

INTEROFFICE COMMUNICATION

JAN 28/2014
printing

TO: See Distrition below

FROM: Gary W. Belina

Agreement With: Ledyard Town of

Agreement No. : 7.17-03(13)

Project No. or
Identifier:

Federal Number:

CORE Contract ID: 14DOT0128AA

cc: Hugh Hayward
Robert W. Harrison
Gary W. Belina
District (2)

JAN 30 2014
14DOT0128AA

**MASTER MUNICIPAL AGREEMENT
FOR CONSTRUCTION PROJECTS**

THIS MASTER MUNICIPAL AGREEMENT FOR CONSTRUCTION PROJECTS ("Master Agreement") is entered into by and between the STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION, (the "DOT"), and the TOWN OF Ledyard, 741 Colonel Ledyard Highway, Ledyard, CT 06339 (the "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 construct improvements to locally-maintained roadways, structures and transportation enhancement facilities that are eligible for government financial assistance from the DOT, the federal government, or both;

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 either the DOT or the Municipality takes on the responsibility of administering the construction phase of a particular municipal project, and the parties wish for this Master Agreement to address both DOT-administered and Municipality-administered projects;

WHEREAS, the Commissioner is authorized to enter into this Agreement and distribute state and federal financial assistance to the Municipality for these projects pursuant to § 13a-98i and § 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 these 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 "Accumulative Costs" means the total, collective expenditure by the Municipality and the DOT to complete the Construction Project (defined in section 1.8).

1.2 "Administer," "Administering" or "Administration" of the Construction Project means conducting and managing operations required to perform and complete the Construction Project, including performing the construction work by either the Municipality or the DOT, as applicable to the particular Construction Project, in whole or in part, advertising and awarding any contract(s) for performance of the work by contractor(s) in whole or in part, or any combination thereof, and undertaking all of the administrative-duties related to and required for the completion of the Construction Project.

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1.3 "Authorization to Award Notice" means the written notice from the DOT to the Municipality authorizing the Municipality to perform its Administration obligations for the Construction Project under the Project Authorization Letter (PAL) (defined in section 1.28), including, but not limited to, awarding the contract(s) for performance of the work.

1.4 "Authorization to Proceed Notice" means the written notice from the DOT to the Municipality authorizing the Municipality to perform its obligations for the Construction Project under the PAL.

1.5 "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.

1.6 "Consulting Engineer" means the person or entity, whether an employee of, or a contractor engaged by, the Municipality, who performs the Design Services During Construction (defined in section 1.12).

1.7 "Contingencies" means a percentage of funding set aside in the PAL for work that cannot specifically be described, or the extent of which cannot be detailed, in the original scope at bid time, but may later be required, at the DOT's determination, for the Construction Project. Among other purposes, this percentage of the Funding is used to account for the costs that may result from the difference in the estimated quantities provided at bid time versus the actual quantities used during the performance of the Construction Project.

1.8 "Construction Project" means the construction phase activities undertaken by the Municipality, and either Administered by the Municipality or by the DOT on the Municipality's behalf, to construct improvements on a locally-maintained roadway or structure, to perform transportation enhancement activities (as defined by 23 U.S.C. § 101(a)(35), as revised), or any combination of the foregoing, based upon a design completed during a design phase of a Municipal Project (defined in section 1.22), and in accordance with the PAL and this Master Agreement.

1.9 "Contract Items" means the products, services, or both set forth in the bid and necessary for the completion of the Construction Project. Contract Items may include, but are not limited to, earth excavation, rock excavation, hot mix asphalt, structural steel, trench excavation, turf establishment, Class A concrete, traffic person services, mobilization, and clearing and grubbing within the Construction Project limits.

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

1.11 "Depreciation Reserve Credit" means the credit for the used life of the replaced utility facility when a new facility is installed.

1.12 "Design Services During Construction" means design services required during the construction phase, with the DOT's prior approval, which may include, but are not limited to, construction engineering services, consultation in the field, advice, visits to the work site, review and

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approval of all shop plans and construction drawings received from the Prime Contractor (defined in section 1.26), design modification of original construction drawings as may be necessary, and any other design services as may be required, with the DOT's prior approval, all in accordance with the Standard Specifications (as defined in section 1.32).

1.13 "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 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.

1.14 "Disadvantage Business Enterprise (DBE)" has the meaning defined in Schedule E.

1.15 "DOT-provided Services" means the work that the DOT is responsible to perform for the Construction Project, as specifically set forth in the PAL and may include, but are not necessarily limited to, material testing, periodic construction inspection, administrative oversight, and liaison activities with other governmental agencies to ensure satisfactory adherence to DOT and federal requirements.

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

1.17 "Extra Work" means potential additional work that is beyond the original scope or limits of work of the Construction Project specifically for which funds are set-aside as a line item category in the PAL.

1.18 "Funding" means funds from the state government, the federal government, the Municipality, or a combination of any of the foregoing, designated for a particular Construction Project, which the DOT provides to the Municipality on a reimbursement basis.

1.19 "Incidentals to Construction" means items that were not included in the listing of Contract Items but that are necessary for the completion of the Construction Project, as determined by the DOT in its sole discretion. Advertising of a request for bids, inspection, construction and engineering services, field quality assurance testing, and material testing are examples of, but are not limited to, items that may be determined to be Incidentals to Construction for a particular Construction Project.

1.20 "Inspection Activities" means continuous inspection of the work on the Construction Project and associated administrative duties, including, but not limited to, inspection of grading, drainage, structure, pavement, facilities construction, and rail work; the required administrative functions associated with the Construction 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 Construction Project-related functions deemed necessary by the DOT.

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1.21 "Inspection Consultant" means the person or entity engaged by the DOT or the Municipality, as applicable to the particular Construction Project, to perform the Inspection Activities.

1.22 "Municipal Project" means a project undertaken by the Municipality for improvements on locally-maintained roadways, structures, transportation enhancement facilities (as defined by 23 U.S.C. § 101(a)(35), as revised), or any combination of the foregoing, which generally includes three phases of activities: the design phase, rights-of-way phase, and construction phase.

1.23 "Nonparticipating Items" means those items or portions of the Construction Project work determined upfront during the Municipal Project design phase by the Federal Highway Administration ("FHWA"), the DOT, or both to not be eligible for reimbursement with the Funding.

1.24 "Official Notice" means notice given from one Party to the other in accordance with Article 14.

1.25 "Plans, Specifications, and Estimates (PS&E)" means the final engineering documents produced during the design phase of the Municipal Project that contain all of the construction details and are made part of the bid documents.

1.26 "Prime Contractor" means the person or entity engaged by the Municipality or the DOT, as applicable to the particular Construction Project, to perform construction work on the Construction Project.

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

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

1.29 "Small Business Enterprise (SBE)" has the meaning defined in Schedule F.

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

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

1.32 "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

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Incidental Construction (Form 816)," Connecticut Department of Transportation (July 2010), as may be revised.

1.33 "Term" means the duration of the Master Agreement.

1.34 "Transportation Enhancement Facilities" means the facilities provided as a result of transportation enhancement activities (as defined by 23 U.S.C. § 101(a)(35), as revised).

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

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

2.1 **Issuance of PAL.** The DOT shall issue to the Municipality a PAL for the applicable Construction 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 Agreement will address Construction Projects and will not address design 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 awarding a contract with respect to the Construction Project. Additional required steps and approvals are set forth in this Agreement.

2.2 **Written Acknowledgement of the PAL.** In order for the PAL to become effective and binding on both parties, the Municipality must return to the DOT a copy of the PAL signed by the Designated Official, hereinafter referred to as the "Written Acknowledgement of the PAL," which serves to acknowledge the Municipality's receipt of the PAL and confirm that the Municipality will undertake the particular Construction Project in accordance with 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. 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.

2.3 **Designated Official.** The Municipality herein represents that the Mayor of the Town of Ledyard is the Designated Official to whom the Municipality has granted the authority, throughout the Term of this Master Agreement, to sign and submit on its behalf the Written Acknowledgement of the PAL(s) to the DOT. The Municipality agrees that the signature of the Designated Official shall bind the Municipality with respect to 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

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agreement identifying by title the new Designated Official and signed by the authorized representatives of each party.

2.4 Obligations of Municipality. 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 Construction 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 Construction Project. Further, the Municipality agrees to proceed with diligence to perform its obligations to accomplish the Construction Project and agrees to use the Funding to complete the same.

2.5 Revisions to the PAL. Any modification to the scope, the allowed Funding amount, or cost breakdown related to the Construction 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 "Supplemental PAL.". The Supplemental PAL shall be acknowledged by the Municipality in accordance with the procedure set forth in section 2.2, and the Supplemental PAL will supersede the previously-issued PAL for the Construction Project and will control.

Article 3. Municipality-Administered Construction Projects. When the Municipality is responsible for Administering the Construction Project, the sections of this Article 3 apply.

3.1 Content of the PAL. 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 Construction Project;

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

(c) an estimated cost break-down for all work under the Construction 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 under the Construction Project, as determined by the Funding ratio;

(e) the Project Amount; and

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

(1) if the Construction Project receives federal participation in Funding, the DBE goal assigned by the DOT applicable to the Prime Contractor, and additionally, where the Municipality retains an Inspection Consultant to perform the Inspection Activities,

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the DBE goal assigned by the DOT to the Inspection Consultant. If federal funds are not used to fund the Inspection Activities on the Construction Project, then no DBE goal will be assigned for the Inspection Activities;

- (2) if the Construction Project receives DOT Funding, and no federal participation in Funding, the SBE goal assigned by the DOT applicable to the Prime Contractor, and additionally, where the Municipality retains an Inspection Consultant, the SBE goal assigned to the Inspection Consultant; or
- (3) regardless of the Funding source(s), the SBPPP goal assigned by the DOT applicable to the Prime Contractor, and additionally, where the Municipality retains an Inspection Consultant, the SBPPP goal assigned to the Inspection Consultant.

3.2 Authorization to Award and Authorization to Proceed.

(a) The Municipality shall not commence to Administer the Construction Project until it has received from the DOT an Authorization to Award Notice or an Authorization to Proceed Notice when the Municipality is, respectively, hiring a Prime Contractor or electing to perform work with its own staff. The DOT will issue an Authorization to Award Notice or Authorization to Proceed Notice, as applicable, directly to the Municipality, addressed to the Designated Official.

(b) The Municipality shall not have the Prime Contractor or the Municipality's staff commence construction work on the Construction Project until the Municipality has received from the DOT an Authorization to Award Notice or Authorization to Proceed Notice. The DOT has no responsibility and incurs no liability for payments to the Municipality for Administration of the Construction Project or for any construction work performed by the Prime Contractor or the Municipality's staff on the Construction Project prior to the DOT's issuance of the Authorization to Award Notice or Authorization to Proceed Notice.

3.3 Municipality to Perform and Complete the Construction Project.

(a) Upon issuance of a PAL by the DOT, submission of the Written Acknowledgment of the PAL by the Municipality, and receipt of an Authorization to Award or Authorization to Proceed Notice, as applicable, from the DOT, the Municipality shall Administer all activities associated with the Construction Project in accordance with the PAL and this Master Agreement.

(b) The Municipality, with prior written approval of the DOT, may elect to perform all or any part of the Construction Project work with its own staff. In requesting approval from the DOT, the Municipality must demonstrate, to the DOT's satisfaction, 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 work in accordance with the plans and specifications.

(c) For work that the Municipality does not elect to perform with its own staff, the Municipality shall retain, using a competitive bidding process, a Prime Contractor to undertake the work under the Construction Project.

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

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

3.4 Engaging a Prime Contractor.

(a) Where the Municipality retains a Prime Contractor to perform the work on the Construction Project, the Municipality shall advertise the Construction Project to engage the Prime Contractor utilizing an advertising and bidding procedure acceptable to the DOT and, if applicable, the federal government. The Municipality shall analyze all bids, submit a bid summary to the DOT, and request the DOT's approval to award a contract for the Construction Project. The Municipality shall perform all of the foregoing in accordance with the following publications:

- (1) Advertising Procedures for Construction Contracts Administered by Municipalities, Connecticut Department of Transportation (January 2010), as may be revised ("Advertising Procedures for Construction Contracts Administered by Municipalities");
- (2) The Standard Specifications. The version of the Standard Specifications in effect at the date of completion of the PS&E for the particular Construction Project is the version that must be followed and complied with for the particular Construction Project; and
- (3) The Municipality Manual, Version 1, Connecticut Department of Transportation (2008), as may be revised ("Municipality Manual").

(b) The Municipality may not impose any local rules, policies, terms, conditions, or requirements on any bidder, Prime Contractor, or Inspection Consultant, unless it has received prior written approval from the DOT and, if applicable, FHWA (or other federal authority). 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 Construction Project.

3.5 **Pre-Award Requirements and Documentation.** The Municipality shall require the low bidder to meet all applicable pre-award requirements and submit any required documentation to the Municipality, which the Municipality, in turn, shall submit to the DOT for review and approval, all in accordance with the Advertising Procedures for Construction Contracts Administered by Municipalities. The pre-award requirements include, but are not limited to:

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- (a) Required documentation applicable to any assigned affirmative action goal, e.g., DBE, SBE, or SBPPP goal, including, but not limited to, the Affirmative Action program certification;
- (b) A schedule of progress or time chart for the Construction Project developed by the Prime Contractor;
- (c) A complete statement of the origin and manufacturer of any manufactured materials to be used in the Construction Project provided on the DOT form "Anticipated Source of Materials (CON-83)," as revised;
- (d) A completed "State of Connecticut Certificate of Compliance with Connecticut General Statutes § 31-57b" form ("OSHA Compliance Form RFP-12 New 6/98"), as revised;
- (e) A completed Certificate of Insurance on the form(s) acceptable to the DOT; and
- (f) Any other documentation requested by the DOT or federal government as pre-award requirements.

3.6 Approval to Award Contract(s).

(a) The Municipality must receive the DOT's prior written approval in order to award its contracts, enter into modifications or supplements to the contracts, or issue any construction orders under its contracts with the Prime Contractor and, where applicable, the Consulting Engineer and the Inspection Consultant, 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 for compliance with applicable DOT and federal requirements the Municipality's proposed contracts prior to the DOT issuing any written approval.

