CFR) and 23USC 11 2(b)2:

> Under the terms of these federal regulations, the Department "shall accept indirect cost rates established in accordance with the Federal Acquisition Regulations for 1-year applicable accounting periods by a cognizant Federal or State government agency...." and "....shall apply such rates for the purpose of contract estimation, negotiation, administration, reporting and contract payment and shall not be limited by administrative or defacto ceilings of any kind."
>
> If a project, part of a project or, a new task based assignment (project) is federal funded, then the above stated requirements shalt apply.

All new agreements that do not have federal funding will apply the requirements of Policy Statement No. EX.O.-33, dated June 25, 2015.

The below listed agreement and assignments **which contain the reference of GL 97-1** in their language shall be completed using the maximum limits contained in OPM's GL 97-1:

- Existing agreements that are supplemented after June25, 2015
- Existing task based agreements
- New task based assignments (projects) that have no federal funding
- Extra work claims on existing agreements

This policy also applies to those entities (i.e., towns, utilities, etc.) that receive federal funding for any phase of a project.

(This Policy Statement supersedes Policy Statement No. F&A-30 dated April 12, 2006)

James Redeker
Commisioner

CONNECTICUT DEPARTMENT OF TRANSPORTATION

POLICY STATEMENT

POLICY NO. EX.O.-33
June 25, 2015

SUBJECT: Policy on Non-Federally Funded Contract Fees for Architects, Engineers and Consultants performing services for the Department

On May, 4 2015 the Office of Policy and Management (OPM) rescinded OPM General Letter No.
97-1. OPM is currently working, in consultation with DOT, to establish revised guidelines regarding the reasonableness and allow-ability of various cost factors related to engineering consultant services as required by Section 13b-20m of the Connecticut General Statutes.

In the interim, the Department will utilize the following Policy on Non-Federally Funded Contract Fees for Architects, Engineers and Consultants performing services for the Department:

All contracts for architects, engineers and consultants shall be negotiated and awarded on the following basis:

1. Burden, Fringe, Overhead and Profit - Actual but not to exceed 165% for work utilizing a Home Office rate and 130% for work utilizing a Field Office rate.

2. Travel - Maximum is established per the State Travel Regulations (Manager's Agreement).

Each such contract must contain appropriate language to clearly acknowledge the parameters of this letter.

James Redeker
Commisioner

Mandatory State and Federal Requirements

For the purposes of this Schedule, references to "Contract" mean this Master Agreement and references to "Contractor" mean the Municipality.

1. **Executive Orders and Other Enactments.**
   (a) All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to the Contract at any time during its term, or that may be made applicable to the Contract during its term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to perform under this Contract if it chooses to contest the applicability of the Enactments or the Client Agency's authority to require compliance with the Enactments.
   (b) This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.
   (c) This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

2. **Audit Clause. Audit Requirements.** For purposes of this paragraph, the word "contractor" shall be deemed to mean "nonstate entity," as that term is defined in Section 4-230 of the Connecticut General Statutes. The contractor shall provide for an annual financial audit acceptable to CTDOT for any expenditure of state-awarded funds made by the contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The contractor will comply with federal and state singe audit standards as applicable.

3. **Suspension or Debarment.** The Municipality agrees and acknowledges that suspended or debarred contractors, consulting engineers, suppliers, materialmen, lessors, or other vendors may not submit proposals for a State contract or subcontract during the period of suspension or debarment regardless of their anticipated status at the time of contract award or commencement of work.

4. **Certification**.
   A. The signature on the Master Agreement by the Municipality shall constitute certification that to the best of its knowledge and belief the Municipality or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of Federal or State funds:

(i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(ii) Has not, within the prescribed statutory time period preceding this Master Agreement, been convicted of or had a civil judgment rendered against him/her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of Records, making false statements, or receiving stolen property;

(iii) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph A(ii) of this certification; and

(iv) Has not, within a five-year period preceding this Master Agreement, had one or more public transactions (Federal, State or local) terminated for cause or default.

B. Where the Municipality is unable to certify to any of the statements in this certification, such Municipality shall attach an explanation to this Master Agreement.

C. The Municipality agrees to insure that the following certification be included in each subcontract agreement to which it is a party, and further, to require said certification to be included in any subcontracts, sub-subcontracts and purchase orders:

(i) The prospective subcontractors, sub-subcontractors participants certify, by submission of its/their proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(ii) Where the prospective subcontractors, sub-subcontractors participants are unable to certify to any of the statements in this certification, such prospective participants shall attach an explanation to this proposal.

5. **Title VI Contractor Assurances**. The Municipality agrees that as a condition to receiving federal financial assistance, if any, under the Master Agreement, the Municipality shall comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d -2000d-4), all requirements imposed by the regulations of the United States Department of Transportation issued in implementation thereof (CFR Part 21 and 28 CFR § 50.3),, and the "Title VI Contractor Assurances", attached hereto at **Schedule I,** all of which are hereby made a part of this Master Agreement.

