

**COOPERATION AGREEMENT
FOR PUBLIC RECREATION IMPROVEMENT PROJECT**

Revised December 11, 2020.

This Agreement is dated as of November ____, 2020, by and among the CITY OF NORWALK, TOWN OF WILTON and FRIENDS OF THE NORWALK RIVER VALLEY TRAIL, INC.

RECITALS

- A. For convenience and ease of understanding, various words and phrases appearing in these Recitals and elsewhere in this Agreement are capitalized. If not defined in these Recitals, capitalized words and phrases appearing in these Recitals and elsewhere in this Agreement shall have the meanings ascribed to them in Section 2.
- B. The Norwalk River Valley Trail (“NRVT”) is a multi-use trail stretching from Norwalk, Connecticut to Danbury, Connecticut, a distance of approximately thirty miles. Over its course, from south to north, the NRVT passes through the municipalities of Norwalk, Wilton, Redding, Ridgefield and Danbury. As of the Effective Date, sections of the NRVT are in various stages of planning, construction and completion.
- C. This Agreement pertains to the section of the NRVT that straddles the boundary line between Norwalk and Wilton, known as the Wilwalk Trail.
- D. The Parties desire to design and construct certain Trail Improvements on and within the Wilwalk Trail.
- E. Friends, in cooperation with Wilton, filed a Connecticut Recreational Trails Grant Application (the “Grant Application”) with the Connecticut Department of Energy and Environmental Protection (“DEEP”).
- F. DEEP accepted the Grant Application and awarded the State Grant.
- G. Wilton entered into a Personal Service Agreement / Grant Contract with DEEP (the “Grant Contract”).
- H. Pursuant to the Grant Contract, Wilton agreed to serve as the grant administrator, perform various financial reporting and payment functions and serve as the contracting party for completion of the Trail Improvements.
- I. On February 8, 2016 Wilton, Friends and Norwalk entered into an Agreement (the “Funding Agreement”) pursuant to which Friends agreed raise and contribute funds equivalent to twenty percent (20%) of the cost of completion of the Trail

Improvements, up to a maximum of \$275,125.00.

- J. On _____, 2020, Norwalk entered into the Norwalk State Lease acquiring the land rights to construct and maintain the Wilwalk Trail – South.
- K. On _____, 2020, Wilton entered into the Wilton State Lease acquiring the land rights to construct and maintain Wilwalk Trail – North.
- L. Friends has secured all funds necessary to fund Municipal Contribution Share under the State Grant.
- M. Wilton has issued a Request for Proposals (the “RFP”) for a contractor to construct the Trail Improvements upon the Wilwalk Trail.
- N. The Parties desire to memorialize their agreement regarding access to the Wilwalk Trail during the construction phase and, in subsequent years, with respect to periodic maintenance and clean-up activities.

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. **Recitals.** The Recitals are hereby incorporated into this Agreement.

2. **Definitions.** The following capitalized words and phrases used in this Agreement shall have the following definitions.

2.1. “Agreement” means this Cooperation Agreement For Public Recreation Improvement Project.

2.2. “Applicable Municipality” means Norwalk, with respect to Wilwalk Trail – South, and Wilton, with respect to Wilwalk Trail – North.

2.3. “Approved Designs” means the Plans for Norwalk River Valley Trail “Wil-Walk” Section prepared by Stantec Consulting Services, Inc. dated January 27, 2020 and the plans and details referenced therein.

2.4. “Contractor” means the construction contractor retained by Wilton and Norwalk to construct the Trail Improvements.

2.5. “Designated Officials” means, with respect to Norwalk, the Assistant Director of Transportation (as of the Effective Date, Mike Yeosock) and, with respect to Wilton, the Assistant Director of Public Works/Town Engineer (as of the Effective Date, Frank Smeriglio). The Municipalities may designate one or more alternate or successor Designated Officials by written notice to the other Parties.

2.6. “Effective Date” means the date appearing below the signature of the Mayor of Norwalk or the date appearing below the signature of First Selectwoman of Wilton on the signature page of this Agreement, whichever is later.

2.7. “Friends” means Friends of the Norwalk River Valley Trail, Inc., a Connecticut non-stock corporation.