(b) Upon receipt of the Authorization to Award Notice from the DOT, the Municipality shall comply with the Advertising Procedures for Construction Contracts Administered by Municipalities and in accordance therewith, award the contract to the bidder specified in the Authorization to Award Notice. The Municipality shall submit to the DOT copies of the award letter, the contract executed with the Prime Contractor, and all other documents required by the Advertising Procedures for Construction Contracts Administered by Municipalities and otherwise requested by the DOT.

(c) 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 contracts with the Prime Contractor and, where applicable, the Consulting Engineer and the Inspection Consultant. Without limiting the foregoing, this Article 3 sets forth certain of these requirements. Additional requirements may be set forth in the PAL. The Municipality's failure to include the requirements in the contract with, and to ensure

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compliance by, the Prime Contractor and, where applicable, the Consulting Engineer and the Inspection Consultant, may amount to a breach of this Master Agreement and the respective PAL, as determined by the DOT in its sole discretion, and may result in the Municipality's loss of Funding for the Construction Project.

3.7 Changes in Scope. Extensions of Time. The Municipality may not make changes to the Construction Project that will increase the cost or alter the termini, character or scope of the construction work without prior written approval from the Authorized DOT Representative. In addition, the Municipality shall not grant any contract time extensions to its contractor(s) or consultant(s) without prior written approval from the Authorized DOT Representative. Such written approval may take the form of a Supplemental PAL issued by the DOT with respect to the Construction Project. The Supplemental PAL, once acknowledged in writing by the Municipality in accordance with the procedure set forth in section 2.2, will supersede the previously-issued PAL for the Construction Project and will control.

3.8 Design Services During Construction. The Municipality shall itself provide or retain a Consulting Engineer to provide Design Services During Construction. The scope of the Design Services During Construction is subject to the prior approval of the DOT. If, in order to complete the approved Design Services During Construction, the Municipality must replace the Consulting Engineer that it previously hired during the design phase of the Municipal Project and engage a new Consulting Engineer during the construction phase, then the Municipality agrees to comply with any selection and contracting requirements imposed by the DOT in its sole discretion during the construction phase of the Municipal Project.

3.9 Inspection Activities. The Municipality shall itself provide a qualified staff person, or retain a qualified person or entity, to serve as the Inspection Consultant to perform full-time Inspection Activities. The Municipality shall submit written documentation to the DOT indicating the criteria it used in assigning existing municipal staff, hiring new municipal staff, retaining an Inspection Consultant, or any combination of the foregoing to perform Inspection Activities for the Construction Project.

(a) If the Municipality elects to retain an Inspection Consultant, in order to be eligible for reimbursement for the associated costs, the Municipality must use a Qualifications Based Selection process as described in and in accordance with the "Consultant Selection, Negotiation and Contract Monitoring Procedures for Municipally Administered Projects," Connecticut Department of Transportation (2011), as may be revised.

- (1) When designating an Inspection Consultant, the Municipality shall submit to the DOT for review and approval, the name(s) and qualifications of the proposed Inspection Consultant prior to advertising the Construction Project. The Municipality shall comply with the "Construction Engineering and Inspection Information Pamphlet for Consulting Engineers," Connecticut Department of Transportation (2008) as may be revised, when determining the required qualifications of the Inspection Consultant.

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- (2) If the Construction Project receives federal participation in Funding, when the Municipality retains an Inspection Consultant, it must designate a full time employee of the Municipality to be in responsible charge of the Construction Project in accordance with 23 CFR § 635.105(c)(4), as may be revised.

(b) If the Municipality elects to provide full-time Inspection Activities for the Construction Project with its own staff, upon request, the Municipality shall provide to the DOT written documentation of the qualifications of the municipal staff performing the Inspection Activities, for review by the DOT. When municipal staff is performing the Inspection Activities for the Construction Project, any required field quality assurance testing may be provided by the DOT, upon written request, and the DOT expenses associated with the field quality assurance testing will be funded in accordance with the PAL.

3.10 Additional Administration Responsibilities. The Municipality shall perform all other work which becomes necessary to properly Administer the Construction Project and inspect the work of the Prime Contractor in order to ensure compliance with the Standard Specifications, the bid package documents, and the Municipality's contract with the Prime Contractor, including, but not limited to, the Special Provisions for the particular Construction Project. Any work performed by the DOT in order to assist with the Municipality's Administration responsibilities for the Construction Project and any associated expenses will be funded in accordance with the PAL.

3.11 Inadequate Administration. If, at any time during the Construction Project, the DOT determines that the Administration by the Municipality is not adequate, it may be deemed a breach by the Municipality, as determined by the DOT in its sole discretion, and the DOT may assume responsibility for or supplement the Administration of the Construction Project, at its sole discretion. The additional costs associated with the DOT's Administration of the Construction Project will be considered part of the Construction 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 Construction Project does not waive any of the DOT's remedies under this Agreement, nor relieve the Municipality from any liability related to its breach.

3.12 Federal and State Required Contract Provisions.

(a) The Municipality shall include in the contracts with the Prime Contractor and, where applicable, the Inspection Consultant, the following attachments, each as may be revised:

- (1) "State and Federal Workforce Utilization Goals," attached at Schedule B, including Appendix A which is applicable to Construction Projects that are funded by the state government (with no federal participation in Funding), and Appendix B which is applicable to Construction Projects that receive federal participation in Funding;
- (2) "Connecticut Required Specific Equal Employment Opportunity Responsibilities," (2012), attached at Schedule C; and

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- (3) FHWA-1273, "Required Contract Provisions, Federal-aid Construction Contracts," (2012), attached at Schedule D, which is applicable to Construction Projects that receive federal participation in Funding.

(b) The Municipality's failure to comply with any requirement within this section 3.12 may be deemed by the DOT, in its sole discretion, a breach of this Master Agreement and the respective PAL and, as a result, the DOT may seek any of its remedies under this Master Agreement.

3.13 Affirmative Action (AA) Goals & On-the-Job Training Requirement.

(a) The Municipality agrees to include the assigned DBE goal, SBE goal, or SBPPP goal, as applicable, and associated requirements, set forth in the PAL, as requirements within any contract the Municipality enters into with its Prime Contractor, and, if applicable, its Inspection Consultant, and to require its Prime Contractor and, if applicable, its Inspection Consultant, to comply with the current version of the "Special Provision, Disadvantaged Business Enterprises" (2012), as may be revised, the "Special Provision, Small Contractor and Small Contractor Minority Business Enterprise (Set Aside)" (2012), as may be revised, or the "Special Provisions, Small Business Participation Pilot Program" (2012), as may be revised, which are attached at Schedules E, F & G, respectively (the "Affirmative Action (AA) Requirements"). The Municipality shall include a provision within such contract(s) requiring compliance with the AA Requirements and attach a copy of the applicable AA Requirements provided at Schedule E, F or G to such contract(s).

(b) The Municipality acknowledges that with respect to any Construction Project that receives federal participation in Funding, the Construction Project may be subject to an On the Job Training (OJT) requirement and the "On-the-Job Training Program Special Provision" (2012) as may be revised, attached at Schedule H. The Municipality agrees that upon receiving notice from the DOT of the OJT requirement, the Municipality will include the OJT requirement in its contract with the Prime Contractor and attach a copy of Schedule H to the contract.

(c) As a condition of receiving Funding under the PAL, the Municipality may be required at the discretion of the DOT or other applicable state or federal authorized agencies, to impose additional AA requirements upon and obtain certain assurances from the Prime Contractor, and, where applicable, the Inspection Consultant. The Municipality agrees to include any other AA Requirements in its contracts with the Prime Contractor, and, where applicable, the Inspection Consultant, at the direction of the DOT.

(d) The DOT, in its sole discretion, may determine whether the Municipality failed to comply with any requirement within this section 3.13 and may deem such failure a breach of this Master Agreement and the respective PAL. As a result of any such breach, the DOT, at its sole discretion, may withhold reimbursement to the Municipality for the Construction 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.

3.14 Inspection Consultant Fees and Auditing Requirements.

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(a) With respect to any contract with an Inspection Consultant, the Municipality shall comply with Policy No. F&A-30, dated April 12, 2006 ("Maximum Fees for Architects, Engineers and Consultants"), attached at Schedule I. The Municipality shall utilize the guidelines stipulated in Office of Policy and Management's General Letter No. 97-1, dated November 21, 1996, attached at Schedule J, when applicable, in accordance with Policy No. F&A-30.

(b) With respect to Construction Projects that receive federal Funding, the Municipality shall comply with, and require the Inspection Consultant and, if applicable, the Consulting Engineer, to comply with, the audit requirements set forth in 48 CFR Part 31 and 23 CFR Part 172, as may be revised.

3.15 Construction Project Standards and Manuals.

(a) The Municipality shall comply with, and require its Prime Contractor and, if applicable, its Inspection Consultant, to comply with all applicable DOT and federal laws and regulations and the current version of the following publications (except as otherwise noted), each as may be revised:

- (1) Construction Manual, Department of Transportation Office of Construction, Version 2.2, Connecticut Department of Transportation (2011);
- (2) The Standard Specifications. The version of the Standard Specifications in effect at the date of completion of the PS&E for the particular Construction Project is the version that must be followed and complied with for the particular Construction Project;
- (3) The Municipality Manual;
- (4) Pamphlet for Monitoring Performance and Payment Requests for Consultants, State of Connecticut Department of Transportation (1994);
- (5) QA Program for Materials Acceptance and Assurance Testing Policies and Procedures, at Chapter 8, entitled "Minimum Schedule for Acceptance Testing," Connecticut Department of Transportation (2009);
- (6) Public Service Facility Policy and Procedures for Highways in Connecticut, Connecticut Department of Transportation (2008); and
- (7) Utility Accommodation Manual, Connecticut Department of Transportation (2009).

(b) The above-referenced publications are incorporated and made a part of this Agreement by reference and, in all applicable respects, shall govern the conduct and describe the respective obligations of the DOT and the Municipality and any parties engaged by the Municipality to perform work on the Construction Project set forth in a PAL issued under this Master Agreement. The Municipality shall incorporate by reference these publications and all provisions contained

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therein into its contract(s) with the Prime Contractor and, if applicable, the Inspection Consultant, for any Construction Project undertaken pursuant to a PAL issued under this Master Agreement.

3.16 Maintenance of Records On-Site. The Municipality shall maintain and secure at all times all construction records for the Construction Project at a single location for the DOT's review, use and approval.

3.17 DOT-provided Services. If the Construction Project requires DOT-provided Services, they will be set forth in the PAL and funded in accordance with the proportionate cost sharing for work on the Construction Project as set forth in the PAL. DOT-provided Services may include, but are not necessarily limited to, material testing, periodic construction inspection, administrative oversight, and liaison activities with other governmental agencies to ensure satisfactory adherence to DOT and federal requirements. The DOT reserves the right at all times to inspect all aspects of the work related to the Construction Project, and such inspections shall be deemed DOT-provided Services.

3.18 Demand Deposit Requirement; Depreciation Reserve Credit.

(a) Where a PAL requires DOT-provided Services, the PAL will specify Municipality's proportionate share of the cost of the DOT-provided Services. The DOT will bill the Municipality the amount of the Municipality's proportionate share of such 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.

(b) Where the Construction Project requires replacement of a Municipality-owned utility facility, the Municipality shall deposit with the DOT, upon demand, the sum set forth in the PAL for the Depreciation Reserve Credit of the municipally-owned utility facility being replaced and the value of any materials salvaged from the existing facility. The Depreciation Reserve Credit will be calculated in accordance with the Public Service Facility Policy and Procedures for Highways in Connecticut (2008), as may be revised.

3.19 Costs and Reimbursement.

(a) The Municipality shall expend its own funds to pay for costs related to Administering the Construction Project and then shall seek from the DOT reimbursement for approved costs.

(b) The Municipality shall document all expenses it incurs and maintain all records related to the Construction Project costs, including, but not limited to its payments to the Prime Contractor and, if applicable, the Inspection Consultant and the Consulting Engineer, its payroll hours on time sheets for municipal staff working directly on the Construction Project, material purchases made by the Municipality, and 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

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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. Reimbursable municipal payroll costs are limited to the actual municipal payroll for work on the Construction Project and fringe benefits associated with payroll.

(c) If the Municipality fails to adequately record expenses and maintain all related records for any Construction Project or promptly submit any records to the DOT, such failure to do so may be deemed a breach by the Municipality, at the DOT's sole discretion, and the DOT may deem certain expenses to be non-eligible costs of the respective Construction 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 Construction 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 Construction Project, nor relieve the Municipality from any liability related to its breach.

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

- (1) 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 During Construction.
- (2) 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.

3.21 **As-built Plans.** Upon completion of the Construction 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 as-built plans for the Construction Project, in the format requested by the DOT.

3.22 Extra Work.

(a) 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 Construction Project.

(b) If the Municipality wishes to pursue any Extra Work, it must request approval in writing from the DOT of the type and scope of the Extra Work and the associated costs prior to the

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Municipality authorizing performance of the Extra Work by the Prime Contractor, the Consulting Engineer, the Inspection Consultant, or municipal staff, as applicable.

- (c) Once approved in writing by the DOT, the Extra Work will be funded as follows:
 - (1) If the Extra Work results in an Accumulative 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.
 - (2) If the Extra Work results in an Accumulative Cost greater than the Project Amount specified in the PAL, the DOT determines that the appropriate federal or state government funding is available for the increased costs of the Construction Project, then the DOT will issue a Supplemental PAL to provide for the cost increase to the Construction 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.

3.23 Funding of Additional DOT-Approved Costs upon Final Audit.

(a) If, upon final audit, additional costs, including, but not limited to, those resulting from, Extra Work, delays, or other cost over-runs, result in an Accumulative 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.

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

(c) If, pursuant to subsection (a), the additional costs are not approved by the DOT or if, pursuant to subsection (b), a Supplemental PAL is not issued, then the Municipality will be responsible for 100% of the additional cost.

(d) 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.

3.24 Semi-Final and Final Inspections.

(a) Before completion of the Construction Project, the Municipality and the DOT shall both perform the semi-final and final inspection of the Construction Project. The Municipality shall notify the DOT in writing that the work is complete and ready for inspection by the DOT.

(b) Within one hundred twenty (120) calendar days of the final acceptance of the physical work by the Municipality and the DOT, the Municipality shall submit to the DOT the required documents as set forth in the Municipality Manual. The Municipality shall be available, and if

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applicable shall require its Inspection Consultant to be available, to assist the DOT with the review and acceptance of the documents required by the Municipality Manual. Upon the DOT's approval of the submitted documents, the DOT will reimburse the Municipality for the approved expenses on any outstanding Vouchers submitted by the Municipality. If the Municipality fails to submit the documents required by the Municipality Manual for the DOT's review and approval, the DOT, at its sole discretion, may assume responsibility for or supplement the Administration of the Construction Project, as described in section 3.11.