6. **Certification for Federal-Aid Contracts** (Applicable to contracts exceeding $100,000):

A. The Municipality certifies, by signing and submitting this Master Agreement, to the best of his/her/its knowledge and belief, that:

(i) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Municipality, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Municipality shall complete and submit a Disclosure of Lobbying Activities form (Form SF-LLL) available at the Office of Budget and Management's ("OMB") website at http://www.whitehouse.gov/omb/grants_forms/, in accordance with its instructions. If applicable, Form SF–LLL shall be completed and submitted with the Master Agreement.

B. This Certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this Certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required Certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

C. The Municipality shall require that the language of this Certification be included in all subcontracts, sub-subcontracts which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly. These completed Disclosure Forms-LLL, if applicable, shall be mailed to the Connecticut Department of Transportation, P.O. Box 317546, Newington, CT 06131-7546, to the attention of the project manager.

7. **Americans Disabilities Act of 1990**. This clause applies to municipalities who are or will be responsible for compliance with the terms of the Americans Disabilities Act of 1990 ("ADA"), Public Law 101-336, during the term of the master Agreement. The Municipality represents that it is familiar with the terms of this ADA and that it is in compliance with the ADA. Failure of the Municipality to satisfy this standard as the same applies to performance under this Master Agreement, either now or during the term of the Master Agreement as it may be amended, will render the Master Agreement voidable at the option of the State upon notice to the Municipality. The Municipality warrants that it will hold the State harmless and indemnify the State from any liability which may be imposed upon the State as a result of any failure of the Municipality to be in compliance with this ADA, as the same applies to performance under this Master Agreement.

8. The Municipality receiving federal funds must comply with the Federal Single Audit Act of 1984, P.L. 98-502 and the Amendments of 1996, P.L. 104-156. The Municipality receiving state funds must comply with the Connecticut General Statutes § 7-396a, and the State Single Audit Act, §§ 4-230 through 236 inclusive, and regulations promulgated thereunder.

FEDERAL SINGLE AUDIT: Each Municipality that expends a total amount of Federal

awards: 1) equal to or in excess of $500,000 in any fiscal year shall have either a single audit made in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" or a program-specific audit (i.e. an audit of one federal program); 2) less than $500,000 shall be exempt for such fiscal year.

STATE SINGLE AUDIT: Each Municipality that expends a total amount of State financial assistance: 1) equal to or in excess of $300,000 in any fiscal year shall have an audit made in accordance with the State Single Audit Act, Connecticut General Statutes (C.G.S.) §§ 4-230 to 4-236, hereinafter referred to as the State Single Audit Act or a program audit; 2) less than $300,000 in any fiscal year shall be exempt for such fiscal year.

The contents of the Federal Single Audit and the State Single Audit (collectively, the "Audit Reports") must be in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

The Audit Reports shall include the requirements as outlined in OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and the State Single Audit Act, when applicable.

The Municipality shall require that the Records of an independent Certified Public Accountant ("CPA") be maintained for a minimum of five (5) years from the date of the Audit Reports and shall require that the CPA provide the State with access to any Records of the CPA pertaining to the Master Agreement so that the State may audit or review all such Records.

9. When the Municipality receives State or Federal funds it shall incorporate the "Connecticut Required Specific Equal Employment Opportunity Responsibilities" ("SEEOR"), dated 2010, attached at **Schedule B**, as may be revised, as a material term of any contracts/agreements it enters into with its contractors, consulting engineers or other vendors, and shall require the contractors, consulting engineers or other vendors to include this requirement in any of its subcontracts. The Municipality shall also attach a copy of the SEEOR, as part of any contracts/agreements with contractors, consulting engineers or other vendors and require that the contractors, consulting engineers or other vendors attach the SEEOR to its subcontracts.

10. **Whistleblowing**. This Master Agreement may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Municipality takes or threatens to take any personnel action against any employee of the Municipality in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Municipality shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Master Agreement. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute

relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Municipality.

11. **Consulting Agreements Representation.** Pursuant to section 4a-81 of the Connecticut General Statutes, the Contractor represents that it has not entered into any consulting agreements in connection with this Contract, except for the agreements listed below or in an attachment to this Contract. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contracts. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of section 4a-81 of the Connecticut General Statutes.

_____ _____

Consultant's Name and Title Name of Firm (if applicable)

_____ _____ _____

Start Date End Date Cost

The basic terms of the consulting agreement are: _____

_____

_____

Description of Services Provided: _____

_____

_____

Is the consultant a former State employee or former public official? ☐ YES ☐ NO

If YES: _____ _____

Name of Former State Agency Termination Date of Employment

Schedule I

TITLE VI CONTRACTOR ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations**: The contractor (hereinafter includes consultants) will comply with the Regulations relative to Nondiscrimination in Federally-assisted programs of the United States Department of Transportation Federal Highway Administration and Federal Transit Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination**: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income or Limited English Proficiency in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations, either by bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports**: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration or Federal Transit Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor will so certify to the Recipient or the Federal Highway Administration or the Federal Transit Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Non-compliance**: In the event of the contractor's non-compliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration or the Federal Transit Administration may determine to be appropriate, including, but not limited to:

    a. withholding contract payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with, litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); • Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to -ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U .S.C. 1681 et seq)