2.8. “Maintenance Program” means the written program for maintenance of the Wilwalk Trail to be established by the Parties pursuant to discussions among the President and Executive Director of Friends, Norwalk’s Designated Official and Wilton’s Designated Official, as it may be amended from time to time by mutual agreement of the Parties.

2.9. “Municipalities” means Norwalk and Wilton.

2.10. “Municipal Contribution Share” means an amount equal to twenty (20%) percent of the total State Grant.

2.11. “Norwalk” means the City of Norwalk, a Connecticut municipal corporation

2.12. “Party” and “Parties” means Norwalk, Wilton and Friends, as applicable.

2.13. “Payment and Performance Bond” means a contractor’s payment and performance bond on the current AIA form or forms or other forms reasonably acceptable to the Municipalities, issued by a surety company licensed as a surety in the State of Connecticut.

2.14. “Norwalk State Lease” means the Lease Agreement between the State of Connecticut, Department of Transportation and the City of Norwalk, Riverside Avenue (S.R. 809), (Norwalk River Valley Trail) City of Norwalk, File No. 102—119-03A pursuant to which Norwalk leased the Wilwalk Trail – South.

2.15. “State Grant” means The Recreational Trails Grant (Norwalk River Valley Trail) from the Department of Energy and Environmental Protection to fund the project entitled “Norwalk River Valley Trail” in the amount of One Million One Hundred Thousand Five Hundred and 00/100 Dollars (\$1,100,500.00).

2.16. “Subsurface Work” means disturbance of existing ground surface at a depth greater than twelve (12) inches.

2.17. “Town/City Line” means the boundary line between Wilton and Norwalk.

2.18. “Trail Improvements” means the improvements to the Wilwalk Trail described in the Approved Plans.

2.19. “Trail Maintenance” means the maintenance duties described in Article 5.

2.20. “Wilton” means the Town of Wilton, a Connecticut Municipal Corporation.

2.21. “Wilton State Lease” means the Lease Agreement between the State of Connecticut, Department of Transportation and the Town of Wilton Reserved U.S. Route 7 Expressway (Danbury Road) Town of Wilton, File No.102-125-106B pursuant to which Wilton leased the Wilwalk Trail – North.

2.22. “Wilwalk Trail” means the contiguous land comprised of both Wilwalk Trail – North within the geographical boundaries of Wilton and Wilwalk Trail – South within the geographical boundaries of Norwalk.

2.23. “Wilwalk Trail – North” means the premises located north of the Town/City Line and more particularly described in the Wilton State Lease.

2.24. “Wilwalk Trail – South” means the premises located south of the Town/City Line and more particularly described in the Norwalk State Lease.

3. Right of Access and Entry.

3.1. Construction. Subject to the terms of this Agreement: (a) Norwalk hereby grants to Wilton and the Contractor a non-exclusive revocable limited license to enter upon and over Wilwalk Trail – South for the purposes of constructing the Trail Improvements in accordance with the Approved Designs; and (b) Wilton hereby grants to Norwalk and the Contractor a non-exclusive revocable limited license to enter upon and over Wilwalk Trail – North for the purposes of constructing the Trail Improvements in accordance with the Approved Designs. Friends will provide advice and assistance to the Municipalities during the construction phase.

3.2. Maintenance. Subject to the terms of this Agreement, the Municipalities hereby grant to Friends a non-exclusive revocable limited license to enter upon and over the Wilwalk Trail for the purposes of maintaining the Trail Improvements in accordance with Article 5.

3.3. Subsurface Work. Under no circumstances shall a Party authorize or perform Subsurface Work within the Wilwalk Trail without the prior written consent of the Applicable Municipality.

4. Construction.

4.1. General. The Trail Improvements will be constructed by the Contractor in accordance with the Approved Designs, and in compliance with the applicable provisions of the Grant Contract, the Wilton State Lease and the Norwalk State Lease. Wilton and Norwalk shall jointly engage the services of one or more competent contractor(s) licensed under the laws of the State of Connecticut to construct the Trail Improvements.