3.25 Suspension, Postponement, or Termination of a Municipality-Administered Construction Project.

- (a) Suspension, Postponement, or Termination by the DOT.
 - (1) For Convenience. The DOT, at its sole discretion, may suspend, postpone, or terminate a particular Construction 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.
 - (2) For Cause. As a result of the Municipality's breach of the PAL or failure of the Municipality, its Prime Contractor, Inspection Consultant, Consulting Engineer, or any combination of the foregoing, to perform the work required on any particular Construction Project to the DOT's satisfaction in accordance with the respective PAL, the DOT may suspend, postpone or terminate the particular Construction 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.
- (b) Termination by the Municipality, with prior DOT approval.
 - (1) The Municipality may request termination of the Construction 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 Construction 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.
 - (2) 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.

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(c) Funding of Acceptable Work. Upon suspension, postponement, or termination in accordance with subsection (a) or termination in accordance with subsection (b), the DOT 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, in accordance with the following:

- (1) The DOT, may at its sole discretion, reimburse the Municipality at the contract unit prices (as specified in the bid documents) for the actual number or units of Contract Items completed prior to the effective date of termination, or as may be agreed by the parties for items of work partially completed, provided the DOT finds the work to be acceptable. If the work is not acceptable, the DOT may withhold reimbursement to the Municipality at its sole discretion. No claim for loss of overhead or anticipated profits that may be asserted by the Municipality's Prime Contractor, Inspection Consultant, or Consulting Engineer shall be allowed or funded as a reimbursable Construction Project cost.
- (2) When the volume of work completed, as of the termination date, is not sufficient to reimburse the Municipality under contract unit prices (as specified in the bid documents) for its related expenses, the DOT, at its sole discretion, may reimburse the Municipality for such expenses entirely or in accordance with the proportionate cost sharing specified in the PAL, depending on the availability of additional funding.
- (3) Materials obtained by the Municipality or its Prime Contractor for the Project that have been inspected, tested as required, and accepted by the DOT, and that have not been incorporated into the physical Construction Project, shall be purchased from the Prime Contractor at actual cost as shown by receipted bills. To this cost shall be added all actual costs for delivery at such points of delivery as may be designated by the DOT, as shown by actual cost records. The Municipality will be reimbursed by the DOT for such costs of the material, and the DOT at its sole discretion, will determine which material will become the property of the DOT.
- (4) If the DOT or FHWA (or other applicable federal authority), deems any of the work that the Municipality itself performed, or engaged a third party to perform on its behalf, to be unacceptable, then upon demand by the DOT or FHWA (or other applicable federal authority), the Municipality shall promptly return, in whole or in part, to the DOT or FHWA (or other applicable federal authority), the DOT or federal Funding that prior to the effective date of termination was disbursed to the Municipality to fund that unacceptable work.

(d) In the case of Construction Project which received no federal or state government funding during its design phase, the Municipality agrees that it will pay for the costs of any DOT-provided services performed prior to termination, including but not limited to, DOT oversight services for the Construction Project.

(e) If the Municipality terminates the Construction Project without the DOT's prior approval, the Municipality shall incur all costs related to the Construction Project without

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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, upon demand by the DOT or FHWA (or other applicable federal authority), the Municipality shall promptly return any federal or state government Funding.

(f) Termination of a specific Construction Project shall not relieve the Municipality or its Prime Contractor, Inspection Consultant, or 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 or of its obligations concerning any claims arising out of the work performed on the Construction Project prior to the termination date or any obligations existing under bonds or insurance required by the Connecticut General Statutes or by this or any other agreement with the DOT or the Municipality.

Article 4. DOT-Administered Construction Projects. When the DOT is responsible for Administering the Construction Project, the sections of this Article 4 apply.

4.1 Content of the PAL. The DOT shall issue a PAL to the Municipality which will set forth, at least:

(a) the funding source, the related federal and DOT program information, and the associated funding ratio between the federal government, the DOT, and the Municipality, as applicable, for the Construction Project;

(b) the estimated cost for all work under the Construction Project;

(c) 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 under the Construction Project; and

(d) the Project Amount.

4.2 Engaging a Prime Contractor. The DOT shall advertise the Construction Project, obtain bids for all Construction Project work and items to be supplied or constructed by the Prime Contractor, analyze all bids, and award a contract for the Construction Project, all of the foregoing in accordance with the Standard Specifications, DOT procedures, and if applicable, procedures that are acceptable to the federal government. Unless otherwise specified in the PAL, the DOT shall be responsible for providing, or engaging persons or entities to provide, any services required for the Construction Project, including but not limited to, Design Services During Construction and Inspection Activities, and for the procurement and oversight of those individuals or entities.

4.3 DOT to Perform and Complete the Construction Project. The DOT shall use the applicable Funding apportionments to complete the Construction Project and all related activities that the DOT agrees to perform under the PAL and pursuant to this Master Agreement.

4.4 Copies of Plans and Specifications. Upon the completion of the design phase, prior to

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commencement of construction activities, the DOT shall provide the Municipality with copies of the plans and specifications regarding the Construction Project.

4.5 Design Services During Construction - Municipality-provided. When pursuant to the PAL, the Municipality is required to provide Design Services During Construction:

(a) If the Municipality was the party responsible for undertaking the design phase of the Construction Project, with that design phase funded one hundred percent (100%) by the Municipality, there will be no federal or state government participation in funding the required Design Services During Construction, and the Municipality shall provide Design Services During Construction at its sole expense.

(b) If the design phase of the Construction Project was funded with federal or state government participation, the Municipality shall seek from DOT reimbursement for the Municipality's expenses incurred in providing the Design Services During Construction, and DOT shall reimburse the Municipality for DOT-approved expenditures, all in the following manner:

- (1) The Municipality shall submit to the DOT the Voucher with supporting data, the cost of services rendered and expenses incurred for the billing period. Specifically, with respect to Design Services During Construction that are 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 During Construction.
- (2) 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 proportionate cost sharing set forth in the PAL.

(c) The Municipality agrees to comply with the requirements imposed by the DOT with respect to selection of, and imposition of contractual requirements upon, any Consulting Engineer retained during the construction phase to provide Design Services During Construction. The scope of the Design Services During Construction is subject to the prior approval of the DOT.

4.6 Municipal Contact Person. The Municipality shall designate a contact person to serve as the Municipality's liaison to provide information to the DOT during the Construction Project and all activities related thereto.

4.7 Reimbursement for Value of Municipality-Owned Utility Facility. Where the Construction Project requires replacement of a Municipality-owned utility facility, the DOT shall reimburse the Municipality for the value of the utility facility being replaced minus the Depreciation Reserve Credit and the value of any materials salvaged from it.

4.8 Semi-Final and Final Inspections. The DOT shall notify the Municipality in writing that the work is ready for inspection by the Municipality. Before completion of the Construction Project, the Municipality and the DOT shall both perform the semi-final and final inspection of the

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Construction Project.

4.9 Suspension, Postponement, or Termination of a DOT-Administered Construction Project.

(a) The DOT, upon providing Official Notice, may, in its sole discretion, suspend, postpone, or terminate a specific Construction Project, and such action shall in no event be deemed a breach by the DOT.

(b) If the DOT terminates a specific Construction Project, the DOT, may, at its sole discretion, reimburse the Municipality, in whole or in part, for the Demand Deposit paid to the DOT for the Municipality's proportionate share of costs on the Construction Project.

(c) In the case of a Construction Project which received no federal or state government funding during its design phase, the Municipality agrees that it will pay for the costs of any DOT-provided services performed prior to termination of the Construction Project, including but not limited to, DOT oversight services for the Construction Project.

4.10 Responsibility for Design Phase Errors or Omissions. With respect to a Municipal Project for which the Municipality was responsible for undertaking the design phase at its sole expense (without DOT or federal funding), the Municipality assumes all responsibility for any damages, including but not limited to delay damages, during the construction phase that are a result of the errors or omissions or negligence of the Municipality or its consultant(s) in the design of the Municipal Project. The DOT, even while Administrating the Construction Project, shall have no responsibility with respect to such damages, and the Municipality agrees to indemnify, hold harmless and defend the DOT as more particularly described in Article 16.

Article 5. Utilities and Highway Right-of-Way.

5.1 Relocation. Where the Construction 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

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or relocate in the right-of-way, or remove from the right-of-way, its utility facilities impacted by the Construction Project.

5.2 **Delays.** Regardless of which Party is responsible for Administering the Construction Project, the Municipality shall be responsible, and will not be reimbursed with Funding, for any charges, claims and related damages or costs incurred, including those by the Prime Contractor, for any delays to the Construction Project resulting from:

(a) the failure of the Municipality to issue or enforce compliance with an order to a utility where the Municipality is responsible for such (Municipality-owned highway right-of-way) order; or

(b) in the case of a Municipality-owned utility, failure by the Municipality to promptly readjust, relocate, or remove its utility facilities impacted by the Construction Project.

5.3 **Access to Right-of-Way.** With respect to any work on the Construction 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 Prime Contractor, the Inspection Consultant, or any subcontractor or 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 5.3 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 6. Responsibilities of the Parties for Transportation Facilities.

6.1 **During Construction Project.** During the Construction Project, the Municipality shall enforce all applicable State of Connecticut and municipal traffic laws, ordinances and regulations with respect to any existing Transportation Facilities being directly or indirectly affected by the work undertaken during the Construction Project.

6.2 **Upon Completion of Construction Project.** Upon completion of the Construction Project to the satisfaction of the DOT and, if applicable, FHWA (or other federal authority):

(a) The Municipality assumes all responsibility for:

(1) the proper maintenance and operation of all Municipality-owned Transportation Facilities constructed as part of the Construction Project;

(2) the proper maintenance and operation of all traffic control signals installed on Municipality-maintained roadways as part of the Construction Project, provided that a thirty (30) day operational test period, which commences upon the Prime Contractor's installation of the respective traffic control signal, has been completed to the satisfaction of the Party Administering the Construction Project. (The Party Administering the Construction Project shall require its Prime Contractor to assume

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responsibility for any operational issues during the thirty (30) day test period.) In the event that the completion of the Construction Project occurs prior to the satisfactory completion of the thirty (30) day test period, then the Municipality's assumption of responsibility with respect to the traffic control signal commences upon satisfactory completion of the thirty (30) day test period.

- (3) the payment of energy costs for operation of all traffic control signals and illumination installed as part of the Construction Project when these traffic control signals and illumination are (1) entirely on Municipality-maintained roadways, or (2) at locations (such as an intersection) including at least one roadway for which the Municipality is responsible for maintaining; and
- (4) enforcement of all applicable State of Connecticut and municipal traffic laws, ordinances and regulations with respect to the Transportation Facilities, roadways, or improvements thereto, constructed as part of the Construction Project.

(b) The DOT shall assume responsibility for maintenance of DOT-owned Transportation Facilities, or improvements thereto, constructed as part of the Construction Project, unless otherwise agreed to in writing by the authorized representatives of the Parties.

6.3 Failure to Fulfill Maintenance Responsibilities. If the Municipality fails to fulfill the maintenance responsibilities set forth in subsections (a)(1) or (a)(2) of section 6.2, it may be disqualified, at the DOT's sole discretion, from participating in any future federal or state government funded Municipal Projects that impart maintenance responsibilities on the Municipality. Nothing in this section shall limit any other remedies that DOT may have under this Master Agreement or under the law.

Article 7. Responsibility for Costs.

7.1 Non-participating Items. With respect to Construction Projects that receive federal Funding, the Municipality is responsible for one hundred percent (100%) of the total cost of all Nonparticipating Item(s) and the cost of any Incidentals to Construction that are related to or associated with the Nonparticipating Item(s). The cost of such associated Incidentals to Construction will be determined as follows: A percentage will be derived from the ratio of the total Incidentals to Construction cost to the total contract items cost, as determined by a post-construction final audit, and this percentage will be multiplied by the total cost for the Non-participating Items. The final audit governs the determination of all contract item costs and the final billing to the Municipality for Non-participating Items. However, if the cost of the total Nonparticipating Items is less than ten percent (10%) of the cost of the total contract items, the DOT, at its sole discretion, may deem the cost of such associated Incidentals to Construction to be participating and eligible for Funding.

7.2 Final Payment. Final payment by the Municipality to the DOT, or by the DOT to the Municipality, shall be based upon the actual participating construction costs as determined by a post-construction final audit by the DOT, using cost sharing percentages and funding procedures set forth in the PAL.

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7.3 **Costs Resulting from Errors or Omissions.** The Municipality shall reimburse the DOT for one hundred percent (100%) of all construction costs and costs of DOT-provided Services, which costs are the result of errors or omissions of the Municipality or its consultant(s), including, but not limited to, errors or omissions with respect to the PS&E, inadequate provision of the Inspection Activities or Design Services During Construction by the Municipality or any of its consultants, or inadequate Administration by the Municipality, as applicable. In order to determine the total cost of DOT-provided Services that were attributable to the errors and omissions of the Municipality (as such are not itemized during the Construction Project), a percentage(s) will be derived from the ratio of the total cost of all DOT-provided Services to the total actual construction cost, as determined by a post-construction 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. This provision will survive the expiration of the PAL, the final acceptance of the Construction Project, and the termination of the Master Agreement, or the expiration of the Term.

7.4 **Sidewalk Construction.** The Municipality shall participate in the cost of sidewalks constructed as part of the Construction Project, other than existing sidewalks disturbed by the Construction Project, as set forth in Connecticut Department of Transportation Policy Statement, Policy No. E&C.-19, as may be revised, incorporated by reference into this Master Agreement.

Article 8. Disbursement of Grant Funds; Conditions of Payment.

8.1 **Method of Disbursement.** With respect to each Construction 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.

8.2 **Funding on Reimbursement Basis.** The DOT, by entering into this Master Agreement, does not pledge or promise to pledge the assets of the DOT or the State of Connecticut, nor does it promise to pay any compensation to the Municipality from any monies of the treasury of the State of Connecticut. The Funding in the PAL will be provided to the Municipality by the DOT on a reimbursement basis, provided the Municipality is in compliance with the PAL and this Master Agreement.

8.3 **Federal Approvals Required.** 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 Construction Project.

8.4 **Lack of Timeliness in Municipality Performance.** If the Municipality fails to timely commence and complete the Construction Project as set forth in the respective PAL to the satisfaction of the DOT and in accordance with all applicable federal, state, and local laws, regulations, ordinances, or requirements, then:

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- (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 Construction Project. Upon receipt of written demand from the DOT, the Municipality shall provide payment for the DOT-provided Services within thirty (30) days.

Article 9. Records and Audit.

9.1 **Examination.** The Municipality shall make 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 all of its records, documents, and accounting procedures and practices relevant to any Funding received under this Master Agreement, and for a period of time in accordance with all applicable state or federal audit requirements.

9.2 **Retention.** With respect to each Construction Project undertaken under this Master Agreement, the Municipality shall maintain and secure all records for a period of three (3) years after issuance of the Construction Project's Certification of Acceptance, or three (3) years after the final payment has been made to the Prime Contractor or the termination of any litigation related to the Construction Project, 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 10. Additional Mandatory Requirements.

10.1 **Mandatory State and Federal Requirements.** With respect to each PAL issued and acknowledged under this Agreement, the Municipality shall comply with the "Mandatory State and Federal Requirements," attached at Schedule K, 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 Construction Project, the Municipality agrees to pass down to its contractor(s) and in lower tier subcontractor(s) the applicable requirements set forth in the Mandatory State and Federal Requirements.

10.2 **Additional Federal Requirements.** With respect to each PAL issued and acknowledged under this Agreement that involves the passing of Funds from any agency or office of the federal government, including, but not limited 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.

10.3 **Revisions.** While this Master Agreement and the attached Schedules include applicable State of Connecticut and FHWA requirements (that the Municipality must comply with

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and must require its Prime Contractor, Inspection Consultant, and Consulting Engineer, as applicable, 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 government 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 Construction Project, throughout the Term of this Master Agreement.

Article 11. Conflict.

11.1. **Conflict.** 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.

11.2 **Revisions to Manuals.** With respect to any guide, manual, policy, document, or other publication referenced throughout the Master Agreement and noted to be subject to revision throughout the Term of this Agreement by way of the phrase "as may be revised," for the particular Construction 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 Construction Project. This section does not apply to the Standard Specifications.

Article 12. Review of Municipality's Activities. The Municipality shall cooperate fully with the DOT and permit the DOT, FHWA, or other federal authority, as applicable, to review, at any time during the Construction Project, all activities performed by the Municipality with respect to any PAL issued under this Master Agreement. Upon request of the DOT, the Municipality shall timely furnish all documents related to the Construction Project so that the DOT may evaluate the Municipality's activities with respect to the Construction Project, including, but not limited to, its use of the Funding as required by the PAL, this Master Agreement, and applicable law.

Article 13. Term and Termination of the Master Agreement.

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

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

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13.3 Termination for Cause. As a result of the Municipality's breach of the Master Agreement or a particular PAL or the failure of the Municipality, its Prime Contractor, Inspection Consultant, Consulting Engineer, or any combination of the foregoing, to perform the work required on any particular Construction 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.

13.4 Effect on In-progress PALs.

(a) Upon expiration of the Term or the DOT's earlier termination for convenience of the Master Agreement, any issued PAL for a Construction 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 Construction 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 3.25 (for Municipality-Administered projects) or section 4.9 (for DOT-Administered Projects).

(b) 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 Construction Project in compliance with all applicable terms and conditions of the PAL and this Master Agreement.

Article 14. Official Notice. Any Official Notice from one Party to the other Party, in order for such notice to be binding thereon, shall:

14.1 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:

Master Municipal Agreement for Construction Projects

Mayor
Town of Ledyard
741 Colonel Ledyard Highway
Ledyard, CT 06339

14.2 Be delivered to the address recited herein in person, by facsimile or by electronic transmission, with acknowledgement of receipt, 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; and

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

Article 15. Insurance.

15.1 Minimum Limits of Coverage.

(a) With respect to the work on the particular Construction Project that the Municipality performs or that the Municipality engages a Prime Contractor to perform, respectively, the Municipality when performing the work shall carry, or when the Prime Contractor is performing the work, the Municipality shall require the Prime Contractor to carry and to impose on its subcontractors the requirement to carry, for the duration of the Construction Project the insurance requirements set forth in the Standard Specifications, including "Section 1.03.07 Insurance" and specifically with respect to any working drawings prepared by a designer "Section 1.05.02(2)(a) Plans, Working Drawings and Shop Drawings," and any additional insurance coverage or increased limits required in the Special Provisions for the particular Construction Project.

(b) With respect to the Inspection Activities on the particular Construction Project that the Municipality performs or that the Municipality engages an Inspection Consultant to perform, respectively, on the Construction Project, and with respect to Design Services During Construction performed by the Municipality or by a Consulting Engineer, the Municipality when performing the work shall carry, or when the Inspection Consultant or Consulting Engineer is performing the work, the Municipality shall require the Inspection Consultant or Consultant Engineer to carry and to impose on any subconsultant(s) the requirement to carry, for the duration of the Construction Project, the following insurance:

(1) 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;

Master Municipal Agreement for Construction Projects

(2) Automobile Liability Insurance with respect to the operation of all motor vehicles, including those hired or borrowed, used in connection with the Construction 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);

(3) Railroad Protective Liability Insurance (when the Construction 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) per occurrence for all damages arising out of any one accident or occurrence in connection with bodily injury or death or injury to or destruction of property, and, subject to that limit per accident, an aggregate limit of Six Million Dollars (\$6,000,000) for all injuries to persons or property during the policy period, and with all entities falling within any of the following listed categories as named 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 DOT and (v) any other party with an insurable interest. If such insurance is required, the Municipality, Inspection Consultant, or subconsultant shall obtain and submit the minimum coverage indicated above to the DOT prior to the commencement of the work and shall maintain coverage until the work is accepted by the DOT;

(4) Valuable Papers Insurance Policy, 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 Inspection Consultant, 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.

(5) 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

(6) 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 Indemnification clause in this Master Agreement as the same relates to negligent acts, errors or omissions in the work

Master Municipal Agreement for Construction Projects

performed by the Municipality, Inspection Consultant, or subconsultant, as applicable. The Municipality, Inspection Consultant, 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, Inspection Consultant, or subconsultant shall be liable, as stated above herein, to the extent of the deductible amount. The Municipality, Inspection Consultant, 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, Inspection Consultant, 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, Inspection Consultant, Consulting Engineer, or subconsultant under the PAL for the Construction Project

(c) In the event the Municipality, Prime Contractor, subcontractor, Inspection Consultant, 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.

15.2 Insurance Company Authorized Pursuant to State of Connecticut Law. For each Construction 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 15.6.

15.3 Certificate of Insurance. 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.

15.4 Copies of Policies. The Municipality shall produce, and require its Prime Contractor, any subcontractor, Inspection Consultant, 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, Prime Contractor, subcontractor, Inspection Consultant, 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 days prior notice of any cancellation or change in the insurance coverage required under this Master Agreement.

Master Municipal Agreement for Construction Projects

15.5 Update to Minimum Insurance Limit Requirements. 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 Construction Project. Upon issuance of a PAL by the DOT, and submission of the Written Acknowledgment of the PAL by the Municipality, the Municipality agrees to shall comply with the updated minimum insurance coverage limit requirements as specified by the DOT for the particular Construction Project.

15.6 Self-insurance.

(a) With respect to activities performed directly and exclusively by the Municipality with Municipal forces or staff on a particular Construction 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 15.1. 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 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 Construction 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.

Master Municipal Agreement for Construction Projects

Article 16. Indemnification.

16.1 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, unmaturing, 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 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.

16.2 With respect to Municipality-Administered Construction Projects, the Municipality agrees that it shall indemnify, defend and hold harmless, and it shall require the Municipality's Parties to indemnify, defend and save harmless, the State, and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Master Agreement and any PAL issued hereunder, including the acts of commission or omission (collectively, the "Acts") of the Municipality or the Municipality's 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 of the Municipality or the Municipality's Parties, or the Master Agreement and any PAL issued hereunder. The Municipality and the Municipality's Parties shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Municipality's and the Municipality's Parties' 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 or Municipality's Parties' bids, proposals or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopied compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance of this Master Agreement or any PAL issued hereunder.

16.3 With respect to DOT-Administered Construction Projects, the Municipality agrees to indemnify and hold harmless the State, its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Master Agreement and any PAL issued hereunder, including the acts of

Master Municipal Agreement for Construction Projects

commission or omission (collectively, the "Acts") of the Municipality or the Municipality's 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 of the Municipality or the Municipalities Parties this Master Agreement, and any PAL issued hereunder, including but not limited to, design errors or omissions and failures to make necessary arrangements for utility work.

16.4 The Municipality and the Municipality's Parties shall not be responsible for indemnifying or holding the DOT 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.

16.5 The Municipality and the Municipality's Parties shall reimburse the State for any and all damages to the real or personal property of the DOT caused by the Acts of the Municipality and the Municipality's Parties. The DOT shall give the Municipality and the Municipality's Parties reasonable notice of any such Claims.

16.6 The Municipality's and the Municipality's Parties' duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Master Agreement and any extension thereof, without being lessened or compromised in any way, even where the Municipality and the Municipality's Parties are 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.

16.7 The Municipality and the Municipality's Parties shall carry and maintain at all times during the term of this Master Agreement, and during the time that any provisions survive the term of this Master Agreement, sufficient general liability insurance to satisfy its obligations under this Master Agreement. The Municipality and the Municipality's Parties shall name the DOT as an additional insured on the policy. The State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the State is or was contributorily negligent.

16.8 This section shall survive the expiration or earlier termination of the Term or any PAL issued hereunder, shall apply to any extension of the Term of this Master Agreement, and shall not be limited by reason of any insurance coverage.

Article 17. Sovereign Immunity.

17.1 **No Waiver of the State's Immunities.** 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.

17.2 **Defense of Suits by the Municipality.** Nothing in this Agreement shall preclude the Municipality from asserting its Governmental Immunity rights in the defense of third party claims.

Master Municipal Agreement for Construction Projects

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 Agreement, including, but not limited to, those relating to damages.

Article 18. 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. Nothing contained in this Master Agreement shall be construed as an agreement by the DOT to directly or indirectly obligate the DOT to creditors or employees of the Municipality or to the Municipality's Parties.

Article 19. Amendment. This Master Agreement may be amended by mutual written agreement signed by the authorized representative of each Party and approved by the Attorney General of the State of Connecticut, and upon receipt of any additional approvals required by law.

Article 20. 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 21. 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 22. 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 23. Entire Agreement. This Master Agreement constitutes, when fully executed and approved as indicated, the entire agreement between the parties and shall supersede all previous communications, representations, or agreements, either oral or written, between the Parties hereto

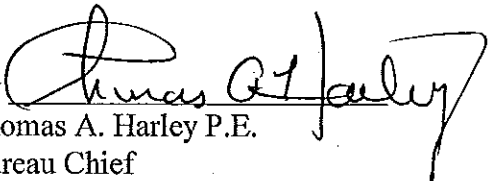
Master Municipal Agreement for Construction Projects

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.

Master Municipal Agreement for Construction Projects


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
James Redeker, Commissioner

By 
Thomas A. Harley P.E.
Bureau Chief
Bureau of Engineering and Construction

Date: Jan 21, 2014

TOWN OF LEDYARD

By 
John Rodolico
Mayor

Date: 1/10/14



TOWN OF LEDYARD
CONNECTICUT
TOWN COUNCIL


741 Colonel Ledyard Highway
Ledyard, Connecticut 06339-1551
(860) 464-3203
FAX (860) 464-1485
council@ledyardct.org

Chairman Linda C. Davis

CERTIFIED RESOLUTION
MASTER MUNICIPAL AGREEMENT FOR CONSTRUCTION PROJECTS

RESOLVED: that the Honorable, John Rodolico, Mayor is hereby authorized to sign the agreement entitled, "*Master Municipal Agreement for Construction Projects.*"

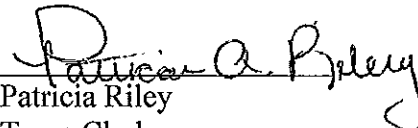
Adopted by the Ledyard Town Council on: January 8, 2014


Linda C. Davis, Chairman

.....

IN WITNESS HEREOF, I, Patricia Riley, the duly qualified and acting Clerk of the Town of Ledyard, Connecticut, do hereby certify that the above resolution was adopted at a regular meeting of the Town of Ledyard, held on January 8, 2014, and is on file of record, and that said resolution has not been altered, amended or revoked and is in full force and effect.

(seal)


Patricia Riley
Town Clerk



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

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




Office of the
Commissioner

An Equal Opportunity Employer

Delegation of Authority
Authorized by Sections 13b-17 and 13b-20 of the
Connecticut General Statutes, As Amended

Know All Ye Persons By These Presents, That I, James Redeker, Commissioner of Transportation, as authorized by Section 13b-17 and Section 13b-20 of the Connecticut General Statutes, as amended, do hereby delegate to Thomas A. Harley, Bureau Chief of the Bureau of Engineering and Construction and who also serves as the Chief Engineer, Department of Transportation, the duties and responsibilities which relate to all day-to-day operational and administrative activities and functions for the Bureau of Engineering and Construction and the authority to sign any agreement, contract, document, or instrument pertaining to the above which I am authorized to sign for said Bureau.


James Redeker
Commissioner

Date: 8.26.11

Schedule A
PAL Template

[Addressee - Designated Municipal Official]

Local Roads

Dear [Addressee - Designated Municipal Official]:

Subject: Project Authorization Letter
For the [Project Description] (Construction 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 Construction 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 [DOT/Municipality] is responsible for the Administration of the Construction Project.

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

Funding for the Construction 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] dollars. 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 construction project activities. A Demand Deposit in the amount of \$[ENTER AMOUNT] dollars 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 Construction 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.

[For Municipality-Administered Construction Projects ADD: The issuance of the PAL itself is not an authorization for the Municipality to begin performing work with respect to the Construction Project. The Municipality may advance or begin work on the Construction Project only after it has received from the DOT an Authorization to Award Notice.]

[enter to:]

-2-

[enter date:]

Please indicate your concurrence with the PAL by signing below on or before [date] and returning a copy to the DOT's Authorized Representative. Submission of the Written Acknowledgement of the PAL by facsimile or electronic transmission is acceptable. 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 Construction Project.