4.2. Competitive Bidding, Prevailing Wage. The Designated Officials having approved the RFP, Wilton shall proceed to procure services, labor, equipment, materials and all other items necessary for the construction of the Trail Improvements through competitive bidding consistent with Wilton's customary competitive bidding practices and the terms of the Grant Contract. Friends will analyze the proposals submitted by prospective contractors in response to the RFP and recommend to the Designated Officials the contractor that Friends believes is the lowest responsible qualified bidder. The Contractor will be required to comply with applicable Connecticut Prevailing Wage laws and requirements. The Contractor will be required to hold valid Connecticut licenses for the performance of the construction work.

4.3. Permits. Construction of the Trail Improvements shall not commence unless and until all applicable federal, state and local permits have been issued.

4.4. Contract Requirements. The construction of the Trail Improvements shall be performed in accordance with one or more written construction contracts. Wilton's legal counsel will draft the construction contract(s) and solicit comments from Norwalk's legal counsel and the Designated Officials prior to forwarding the construction contract(s) to the successful bidder. In accordance with the Grant Contract, Wilton (not Norwalk or Friends) shall be the Party undertaking the payment obligation to the Contractor. Each construction contract shall include the following provisions.

4.4.1. Contractor Indemnification. The Contractor shall indemnify, defend and save harmless the Municipalities and Friends, and their respective elected and appointed officials, officers, agents and employees from and against any and all liabilities; obligations; damages; penalties; claims; losses; costs and expenses, including reasonable attorneys' fees, arising out of, in connection with, or related to the acts and omissions of the Contractor in constructing the Trail Improvements, and that of its agents, contractors, subcontractors, and employees.

4.4.2. Contractor Insurance. The Contractor shall obtain and maintain insurance coverages consistent with the requirements of the RFP. The Contractor shall be required to deliver a copy of a certificate of insurance evidencing proof of insurance and naming the Municipalities, as additional insureds, within ten (10) days of the execution of the construction contract(s).

4.4.3. Contractor Payment and Performance Bond. The Contractor shall obtain and maintain a Payment and Performance Bond for the full amount of the contract price naming the Municipalities as obligees thereunder to the extent of the value of the Trail Improvements.

4.4.4. Compliance. The Contractor shall comply with all applicable laws, ordinances and codes of any governmental body having jurisdiction over any matter related to the construction contract or the services to be performed thereunder and shall commit no trespass on any private property in connection with the completion of the Trail Improvements.

4.4.5. Review and Certification of Work. Friends shall enter into a written contract with Stantec Consulting Services, Inc. ("Stantec") to review the progress of construction work and the Contractor's invoices and certify to Friends and the Municipalities that all work is completed in accordance with the Approved Designs and the Grant Contract (the "Stantec Contract"). Friends shall deliver a copy of the Stantec Contract to each of the Designated Officials. Friends agrees to assign to the Municipalities all of Friends' rights under the Stantec Contract immediately upon request by the Municipalities. Friends shall cause the Stantec Contract to include a provision allowing Friends to assign all of its rights to the Municipalities without conditions or restrictions other than the giving of notice. Friends shall cause Stantec to advise Friends and the Designated Officials as to all change order requests submitted by the Contractor. Friends shall cause Stantec to forward to the Designated Officials a copy of each of Stantec's progress reports and certifications. The Designated Officials will, in their discretion, periodically review the progress of construction work with respect to the sections of the Wilwalk Trail located within their respective Municipalities. Wilton will rely upon Stantec's progress reports and certifications and comments, if any, from the Designated Officials in paying (or withholding payment of) the Contractor's invoices.

4.4.6. Oversight and Cost Overrun. Friends will collaborate with Stantec in overseeing the construction work to the end that construction work is completed on schedule, on budget and that the cost of construction of the Trail Improvements does not exceed the amount available under the State Grant. If Friends learns or discovers that the cost of construction of the Trail Improvements is likely to exceed the amount available under the State Grant (a "Cost Overrun"), Friends shall promptly give written notice to the Designated Officials and recommend a course of action to eliminate or limit the Cost Overrun. If the Cost Overrun cannot reasonably be eliminated through modifications of the Contractor's scope of work, substitution of materials, timing, or otherwise, then Friends will be responsible for the Cost Overrun.

5. Maintenance.

5.1. Friends assumes responsibility for maintaining the Wilwalk Trail and the Trail Improvements in accordance with the Maintenance Program. Friends understands that neither Norwalk nor Wilton undertakes any responsibility for the care or maintenance of the Wilwalk Trail or the Trail Improvements. All necessary and

reasonable care and maintenance shall be performed by Friends at its own cost and expense.

5.2. Friends will be responsible for maintaining the Wilwalk Trail and Trail Improvements in a safe, clean and neat condition for all who may use or come upon it for the purposes intended. Friends will not permit any accumulation of debris or obstructions in, on or around the Wilwalk Trail, **and will undertake to remedy any such condition within a reasonable time following receipt of notice of same.**

5.3. Norwalk, with respect to Wilwalk Trail - South, and Wilton, with respect to Wilwalk Trail - North, may, at any time, notify Friends in writing of any deficiencies in the condition or maintenance of the Wilwalk Trail and Friends shall, upon receipt of such notice, correct the same to the reasonable satisfaction of either Norwalk or Wilton, as applicable, as soon as reasonably possible.

5.4. Friends shall, immediately upon completion of any of its maintenance obligations under this Agreement, repair any damage to the Wilwalk Trail occurring as a result of the performance of the maintenance obligations.

6. Safety. Each Municipality reserves the right to close to the public all or part of the Wilwalk Trail that is within the Municipality's geographic boundaries if, and for so long as, in the opinion of the Designated Official, the Wilwalk Trail is unsafe for public use. Any Party exercising rights or obligations pursuant to Section 3.2 or Article 5 shall: (a) be responsible for ~~preventing accidents and~~ undertaking all **reasonable** measures to **prevent accidents and** ensure the safety of all persons in the **vicinity-leasehold area (as defined in the Norwalk State Lease and the Wilton State Lease)** of Wilwalk Trail and the Trail Improvements during construction, maintenance or other activities usual, customary or incidental thereto, including those engaged in the construction or maintenance of the Trail Improvements and members of the general public; and (b) shall comply with all laws, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety applicable to the construction or maintenance of the Trail Improvements, including, among others, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with all safety standards established during the progress of the construction or maintenance of the Trail Improvements.

7. Term. The term of this Agreement shall commence on the Effective Date and shall remain in effect until terminated pursuant to Article 8.

8. Termination. This Agreement may be terminated by any Party in the event of the breach of any material obligation of a non-terminating Party. This Agreement may be terminated by either Norwalk or Wilton, as it relates to the portion of the Wilwalk Trail within the Municipality's borders, if Friends fails to maintain the portion of the Wilwalk Trail within the Municipality's borders in accordance with the Maintenance Program. **Prior to such termination becoming effective, any Party found to be in breach shall have a thirty (30) cure period following its receipt of written notification of such breach. In**

the event such breach is not cured within this time frame, termination of this Agreement shall be effective upon the expiration of such thirty-day cure period.

Norwalk or Wilton may terminate this Agreement upon termination of the Norwalk State Lease or the Wilton State Lease, as applicable, **and such** termination of this Agreement shall be effective upon the receipt of the notice of termination by the non-terminating Party or Parties.

9. Indemnification.

Friends agrees to indemnify, defend, and save harmless Norwalk and Wilton (each, an "Indemnified Party"), and the Indemnified Party's elected and appointed officials, directors, officers, agents and employees from and against any and all liabilities; obligations; damages; penalties; claims; losses; costs and expenses, including reasonable attorneys' fees, arising out of, in connection with, or related to the failure of the Indemnifying Party to fulfill the Indemnifying Party's obligations under this Agreement either by way of omission or commission, including, without limitation, with respect to obligations regarding construction and maintenance of the Wilwalk Trail and the Trail Improvements. The responsibility of Friends shall extend to the actions and omissions of its agents, contractors, subcontractors, employees and volunteers. Friends hereby assumes and agrees to pay for the defense of all such claims, damages, demands, suits and proceedings described herein. The obligation of Friends under this Article 9 shall be limited to the amounts of insurance coverage described in Exhibit A or the amounts of insurance coverage carried by Friends, whichever is greater. The provisions of this Article 9 shall survive the termination of this Agreement, **and** shall be separate and independent of any other provision of this Agreement.