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

Very truly yours,

Authorized DOT Representative

Concurred By _____ Date _____

Print Name:
Designated Municipal Official

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

A. Contract Items and Contingencies	\$
B. Incidentals to Construction-Municipal Services	\$
C. Extra Work Allowance-Municipal Services (+/-10% of B)	\$
D. Total Municipal Cost (A+B+C)	\$
E. Incidentals to Construction-DOT Materials Testing	\$
F. Incidentals to Construction-DOT Administrative Oversight	\$
G. Incidentals to Construction-DOT Audits	\$
H. Extra Work Allowance by DOT Forces (+/-10% of E+F+G)	\$
I. Total Incidentals to Construction-DOT (E+F+G+H)	\$
J. Total Construction Cost (D+I)	\$
K. Federal Proportionate Share of the Total Construction Cost (X% of J)	\$
L. DOT Proportionate Share of the Total Construction Cost (X% of J)	\$
M. Maximum Amount of Reimbursement to the Municipality (100% 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.)

Master Municipal Agreement for Construction Projects
Schedule B

CONNECTICUT
REQUIRED CONTRACT PROVISION
STANDARD EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS

1. Appendix A and Appendix B referred to below and attached hereto express goals and timetables for the utilization of females and minorities respectively on all state funded and federally assisted construction projects funded by or through the Connecticut Department of Transportation.

Appendix A establishes the goal for minority and female utilization in all crafts statewide on state funded construction projects. Appendix B refers to minority and female utilization goals in all crafts statewide on federally assisted/funded construction projects.

2. The goals for minority and female participation are expressed in percentage terms for the contractor's aggregate work-force in each trade on all construction work in the Covered Area, are as follows:

STATE UTILIZATION GOALS FEDERAL UTILIZATION GOALS

See Appendix A

See Appendix B

These goals are applicable to all the contractor's construction work (whether or not it is federal or federally assisted) performed in the Covered Area. If the contractor performs construction work in a geographical area located outside of the Covered Area, it shall apply the goals established for such geographical area where the work is actually performed. With federally involved and non-federally involved construction.

3. The contractor's compliance with the federal Executive Order 11246 and the regulation in 41 CFR Part 60-4 shall be based on its implementation of the specific affirmative action obligations required by the specifications set forth in 41 CFR Part 60-4.3(A) and its efforts to meet the goals established for the geographical area where the contract is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hour performed.

4. As used in these specifications:

- a. "Covered Area" means the geographical area described in the solicitation from which this contract resulted.
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.
- c. "Employer Identification Number" means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
 1. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin):

Schedule B

2. Hispanic (all persons of Mexican, Puerto Rican, Cuban Central or South American or other Spanish Culture or Origin, regardless of race):
3. Asian or Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands: and
4. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

5. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications which contain the applicable goals for minority and female participation.

6. If the contractor is participating (pursuant to 41 CFR Part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the Covered Area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the Equal Employment Opportunity (EEO) clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the plan goals and timetables.

7. The contractor shall implement the specific affirmative action standards provided in subparagraphs 10a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the Covered Area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs (OFCCP) Office or from federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

8. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, federal Executive Order 11246, or the regulations promulgated pursuant hereto.

9. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

10. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

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a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites; and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason thereafter; along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or women sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under subparagraph 10b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO Policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company EEO Policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment, decisions including specific foreman, etc. prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings; persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO Policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and

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training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work-force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

11. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (subparagraphs 10a through p). The efforts of a contractor association, joint contractor union, contractor community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under subparagraphs 10 a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female work-force participation, makes a good faith effort to meet with individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

12. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of federal Executive Order 11246 if a particular group is employed in a substantially disparate manner, (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific

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minority group of women is under utilized).

13. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

14. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to federal Executive Order 11246.

15. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to federal Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and federal Executive Order 11246, as amended.

16. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 10 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR Part 60-4.8.

17. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status, (e.g. mechanic, apprentice, trainee, helper, or laborer) dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

18. Nothing herein provided shall be construed as a limitation upon the application of their laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

19. The Director of the Office of Federal Contract Compliance Programs, from time to time, shall issue goals and timetables for minority and female utilization which shall be based on appropriate work-force, demographic or other relevant data and which shall cover construction projects or construction contracts performed in specific geographical areas. The goals, which shall be applicable to each construction trade in a covered contractor's or timetables, shall be published as notices in the Federal Register, and shall be inserted by the Contracting officers and applicants, as applicable, in the Notice required by 41 CFR Part 60-4.2.

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STATE FUNDED PROJECTS (only)

APPENDIX A

(Labor Market Goals)

<u>LABOR MARKET AREA GOAL</u>			<u>Minority</u>	<u>Female</u>
Bridgeport			14%	6.9%
Ansonia	Beacon Falls	Bridgeport	Derby	
Easton	Fairfield	Milford	Monroe	
Oxford	Seymour	Shelton	Stratford	
Trumbull				
Danbury			4%	6.9%
Bethel	Bridgewater	Brookfield	Danbury	
Kent	New Fairfield	New Milford	Newtown	
Redding	Ridgefield	Roxbury	Sherman	
Washington				
Danielson			2%	6.9%
Brooklyn	Eastford	Hampton	Killingly	
Pomfret	Putnam	Scotland	Sterling	
Thompson	Voluntown	Union	Woodstock	
Hartford			15%	6.9%
Andover	Ashford	Avon	Barkhamsted	
Berlin	Bloomfield	Bolton	Bristol	
Burlington	Canton	Chaplin	Colchester	
Columbia	Coventry	Cromwell	Durham	
East Granby	East Haddam	East Hampton	East Hartford	
East Windsor	Ellington	Enfield	Farmington	
Glastonbury	Granby	Haddam	Hartford	
Harwinton	Hebron	Lebanon	Manchester	
Mansfield	Marlborough	Middlefield	Middletown	
Newington	Plainville	Plymouth	Portland	
Rocky Hill	Simsbury	Somers	South Windsor	

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STATE				<u>Minority</u>	<u>Female</u>
<u>LABOR MARKET AREA GOAL</u>					
Southington	Stafford	Suffield	Tolland		
Vernon	West Hartford	Wethersfield	Willington		
Winchester	Windham	Windsor	Windsor Locks		
Lower River				2%	6.9%
Chester	Deep River	Essex	Old Lyme		
Westbrook					
New Haven				14%	6.9%
Bethany	Branford	Cheshire	Clinton		
East Haven	Guilford	Hamden	Killingworth		
Madison	Meriden	New Haven	North Branford		
North Haven	Orange	Wallingford	West Haven		
Woodbridge					
New London				8%	6.9%
Bozrah	Canterbury	East Lyme	Franklin		
Griswold	Groton	Ledyard	Lisbon		
Montville	New London	North Stonington	Norwich		
Old Lyme	Old Saybrook	Plainfield	Preston		
Salem	Sprague	Stonington	Waterford		
Hopkinton	RI - Westerly	Rhode Island			
Stamford				17%	6.9%
Darien	Greenwich	New Canaan	Norwalk		
Stamford	Weston	Westport	Wilton		
Torrington				2%	6.9%
Canaan	Colebrook	Cornwall	Goshen		
Hartland	Kent	Litchfield	Morris		
Norfolk	North Canaan	Salisbury	Sharon		
Torrington	Warren				
Waterbury				10%	6.9%
Bethlehem	Middlebury	Naugatuck	Prospect		
Southbury	Thomaston	Waterbury	Watertown		
Wolcott	Woodbury				

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FEDERALLY FUNDED OR ASSISTED PROJECTS (only)

APPENDIX B
(Labor Market Goals)

GOALS

Standard Metropolitan Statistical Area (SMSA) Minority Female

<u>Standard Metropolitan Statistical Area (SMSA)</u>				<u>Minority</u>	<u>Female</u>
<u>Bridgeport - Stamford - Norwalk - Danbury</u>				<u>10.2%</u>	<u>6.9%</u>
Bethel	Bridgeport	Brookfield	Danbury		
Darien	Derby	Easton	Fairfield		
Greenwich	Milford	Monroe	New Canaan		
New Fairfield	Newton	Norwalk	Redding		
Shelton	Stamford	Stratford	Trumbull		
Weston	Westport	Wilton			
<u>Hartford - Bristol - New Britain</u>				<u>6.9%</u>	<u>6.9%</u>
Andover	Avon	Berlin	Bloomfield		
Bolton	Bristol	Burlington	Canton		
Colchester	Columbia	Coventry	Cromwell		
East Granby	East Hampton	East Hartford	East Windsor		
Ellington	Enfield	Farmington	Glastonbury		
Granby	Hartford	Hebron	Manchester		
Marlborough	New Britain	New Hartford	Newington		
Plainville	Plymouth	Portland	Rocky Hill		
Simsbury	South Windsor	Southington	Stafford		
Suffield	Tolland	Vernon	West Hartford		
Wethersfield	Willington	Windsor	Windsor Locks		
<u>New Haven - Waterbury - Meriden</u>				<u>9.0%</u>	<u>6.9%</u>
Beacon Falls	Bethany	Branford	Cheshire		
Clinton	East Haven	Guilford	Hamden		
Madison	Meriden	Middlebury	Naugatuck		
New Haven	North Branford	North Haven	Orange		
Prospect	Southbury	Thomaston	Wallingford		
Waterbury	Watertown	West Haven	Wolcott		
Woodbridge	Woodbury				

Schedule B

FEDERAL
LABOR MARKET AREA GOAL

New London - Norwich				4.5%	6.9%
Bozrah	East Lyme	Griswold	Groton		
Ledyard	Lisbon	Montville	New London		
Norwich	Old Lyme	Old Saybrook	Preston		
Sprague	Stonington	Waterford			

Non SMSA

Minority .. Female

Litchfield - Windham				5.9%	6.9%
Abington	Ashford	Ballouville	Bantam		
Barkhamsted	Bethlehem	Bridgewater	Brooklyn		
Canaan	Canterbury	Central Village	Cahplin		
Colebrook	Cornwall	Cornwall Bridge	Danielson		
Dayville	East Canaan	East Killingly	East Woodstock		
Eastford	Falls Village	Gaylordsville	Goshen		
Grosvenor Dale	Hampton	Harwinton	Kent		
Killignly	Lakeside	Litchfield	Moosup		
Morris	New Milford	New Preston	New Preston		
Marble Dale					
Norfolk	North Canaan	No. Grosvenordale	North Windham		
Oneco	Pequabuck	Pine Meadow	Plainfield		
Pleasant Valley	Pomfret	Pomfret Center	Putnam		
Quinebaug	Riverton	Rogers	Roxbury		
Salisbury	Scotland	Sharon	South Kent		
South Woodstock	Sterling	Taconic	Terryville		
Thompson	Torrington	Warren	Warrenville		
Washington	Washington Depot	Waugrean	West Cornwall		
Willimantic	Winchester	Winchester Center	Windham		
Winsted	Woodstock	Woodstock Valley			

Master Municipal Agreement for Construction Projects
Schedule C

**CONNECTICUT REQUIRED
SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES
(2012)**

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

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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.

Master Municipal Agreement for Construction Projects
Schedule D

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualified minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor 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 contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women-employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency 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 FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. **Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. **Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epis.gov/>), which is compiled by the General Services Administration.

I. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

J. Except for transactions authorized under paragraph (f) of these Instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

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

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them 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;

(3) Are 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)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these Instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 any Federal contract, grant, loan, or cooperative agreement.

b. 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. 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 31 U.S.C. 1352. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS.**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Master Municipal Agreement for Construction Projects
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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.

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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 Mariana 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.

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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.

2. 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

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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

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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

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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 Adminstrating 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

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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

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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 B

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 contact;
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 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, 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 E

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.)

<u>Item #</u>	<u>Description of Item</u>	<u>\$ Bid Amount</u>	<u>% of Total Contract</u>
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Schedule E

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

<u>Item #</u>	<u>Description of Item</u>	<u>\$ Bid Amount</u>	<u>% of Total Contract</u>
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Schedule E

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.)

<u>Item #</u>	<u>Description of Item</u>	<u>\$ Bid Amount</u>	<u>% of Total Contract</u>
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Schedule E

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

<u>Name of DBE</u>	<u>Items Contacted for</u>	<u>Date of Contact</u>	<u>Phone/Cert.Mail Other</u>	<u>Result</u>
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5. Names of DBEs who were quoted on contract (be very specific and include items and amounts; attach documentation).

<u>Name of DBE</u>	<u>Item of Work Quoted</u>	<u>Date of Quote</u>	<u>Reason(s) for Rejection of Bid</u>
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Schedule E

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

<u>Name of DBE</u>	<u>Items of Work</u>	<u>Date DBE Declined</u>	<u>Reason for Refusal to Bid</u>
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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 E

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

Contractor Signature

Title

Date: _____

Master Municipal Agreement for Construction Projects
Schedule F

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

Schedule F

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

Schedule F

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

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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:

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- 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.

Master Municipal Agreement for Construction Projects
Schedule G

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

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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 Mariana 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

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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.

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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 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

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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. The Contractor's ability to negotiate a more advantageous contract with another subcontractor is not a valid basis for change. 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

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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

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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

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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.

Master Municipal Agreement for Construction Projects
Schedule H

ON-THE-JOB TRAINING PROGRAM SPECIAL PROVISION

This On-The-Job Training Program Special Provision (Special Provision) is included in this contract in implementation of Title 23 U.S.C., Section 140(a) as established by Section 22 of the Federal-Aid Highway Act of 1968.

As part of the contractor's equal employment opportunity affirmative action program, on-the-job training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing and retaining full journeymen in the type of trade involved. The number of trainees or apprentices to be trained under this contract is determined by dividing the original quantity of hours assigned in the proposal form by 1,000 hours, or the number of hours required under a particular apprenticeship program schedule. In the event the contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this provision. The contractor shall also ensure that this Special Provision is made applicable to such subcontract.

The contractor shall submit for approval to the Connecticut Department of Transportation (ConnDOT), a training outline for each trainee or apprentice that will be trained on this project. The training outline shall include the trade, the training categories, the number of training hours that will be provided, and if there will be any off-site training. If the contractor is participating in a bona fide apprenticeship program approved by the Connecticut State Labor Department (CDOL) Apprentice Training Division, identification of such apprentice program shall also be submitted to ConnDOT.

No more than twenty percent (20%) of the trainees or apprentices proposed shall be in the laborer classification (applicable only when five (5) or more trainees or apprentices are required).

Training, upgrading and retaining minority group workers and women in the various construction trades is a primary objective of this Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

Accordingly, a contractor choosing to utilize a non-apprenticeship program shall make use of the supportive services consultant and/or make every effort to enroll minority and women trainees or apprentices by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent such persons are available within a reasonable area of recruitment. The contractor will be given an opportunity and will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Special Provision.

No employee shall be employed as a trainee or apprentice in any classification in which he/she has successfully completed a training course leading to journeyman status or in which he/she has been employed as a journeyman. Trainees, or apprentices, may be employed and

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trained in the advancement of their training or apprenticeship program.

After award of the contract, and prior to the order to start date of the physical construction of the project, the contractor shall, in conjunction with the required schedule of progress or time chart, submit and obtain approval for, the number of trainees, or apprentices, for each classification selected, the training outline for each classification and an explanation of the start time of each trainee as it relates to the schedule of progress or time chart.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by ConnDOT and the Federal Highway Administration (FHWA). ConnDOT and the FHWA shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee or apprentice for journey person status in the classification concerned by the end of the training period. Furthermore, programs approved by the U.S. Department of Labor (USDOL) or CDOL, including apprenticeship programs, shall be considered acceptable under this Special Provision, except in those cases where the Secretary of Transportation, the Federal Highway Administrator, or ConnDOT, has determined that the program is not administered in a manner consistent with the equal employment obligations of federal-aid highway construction contracts.

The contractor shall furnish each trainee or apprentice with a copy of the program that will be followed in providing the training. The contractor shall provide each trainee or apprentice with a certification showing the type and length of training satisfactorily completed.

The contractor shall provide for the maintenance of records and furnish monthly and final reports documenting his performance under this Special Provision to the Engineer. The monthly updates and final report shall be made on forms provided by ConnDOT or by providing signed copies of the "Apprentice Handbook and Progress Record" provided by CDOL.

In the event that the contractor intends to transfer a trainee or apprentice to another ConnDOT, (FHWA funded) project, the contractor shall provide ConnDOT with a minimum of a 14-day advance notice.

Except as otherwise noted below, the contractor will be reimbursed at \$0.80 per hour of training given an employee in accordance with an approved training or apprenticeship program. As approved by ConnDOT, reimbursement will be made for training hours in excess of the number specified. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the contractor from receiving other reimbursement.

Payment for training is made upon completion of the training program on this contract and not on a monthly basis.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journey person, is caused by the contractor. It is normally expected that a trainee or apprentice will remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not

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required that all trainees or apprentices be on board for the entire length of the contract. A contractor will have fulfilled his responsibilities, under this Special Provision, if he has provided acceptable training for the number of hours specified.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by CDOL in connection with the existing program shall apply to all trainees or apprentices being trained for the same classification who are covered by this Special Provision.

The number of hours shown on the proposal form for Item #2999998A On-The-Job Training Program is not to be altered in any manner by the bidder. Should the bidder alter the amount shown, the altered figures will be disregarded and the original quantity will be used to determine the amount bid for the contract.

Pay Item

On-The-Job Training Program

Pay Unit

Hour

Master Municipal Agreement for Construction Projects
Schedule I



CONNECTICUT DEPARTMENT OF TRANSPORTATION
POLICY STATEMENT

POLICY NO. F&A-30
April 12, 2006

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:

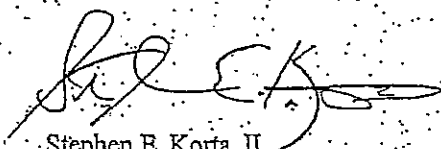
Under the terms of these federal regulations, the Department "shall accept indirect cost rates established in accordance with the Federal Acquisition Regulations for 1-year applicable accounting periods by a cognizant Federal or State government agency..." and "...shall apply such rates for the purpose of contract estimation, negotiation, administration, reporting and contract payment and shall not be limited by administrative or defacto ceilings of any kind."

Travel - shall be the maximum established per the State Travel Regulations (managers' agreement).

If a project is federally funded in any phase, the above stated new requirements shall apply to all new agreements negotiated on or subsequent to December 1, 2005. New agreements that do not have federal funding in any phase, including construction will continue to apply the requirements of the Office of Policy and Management's (OPM) General Letter 97-1. Supplemental agreements negotiated on or after December 1, 2005, that are merely a continuation or refinement of work, shall continue to adhere to the maximums as contained in OPM's General Letter 97-1. Supplemental agreements that result in a new phase of work or more than a continuation or refinement of work will use the above stated new requirements. Supplemental agreements on federally funded projects that continue to utilize the OPM General Letter 97-1 maximums require the approval of the Federal Highway Administration before processing. Existing on-call assignments may be completed using the maximums in OPM's General Letter 97-1, as well as, new on-call assignments (projects) that have no federal funding. New on-call assignments (projects) that have federal funding must use the above stated new requirements. Extra work claims for existing agreements shall continue to adhere to those maximums established in OPM's General Letter 97-1. Computer Aided Design and Drafting (CADD) will be reimbursed through the overhead rate only.

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 December 17, 1996)


Stephen E. Korta, II
Commissioner

Master Municipal Agreement for Construction Projects
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STATE OF CONNECTICUT
OFFICE OF POLICY AND MANAGEMENT



November 21, 1996

GENERAL LETTER NO. 97-1

TO: All State Agencies

FROM: Michael W. Kozlowski, Secretary
Office of Policy & Management

SUBJECT: Contract Fees for Architects, Engineers and Consultants on State
Projects

All Contracts for architects, engineers and consultants on capital projects or studies related thereto, shall be awarded on the following basis:

1. Principals - Maximum of \$35/hour
 - A. Corporations Principal is defined as follows:
 - a. A corporate officer administratively responsible to the Corporation for the contract. The principal classification (whether corporate or other) is intended to include the principal's effort on the contract relating only to managing, directing and/or administering of the contract. In no event will the number of Principal hours established be in excess of 5% of the total contract salary hours established during negotiations.
 - b. A principal may also work on the contract in the "employee" classification, for example; as a Project Manager, Draftsman, Senior Engineer, etc. While performing those services for which qualified, the principal's rate of pay shall be within the salary range for the specific classification.
2. Assistants - Actual payroll at straight time rates. Overtime at actual rates subject to prior approval.
3. Overhead and Profit - Actual but not to exceed 150% for a Home Office project; 125% for a Field Office project and 165% for an Environmental project.
4. Travel - Maximum is established per the State Travel Regulations (Manager's Agreement.)

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

Master Municipal Agreement for Construction Projects
Schedule K

Mandatory State and Federal Requirements

1. **Executive Orders.** This Master Agreement 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 the Master Agreement as if they had been fully set forth in it. The Master Agreement may also be subject to the applicable parts of Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Master Agreement as if they had been fully set forth in it. At the Municipality's request, the State shall provide a copy of these orders to the Municipality.

2. **Code of Ethics.** The Municipality shall comply with the policies set forth in Policy Statement Policy No. F&A-10 ("Code of Ethics Policy"), Connecticut Department of Transportation, June 1, 2007, attached hereto as Schedule L.

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

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(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 (42 U.S.C. §§2000d-2000d-7), all requirements imposed by the regulations of the United States Department of Transportation (49 CFR Part 21) issued in implementation thereof, and the "Title VI Contractor Assurances", attached hereto at Schedule M, 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 website at

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<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

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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 workpapers and reports of an independent Certified Public Accountant ("CPA") be maintained for a minimum of five (5) years from the date of the Audit Reports.

The State reserves the right to audit or review any records/workpapers of the CPA pertaining to the Master Agreement.

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 C, 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.

Master Municipal Agreement for Construction Projects
Schedule L



CONNECTICUT DEPARTMENT OF TRANSPORTATION
POLICY STATEMENT

POLICY NO. F&A-10

June 1, 2007

SUBJECT: Code of Ethics Policy

The purpose of this policy is to establish and maintain high standards of honesty, integrity, and quality of performance for all employees of the Department of Transportation ("DOT" or "Department"). Individuals in government service have positions of significant trust and responsibility that require them to adhere to the highest ethical standards. Standards that might be acceptable in other public or private organizations are not necessarily acceptable for the DOT.

It is expected that all DOT employees will comply with this policy as well as the Code of Ethics for Public Officials, and strive to avoid even the appearance of impropriety in their relationships with members of the public, other agencies, private vendors, consultants, and contractors. This policy is, as is permitted by law, in some cases stricter than the Code of Ethics for Public Officials. Where that is true, employees are required to comply with the more stringent DOT policy.

The Code of Ethics for Public Officials is State law and governs the conduct of all State employees and public officials regardless of the agency in which they serve. The entire Code, as well as a summary of its provisions, may be found at the Office of State Ethics' web site: www.ct.gov/ethics/site/default.asp. For formal and informal interpretations of the Code of Ethics, DOT employees should contact the Office of State Ethics or the DOT's Ethics Compliance Officer or her designee.

All State agencies are required by law to have an ethics policy statement. Additionally, all State agencies are required by law to have an Ethics Liaison or Ethics Compliance Officer. The DOT, because of the size and scope of its procurement activities, has an Ethics Compliance Officer who is responsible for the Department's development of ethics policies; coordination of ethics training programs; and monitoring of programs for agency compliance with its ethics policies and the Code of Ethics for Public Officials. At least annually, the Ethics Compliance Officer shall provide ethics training to agency personnel involved in contractor selection, evaluation, and supervision. A DOT employee who has a question or is unsure about the provisions of this policy, or who would like assistance contacting the Office of State Ethics, should contact the Ethics Compliance Officer or her designee.

The DOT Ethics Compliance Officer is:

Denise Rodosevich, Managing Attorney
Office of Legal Services

For questions, contact the Ethics
Compliance Officer's Designee:

Alice M. Sexton, Principal Attorney
Office of Legal Services

2800 Berlin Turnpike
Newington, CT 06131-7546

To contact the Office of State Ethics:

Office of State Ethics
20 Trinity Street, Suite 205
Hartford, CT 06106

Tel. (860) 566-4472

Facs. (860) 566-3806

Web: www.ethics.state.ct.us

Enforcement

The Department expects that all employees will comply with all laws and policies regarding ethical conduct. Violations of the law may subject an employee to sanctions from agencies or authorities outside the DOT. Whether or not another agency or authority imposes such sanctions, the Department retains the independent right to review and respond to any ethics violation or alleged ethics violation by its employees. Violations of this policy or ethics statutes, as construed by the DOT, may result in disciplinary action up to and including dismissal from State service.

Prohibited Activities

1. **Gifts:** DOT employees (and in some cases their family members) are prohibited by the Code of Ethics and this Policy from accepting a gift from anyone who is: (1) doing business with, or seeking to do business with, the DOT; (2) directly regulated by the DOT; (3) prequalified as a contractor pursuant to Conn. Gen. Stat. §4a-100 by the Commissioner of the Department of Administrative Services (DAS); or (4) known to be a registered lobbyist or a lobbyist's representative. These four categories of people/entities are referred to as "restricted donors." A list of registered lobbyists can be found on the web site of the Office of State Ethics (www.ct.gov/ethics/site/default.asp). A list of prequalified consultants and contractors, i.e., those seeking to do business with the DOT, can be found on the DOT's Internet site under "Consultant Information" and "Doing Business with ConnDOT," respectively.

The term "gift" is defined in the Code of Ethics for Public Officials, Conn. Gen. Stat. §1-79(e), and has numerous exceptions. For example, one exception permits the acceptance of food and/or beverages valued up to \$50 per calendar year from any one donor and consumed on an occasion or occasions while the person paying or his representative is present. Therefore, such food and/or beverage is not a "gift." Another exception permits the acceptance of items having a value up to ten dollars (\$10) provided the aggregate value of all things provided by the donor to the recipient during a calendar year does not exceed fifty dollars (\$50). Therefore, such items are not a "gift." Depending on the circumstances, the "donor" may be an individual if the individual is bearing the expense, or a donor may be the individual's employer/group if the individual is passing the expense back to the employer/group he/she represents.

This policy requires DOT employees to immediately return any gift (as defined in the Code of Ethics) that any person or entity attempts to give to the employee(s). If any such gift or other item of value is received by other than personal delivery from the subject person or entity, the item shall be taken to the Office of Human Resources along with the name and address of the person or entity who gave the item. The Office of Human Resources, along with the recipient of the item of value, will arrange for the donation of the item to a local charity (e.g., Foodshare, local soup kitchens, etc.). The Office of Human Resources will then send a letter to the gift's donor advising the person of the item's donation to charity and requesting that no such gifts be given to DOT employees in the future.

2. **Contracting for Goods or Services for Personal Use With Department Contractors, Consultants, or Vendors:** Executive Order 7C provides that: "Appointed officials and state employees in the Executive Branch are prohibited from contracting for goods and services, for personal use, with any person doing business with or seeking business with his or her agency, unless the goods or services are readily available to the general public for the price which the official or state employee paid or would pay."

3. **Gift Exchanges Between Subordinates and Supervisors/Senior Staff:** A recent change in the Code of Ethics prohibits exchanges of gifts valued at \$100 or more between (i.e., to and from) supervisors and employees under their supervision. The Citizen's Ethics Advisory Board has advised that: (1) the monetary limit imposed by this provision is a per-gift amount; (2) gifts given between supervisors and subordinates (or *vice versa*) in celebration of a "major life event," as defined in the Code of Ethics, need not comply with the \$100 limit; and (3) the limitations imposed by this provision apply to a direct supervisor and subordinate *and to any individual up or down the chain of command*. The Citizen's Ethics Advisory Board has also advised that supervisors or subordinates may not pool their money to give a collective or group gift valued at \$100 or more, even though each of the individual contributions is less than \$100.
4. **Acceptance of Gifts to the State:** A recent change to the Code of Ethics for Public Officials modified the definition of the term "gift" to limit the application of the so-called "gift to the State" exception. In general, "gifts to the State" are goods or services given to a State agency for use on State property or to support an event and which facilitate State action or functions. Before accepting any benefit as a "gift to the State," DOT employees should contact the Ethics Compliance Officer.
5. **Charitable Organizations and Events:** No DOT employee shall knowingly accept any gift, discount, or other item of monetary value for the benefit of a charitable organization from any person or entity seeking official action from, doing or seeking business with, or conducting activities regulated by, the Department.
6. **Use of Office/Position for Financial Gain:** DOT employees shall not use their public office, position, or influence from holding their State office/position, nor any information gained in the course of their State duties, for private financial gain (or the prevention of financial loss) for themselves, any family member, any member of their household, nor any "business with which they are associated." In general, a business with which one is associated includes any entity of which a DOT employee or his/her immediate family member is a director, owner, limited or general partner, beneficiary of a trust, holder of 5 percent or more stock, or an officer (president, treasurer, or executive or senior vice president).

DOT employees shall not use or distribute State information (except as permitted by the Freedom of Information Act), nor use State time, personnel, equipment, or materials, for other than State business purposes.
7. **Other Employment:** DOT employees shall not engage in, nor accept, other employment that will either impair their independence of judgment with regard to their State duties or require or induce them to disclose confidential information gained through their State duties.

Any DOT employee who engages in or accepts other employment (including as an independent contractor), or has direct ownership in an outside business or sole proprietorship, shall complete an Employment/Outside Business Disclosure Form (see attached) and submit it to the Department's Human Resources Administrator. Disclosure of other employment to the DOT Human Resources Administrator shall *not* constitute approval of the other employment for purposes of the Code of Ethics for Public Officials.

Inquiries concerning the propriety of a DOT employee's other employment shall be directed to the Office of State Ethics to assure compliance with the Code of Ethics for Public Officials. Employees anticipating accepting other employment as described above should give ample time (at least one month) to the Office of State Ethics to respond to such outside employment inquiries.

No employee of the DOT shall allow any private obligation of employment or enterprise to take precedence over his/her responsibility to the Department.

8. **Outside Business Interests:** Any DOT employee who holds, directly or indirectly, a financial interest in any business, firm, or enterprise shall complete an Employment/Outside Business Disclosure Form (see attached) and submit it to the Department's Human Resources Administrator. An indirect financial interest includes situations where a DOT employee's spouse has a financial interest in a business, firm, or enterprise. A financial interest means that the employee or his spouse is an owner, member, partner, or shareholder in a non-publicly traded entity. Disclosure of such outside business interests to the DOT Human Resources Administrator shall *not* constitute approval of the outside business interest under this Policy or the Code of Ethics for Public Officials. DOT employees shall not have a financial interest in any business, firm, or enterprise which will either impair their independence of judgment with regard to their State duties or require or induce them to disclose confidential information gained through their State duties. Inquiries concerning the propriety of a DOT employee's outside business interests shall be directed to the Office of State Ethics to assure compliance with the Code of Ethics for Public Officials.
9. **Contracts With the State:** DOT employees, their immediate family members, and/or a business with which a DOT employee is associated, may not enter into a contract with the State, other than pursuant to a court appointment, valued at \$100 or more unless the contract has been awarded through an open and public process.
10. **Sanctioning Another Person's Ethics Violation:** No DOT official or employee shall counsel, authorize, or otherwise sanction action that violates any provision of the Code of Ethics.
11. **Certain Persons Have an Obligation to Report Ethics Violations:** If the DOT Commissioner, Deputy Commissioner, or "person in charge of State agency procurement" and contracting has reasonable cause to believe that a person has violated the Code of Ethics or any law or regulation concerning ethics in State contracting, he/she *must* report such belief to the Office of State Ethics. All DOT employees are encouraged to disclose waste, fraud, abuse, and corruption about which they become aware to the appropriate authority (see also Policy Statement EX.O.-23 dated March 31, 2004), including, but not limited to; their immediate supervisor or a superior of their immediate supervisor, the DOT Office of Management Services; the Ethics Compliance Officer, the Auditors of Public Accounts; the Office of the Attorney General, or the Office of the Chief State's Attorney.
12. **Post-State Employment Restrictions:** In addition to the above-stated policies of the Department, DOT employees are advised that the Code of Ethics for Public Officials bars certain conduct by State employees *after they leave State service. Upon leaving State service:*
 - **Confidential Information:** DOT employees must never disclose or use confidential information gained in State service for the financial benefit of any person.
 - **Prohibited Representation:** DOT employees must *never* represent anyone (other than the State) concerning any "particular matter" in which they participated personally and substantially while in State service and in which the State has a substantial interest.

DOT employees also must not, for one year after leaving State service, represent anyone other than the State for compensation before the DOT concerning a matter in which the State has a substantial interest. In this context, the term "represent" has been very broadly defined. Therefore, any former DOT employee contemplating post-State employment work that might involve interaction with any bureau of DOT (or any Board or Commission administratively under the DOT) within

their first year after leaving State employment should contact the DOT Ethics Compliance Officer and/or the Office of State Ethics.

- *Employment With State Vendors:* DOT employees who participated substantially in, or supervised, the negotiation or award of a State contract valued at \$50,000 or more must not accept employment with a party to the contract (other than the State) for a period of one year after resigning from State service, if the resignation occurs within one year after the contract was signed.

13. *Ethical Considerations Concerning Bidding and State Contracts:* DOT employees also should be aware of various provisions of Part IV of the Code of Ethics that affect any person or firm who: (1) is, or is seeking to be, prequalified by DAS under Conn. Gen. Stat. §4a-100; (2) is a party to a large State construction or procurement contract, or seeking to enter into such a contract, with a State agency; or (3) is a party to a consultant services contract, or seeking to enter into such a contract, with a State agency. These persons or firms shall not:

- With the intent to obtain a competitive advantage over other bidders, solicit any information from an employee or official that the contractor knows is not and will not be available to other bidders for a large State construction or procurement contract that the contractor is seeking;
- Intentionally, willfully, or with reckless disregard for the truth, charge a State agency for work not performed or goods not provided, including submitting meritless change orders in bad faith with the sole intention of increasing the contract price, as well as falsifying invoices or bills or charging unreasonable and unsubstantiated rates for services or goods to a State agency; and
- Intentionally or willfully violate or attempt to circumvent State competitive bidding and ethics laws.

Firms or persons that violate the above provisions may be deemed a nonresponsible bidder by the DOT.

In addition, no person with whom a State agency has contracted to provide consulting services to plan specifications for any contract, and no business with which such person is associated, may serve as a consultant to any person seeking to obtain such contract, serve as a contractor for such contract, or serve as a subcontractor or consultant to the person awarded such contract.

DOT employees who believe that a contractor or consultant may be in violation of any of these provisions should bring it to the attention of their manager.

Training for DOT Employees

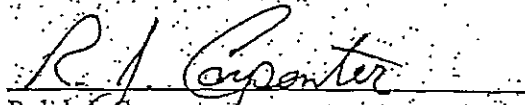
A copy of this policy will be posted throughout the Department, and provided to each employee either in hard copy or by e-mail. As set forth above, State law requires that certain employees involved in contractor/consultant/vendor selection, evaluation, or supervision must undergo annual ethics training coordinated or provided by the Ethics Compliance Officer. If you believe your duties meet these criteria, you should notify your Bureau Chief to facilitate compilation of a training schedule. In addition, the DOT Ethics Compliance Officer can arrange for periodic ethics training provided by the Office of State Ethics. Finally, the Department will make available, on its web site or otherwise, a copy of this policy to all vendors, contractors, and other business entities doing business with the Department.

Important Ethics Reference Materials

It is strongly recommended that every DOT employee read and review the following:

- Code of Ethics for Public Officials, Chapter 10, Part 1, Conn. General Statutes Sections 1-79 through 1-89a found at: www.ct.gov/ethics/site/default.asp.
- Ethics Regulations Sections 1-81-14 through 1-81-38, found at: www.ct.gov/ethics/site/default.asp
- The Office of State Ethics web site includes summaries and the full text of formal ethics advisory opinions interpreting the Code of Ethics, as well as summaries of previous enforcement actions: www.ct.gov/ethics/site/default.asp. DOT employees are strongly encouraged to contact the Department's Ethics Compliance Officer or her designee, or the Office of State Ethics with any questions or concerns they may have.

(This Policy Statement supersedes Policy Statement No. F&A-10 dated January 6, 2006)


Ralph J. Carpenter
COMMISSIONER

Attachment

List 1 and List 3

(Managers and supervisors are requested to distribute a copy of this Policy Statement to all employees under their supervision.)

cc: Office of the Governor, Department of Administrative Services, Office of State Ethics

Master Municipal Agreement for Construction Projects
Schedule M

TITLE VI CONTRACTOR ASSURANCES

For this document Contractor means Consultant, Consulting Engineer, Second Party, or other entity doing business with the State and Contract shall mean the same as Agreement.

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 shall comply with the regulations relative to nondiscrimination in federally assisted programs of the United States Department of Transportation (hereinafter, "USDOT"), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), 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, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Subsection 5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive 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 shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

4. Information and Reports: The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Connecticut Department of Transportation (ConnDOT) or the Funding Agency (FHWA, FTA and FAA) to be pertinent to ascertain compliance with such Regulations, orders, 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 shall so certify to ConnDOT or the Funding Agency, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the ConnDOT shall impose such sanctions as it or the Funding Agency may determine to be appropriate, including, but not limited to:

- A. Withholding contract payments until the Contractor is in-compliance; and/or
- B. Cancellation, termination, or suspension of the Contract, in whole or in part.

6. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the ConnDOT or the Funding Agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the ConnDOT to enter into such litigation to protect the interests of the Funding Agency, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**MASTER MUNICIPAL AGREEMENT
FOR CONSTRUCTION PROJECTS**

THIS MASTER MUNICIPAL AGREEMENT FOR CONSTRUCTION PROJECTS ("Master Agreement") is entered into by and between the STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION, (the "DOT"), and the TOWN OF Ledyard, 741 Colonel Ledyard Highway, Ledyard, CT 06339 (the "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 construct improvements to locally-maintained roadways, structures and transportation enhancement facilities that are eligible for government financial assistance from the DOT, the federal government, or both;

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 either the DOT or the Municipality takes on the responsibility of administering the construction phase of a particular municipal project, and the parties wish for this Master Agreement to address both DOT-administered and Municipality-administered projects;

WHEREAS, the Commissioner is authorized to enter into this Agreement and distribute state and federal financial assistance to the Municipality for these projects pursuant to § 13a-98i and § 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 these 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:

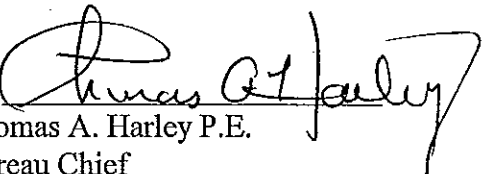
1.1 "Accumulative Costs" means the total, collective expenditure by the Municipality and the DOT to complete the Construction Project (defined in section 1.8).

1.2 "Administer," "Administering" or "Administration" of the Construction Project means conducting and managing operations required to perform and complete the Construction Project, including performing the construction work by either the Municipality or the DOT, as applicable to the particular Construction Project, in whole or in part, advertising and awarding any contract(s) for performance of the work by contractor(s) in whole or in part, or any combination thereof, and undertaking all of the administrative-duties related to and required for the completion of the Construction Project.

Master Municipal Agreement for Construction Projects

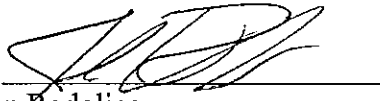
The parties have executed this Master Agreement by their duly authorized representatives on the day and year indicated, with full knowledge of and agreement with its terms and conditions.

STATE OF CONNECTICUT
Department of Transportation
James Redeker, Commissioner

By 
Thomas A. Harley P.E.
Bureau Chief
Bureau of Engineering and Construction

Date: Jan 21, 2014

TOWN OF LEDYARD

By 
John Rodolico
Mayor

Date: 1/10/14



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

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

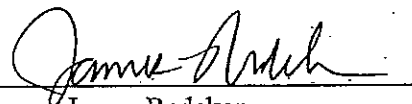


Office of the
Commissioner

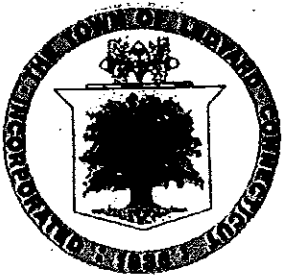
An Equal Opportunity Employer

Delegation of Authority
Authorized by Sections 13b-17 and 13b-20 of the
Connecticut General Statutes, As Amended

Know All Ye Persons By These Presents, That I, James Redeker, Commissioner of Transportation, as authorized by Section 13b-17 and Section 13b-20 of the Connecticut General Statutes, as amended, do hereby delegate to Thomas A. Harley, Bureau Chief of the Bureau of Engineering and Construction and who also serves as the Chief Engineer, Department of Transportation, the duties and responsibilities which relate to all day-to-day operational and administrative activities and functions for the Bureau of Engineering and Construction and the authority to sign any agreement, contract, document, or instrument pertaining to the above which I am authorized to sign for said Bureau.


James Redeker
Commissioner

Date: 8.26.11



TOWN OF LEDYARD
CONNECTICUT
TOWN COUNCIL

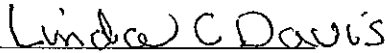
741 Colonel Ledyard Highway
Ledyard, Connecticut 06339-1551
(860) 464-3203
FAX (860) 464-1485
council@ledyardct.org

Chairman Linda C. Davis

CERTIFIED RESOLUTION
MASTER MUNICIPAL AGREEMENT FOR CONSTRUCTION PROJECTS

RESOLVED: that the Honorable, John Rodolico, Mayor is hereby authorized to sign the agreement entitled, "*Master Municipal Agreement for Construction Projects.*"

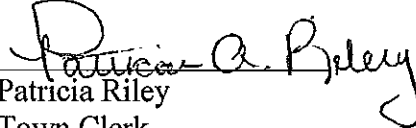
Adopted by the Ledyard Town Council on: January 8, 2014


Linda C. Davis, Chairman

.....

IN WITNESS HEREOF, I, Patricia Riley, the duly qualified and acting Clerk of the Town of Ledyard, Connecticut, do hereby certify that the above resolution was adopted at a regular meeting of the Town of Ledyard, held on January 8, 2014, and is on file of record, and that said resolution has not been altered, amended or revoked and is in full force and effect.

(seal)


Patricia Riley
Town Clerk

To: Agreement Files

From: Gary W. Belina Fiscal Admin.
Manager I, Department of Transportation

Date: 1/14/13

Re: Contract Approval Request Agreement No. 7.17-03(13)

Attached for your Office's review and approval is a contract between State of Connecticut and Town of Ledyard Master Municipal Agreement in the amount of \$Charges to be made on a project by project from appropriate funding sources.

The contract contains the following:

1. Dated signature of the parties involved, at page 36.
2. Reference to the agency's statutory authority to contract, at page 1, 4th Whereas Clause.
3. The contractor is a governmental entity, from outside of Connecticut, reference to the contractor's statutory authority to contract, at page _____. N/A
4. Audit clause for State grants (§7-396a), at page Schedule K, Pgs. 3, 4 Art. 8. N/A
5. Whistleblower provision, if value of non-public works contract > \$5MM (§4-61dd(e)), at page _____. N/A
6. Public records provision, if contract exceeds \$2.5MM (§1-218), at page NA. N/A
7. Provision making Connecticut law applicable and the State of Connecticut the venue, at page 34, Art. 18. If omitted or changed, attached is agency's memo with appropriate justification.
8. Provision allowing termination "in the best interests of the state" (for convenience), at page 26, Art. 13.2. If omitted or changed, attached is agency's memo with appropriate justification.
9. Provision concerning tangible personal property (§12-411b), at page NA. N/A
10. Provision obligating contractor to indemnify and hold harmless the State, at page 32, Art. 16. If omitted or changed, attached is agency's memo with appropriate justification.
11. Provision declaring the non-waiver of State's immunity, at page 33, Art. 17.1. If omitted or changed, attached is agency's memo with appropriate justification.
12. Provision concerning State Ethics Commission's summary of ethics laws (§1-101qq), at page _____. N/A
13. Provision concerning audit and inspection of plants, places of business and records (§4e-29 and §4e-30), at page N/A.
14. Provision concerning accountability, transparency and results based outcomes (§4e-14), at page N/A. Currently not required.
15. Provision concerning campaign contribution restrictions if contract value > \$50K or if value of all of contractor's contracts > \$100K in calendar year (OPM Requirement), at page _____. N/A
16. Provision concerning protection of confidential information (Governor's requirement), at page NA. If omitted or changed, attached is a written authorization from the Governor's Office. N/A
17. Payment schedule or statement of payment, at page Pg. 6, Art. 3.1.
18. Provision concerning Executive Order Nos. 3, 7C, 14, 16 and 17, at page Schedule K, Pg. 1, Art. 1. If omitted or changed, attached is a written authorization from the Governor's Office.
19. Nondiscrimination provisions (§4a-60 and §4a-60a), at page N/A. If omitted or changed, attached is a written authorization from CHRO. Political subdivisions, quasi-publics and other government entities are statutorily exempt. N/A

In addition, I am also duly authorized to confirm, and have verified that the contract DOES NOT include any provisions which:

- 34. Incorporate into the contract additional terms and conditions that are found on a non-State website.
- 35. Permit the filing of liens against the State.
- 36. Obligate the State to indemnify or hold harmless the contractor.
- 37. Make the State subject to binding arbitration.
- 38. Waive or modify the implied warranties of fitness or merchantability. If waived or modified, attached is agency's memo with appropriate justification.
- 39. Indicate that the contract has expired or terminated.

COMMENTS:

Revision of November 2011

JAN 22 2014

DEPARTMENT Transportation	DIVISION Thomas A. Harley, P.E., Bureau Chief Bureau of Engineering and Construction	DATE 1-21-14
CONTACT PERSON Gary W. Belina	TITLE Fiscal/Administrative Manager I	PHONE NO. X 3134

CONTRACTOR OR LESSOR **Town of Ledyard**
Agreement No. 7.17-03(13) Core No. 14DOT0128AA

IS CONTRACTOR A CURRENT OR RETIRED STATE EMPLOYEE?
 YES NO (if current, attach statement from agency head attesting to his/her availability)

CONTRACT OR LEASE PERIOD: FROM * TO *

TYPE OF CONTRACT OR LEASE
 AMENDMENT OF EXISTING CONTRACT/LEASE RENEWAL NEW * Ten (10) years from the date DOT executes the Agreement

DESCRIPTION OF CONTRACT OR LEASE	Complete below where applicable			THIS CONTRACT OR LEASE	PRIOR CONTRACT OR LEASE	DIFFERENCE
	FREQUENCY:	VISITS (length)	OTHER (Specify)			
	<input type="checkbox"/> HOURS	<input type="checkbox"/>	<input type="checkbox"/>			
	IF CONTRACT <input type="checkbox"/> PER HOURS	<input type="checkbox"/> PER VISIT	OTHER (Specify) <input type="checkbox"/>	\$		
	IF LEASE <input type="checkbox"/> PER SQUARE FOOT		OTHER (Specify) <input type="checkbox"/>	\$		
FUNDING	General			\$		
	Other:			\$		
	TOTAL COST			\$ 0**		

IS THIS CONTRACT/ LEASE "RETRO-ACTIVE"? (if Yes, attach explanation) ** Charges to be made on a project-by-project basis from appropriate funding source
 YES NO N/A

EXPLANATION OF COST INCREASE (if applicable)
 N/A

REASON FOR CONTRACT OR LEASE
 This Master Municipal Agreement allows the Municipality to have the possibility to financially participate in, municipal projects to construct improvements to locally-maintained roadways, structures and transportation enhancement facilities that are eligible for government financial assistance from the State, the federal government, or both.

PROPOSALS OR BIDS
 ARE THESE SERVICES OBTAINABLE THROUGH OTHER STATE AGENCIES? (if YES, explain why not being utilized)
 YES NO
 WERE COMPETITIVE BIDS OR ALTERNATIVE PROPOSALS SOUGHT? (if YES, briefly summarize on an attached sheet) (if NO, explain why not)
 YES NO N/A

FOR USE OF OFFICE OF POLICY AND MANAGEMENT ONLY					
ARE FUNDS AVAILABLE?		IS THERE NEED FOR SERVICE/LEASE?		MANAGEMENT DIVISION IF APPLICABLE	
<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> RECOMMEND APPROVAL	<input type="checkbox"/> RECOMMEND DISAPPROVAL <input type="checkbox"/> See attached
				BUDGET DIVISION	
				<input type="checkbox"/> RECOMMEND APPROVAL	<input type="checkbox"/> RECOMMEND DISAPPROVAL <input type="checkbox"/> See attached

Enc. 1 Roger Levesque/rl

ANALYST RECOMMENDATION
 bcc: Thomas A. Harley
 Timothy M. Wilson - Hugh H. Hayward
 Eugene V. Falcone - Robert W. Harrison - Ava M. Torello - Courtney R. Blanks
 Mario F. Torcia
 Barbara E. Farnsworth
 Charles F. Roman - Gary W. Belina - Glenn R. Hunter - Angelo Fazio

ANALYST	DATE	SECTION DIRECTOR	DATE	EXECUTIVE BUDGET OFFICER	DATE
---------	------	------------------	------	--------------------------	------

Agreement Title or Description Master Municipal Agreement for Construction Projects Town of Ledyard

State Project No(s). Various

If multiple State projects, please break out amounts. List on separate sheets if necessary.

Negotiations Committee action completed _____
Date

Draft approved by Federal: Highway Administration ()
Aviation Administration ()
Other () _____
Date

A. To be completed by unit originating Agreement. Highway Design-Local Roads
Unit Name Date

Will this agreement result in expenditure of State and/or Federal Funds?
____ No IF NO, PLEASE FORWARD PACKAGE DIRECTLY TO CONTRACT COMPLIANCE

____ Yes Please complete the following:

Total Agreement Amount * Master Municipal Agreement
\$ for various Projects

If a Supplemental Agreement, enter amount of previous Agreement (s) (NA)

Net amount to be certified by this CON-128 \$ NA

* * If this is a Town/State Agreement, enter the maximum reimbursement due to the Town.
If this is a Utility Agreement, enter the State and/or Federal share.

B. Funding: Net amount to be certified by this CON-128 Federal \$ see note 1 0 note 1 – charges to be
State 0 determined on project by
Other 0 project basis from appropriate
Total \$ 0 funding sources.

I certify sufficient funds are available/programmed.

1. Operating Funds: NA 1/21/14
Unit Budget Coordinator Date

2. Capital funds: () Bonds
() Revenue Construction
Appropriations
() Other NA _____
Date

3. Federal Funds: NA _____
Date

C. I certify that the subject Agreement has been reviewed by this Office Re: Civil Rights and Affirmative Action.
Priscilla Collins 1/21/14
Director of Contract Compliance Date

D. Final Agreement Package checked by [Signature] 1-21-14
Date
DBE See note 2 % SBE See note 2 % SBE/MBE See note 2 % note 2 – goals to be determined
DBE \$ _____ SBE \$ _____ SBE/MBE \$ _____ on project by project basis.

I certify that I have reviewed the subject Agreement and recommend that it be signed. I also certify that the percentages and amounts (if applicable) stated immediately above are correct for this Agreement.

Title: Prin ENG HUGH HATMAN 1-21-14
Originating Unit Name Date

Fiscal Administrative Manager I [Signature] 1-21-14
Agreement Section Name Date

To:
From: Transportation Director of Contract Administration

The above concerned personnel have reviewed the subject Agreement package and I recommend that the Agreement be signed.

[Signature] 1-21-14
Transportation Director of Contract Administration Date

Belina, Gary W

From: Arnold, Nancy
Sent: Friday, January 24, 2014 9:48 AM
To: Belina, Gary W
Subject: RE: MMAC Ledyard Town of (Agreement Signatory Approval form)

Approved; hard copy to follow

Nancy E. Arnold
Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106

Phone: 860.808.5090
Fax: 860.808.5384
Email: Nancy.Arnold@ct.gov
URL: <http://ct.gov/ag/>

CONFIDENTIAL INFORMATION: The information contained in this e-mail is confidential and is intended for the use of the recipient. If the recipient of this e-mail is not the intended recipient, you are requested to delete this e-mail immediately and do not disseminate or distribute a copy. If you have received this e-mail by mistake, please notify us immediately by replying to the message so that we can take appropriate action immediately and see to it that this mistake is rectified.

From: Belina, Gary W
Sent: Friday, January 24, 2014 7:46 AM
To: Arnold, Nancy
Subject: MMAC Ledyard Town of (Agreement Signatory Approval form)

Hi Nancy:

Please see attached PDF, which contains Agreement Signatory Approval form for MMAC Ledyard.

Thanks Gary

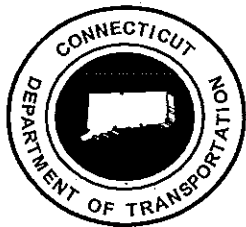
Belina, Gary W

To: Arnold, Nancy
Subject: MMAC Ledyard Town of (Agreement Signatory Approval form)
Attachments: ledyard_201401240749.pdf

Hi Nancy:

Please see attached PDF, which contains Agreement Signatory Approval form for MMAC Ledyard.

Thanks Gary



Connecticut Department of Transportation

Date: January 23, 2014

To: Nancy Arnold, Assistant Attorney General, Office of Attorney General

From: Gary W. Belina, Fiscal/Administrative Manager X3134

RE: Agreement Signatory Approval

Attached for your review are the resolution indicating authority to sign the agreement, the first page of the agreement, and the signatory page in connection with the execution of the following Master Municipal Agreement for Construction Projects:

Second Party: Town of Ledyard

Agreement Number: 7.17-03(13)

Description: Master Municipal Agreement for the Construction of locally-maintained roadways, structures, and transportation enhancement facilities that are eligible for governmental financial assistance.

Please indicate your disposition in the space provided so we may proceed with the release of the agreement.

Approved: _____

Date: _____

Disapproved: _____

Date: _____

GWB/gwb
Attachments

INTEROFFICE COMMUNICATION

JAN 30 2014
#2 to unit

TO: Hugh H. Hayward

FROM: Gary W. Belina

Agreement With: Ledyard Town of

Agreement No. : 7.17-03(13)

Project No. or
Identifier:

Federal Number:

CORE Contract ID: 14DOT0128AA

REQUEST: Please forward attached No. 2 copy of Agreement to Second Party. Conformed
copies are being prepared.

INTEROFFICE COMMUNICATION

JAN 27 2014
fiscal

TO: Mario Torcia

FROM: Gary W. Belina

Agreement With: Ledyard Town of

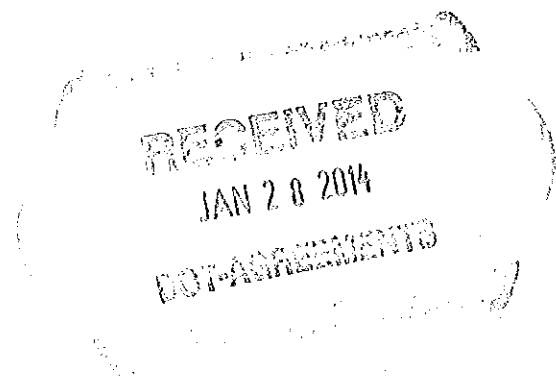
Agreement No. : 7.17-03(13)

Project No. or
Identifier:

Federal Number:

CORE Contract ID: 14DOT0128AA

REQUEST: Please release as soon as possible.

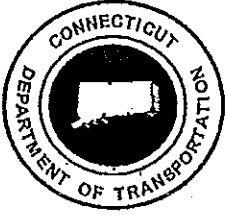


cc: Eugene V. Falcone - Robert W. Harrison - CORE

REPLY:

DATE:

Released
1/28/14
Angela Collins



Connecticut Department of Transportation

Date: January 23, 2014

To: Nancy Arnold, Assistant Attorney General, Office of Attorney General

From: Gary W. Belina, Fiscal/Administrative Manager X3134

RE: Agreement Signatory Approval

Attached for your review are the resolution indicating authority to sign the agreement, the first page of the agreement, and the signatory page in connection with the execution of the following Master Municipal Agreement for Construction Projects:

Second Party: Town of Ledyard

Agreement Number: 7.17-03(13)

Description: Master Municipal Agreement for the Construction of locally-maintained roadways, structures, and transportation enhancement facilities that are eligible for governmental financial assistance.

Please indicate your disposition in the space provided so we may proceed with the release of the agreement.

Approved: *Gary W. Belina* H.A.G.

Date: 1/24/14

Disapproved: _____

Date: _____

GWB/gwb
Attachments

INTEROFFICE COMMUNICATION

JAN 28/2014,
printing

TO: See Distriton below

FROM: Gary W. Belina

Agreement With: Ledyard Town of

Agreement No. : 7.17-03(13)

Project No. or
Identifier:

Federal Number:

CORE Contract ID: 14DOT0128AA

cc: Hugh Hayward
Robert W. Harrison
Gary W. Belina
District (2)

RECEIVED
JAN 30 2014
DOT-TRANS-PLANNING-INFO