10. Insurance.

Friends shall, either on its own account, or by arrangement with Wilton, obtain and maintain the insurance coverage described in Exhibit A for the duration of this Agreement. Wilton and Norwalk shall each maintain their customary insurance coverages for the duration of this Agreement. The insurance and additional insurance requirements stated herein shall be separate and independent of any other requirement or provision of this Agreement. The Parties shall not authorize or permit any actions by their respective volunteers, employees, agents, contractors or subcontractors, as the case may be, on or impacting the Wilwalk Trail and Trail Improvements which are or may be contrary to law; which will invalidate or be in conflict with any policy of insurance at any time carried with respect to the Wilwalk Trail and Trail Improvements; or which might subject another Party to any liability for personal injury, property damage, penalty, fine, or other financial loss or expense.

11. General Provisions.

11.1. Successors. To the extent any rights or obligations under this Agreement remain in effect, this Agreement shall be binding upon and enforceable

against, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

11.2. Notices. All notices of any nature referred to in this Agreement shall be in writing and sent by registered or certified mail, postage prepaid, to the respective addresses set forth below or to such other addresses as the respective Parties hereto may designate in writing:

If to Norwalk: City of Norwalk
 Attn: Chief of Operations and
 Public Works
 125 East Avenue, 2nd Floor
 Norwalk, CT 06851

with copy to: Law Department
 Attn: Corporation Counsel
 125 East Avenue, 2nd Floor
 Norwalk, CT 06851

If to Wilton: Town of Wilton
 Attn: Director of Public Works
 238 Danbury Road
 Wilton, CT 06897

If to Friends: Friends Of The Norwalk River Valley Trail, Inc.
 Attn: Executive Director
 115 Nod Hill Road
 Ridgefield, CT 06877

11.3. Entire Agreement. This Agreement, together with all exhibits and/or schedule hereto, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements among the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof. Notwithstanding, the Parties agree that the Funding Agreement shall remain in full force and effect except to the extent that the Funding Agreement is expressly contradicted by this Agreement.

11.4. Severability. The provisions of this Agreement are severable, and, if any one or more provisions may be determined to be judicially unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provision, to the extent enforceable, in any jurisdiction, shall nevertheless be binding and enforceable if and to the extent that the economic and legal substance of the transactions contemplated is not materially adversely affected in any matter as to any party and shall be construed and enforced so as to effectuate the intent of the entire Agreement, including the wholly or partially unenforceable provision, to the maximum extent legally permissible.

11.5. Amendments. Any amendments to this Agreement shall be effective only when duly executed by all of the Parties.

11.6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.

11.7. Assignment of Agreement. No Party may assign or transfer its rights or obligations under this Agreement without first obtaining the prior written consent of the other Parties, which consent may be granted or withheld in the sole and absolute discretion of the applicable Party.

11.8. Survival. If any provision of this Agreement is held invalid, the balance of the provisions of this Agreement shall not be affected thereby if the balance of the provisions of this Agreement would then continue to conform to the requirements of applicable laws.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the dates indicated below.

CITY OF NORWALK

By: _____
Harry W. Rilling,
Its Mayor

Date Signed: _____

TOWN OF WILTON

By: _____
Lynne A. Venderslice,
Its First Selectwoman

Date Signed: _____

**FRIENDS OF THE NORWALK RIVER
VALLEY TRAIL, INC.**

By: _____
Charlie Taney,
Its ~~Executive Director~~ President

Date Signed: _____

{Signature Page to Cooperation Agreement}

EXHIBIT A

INSURANCE REQUIREMENTS

Workers' Compensation Insurance: Workers' Compensation Insurance in accordance with the requirements of the laws of the State of Connecticut.

Commercial General Liability: Commercial General Liability insurance providing for a total limit of Two Million Dollars (\$2,000,000) coverage per occurrence for all damages arising out of bodily injury, personal injury, property damage, products/completed operations, and contractual liability coverage for the indemnification obligations arising under this Agreement. The Annual Aggregate limit shall not be less than Two Million Dollars (\$2,000,000).

Automobile Liability: With respect to each owned, non-owned, or hired vehicle, Automobile Liability insurance providing One Million Dollars (\$1,000,000) coverage per accident for bodily injury and property damage.

Umbrella/Excess Liability: The insurance limits required can be provided with a combination of Umbrella or Excess Liability insurance that would "follow form" of the underlying required terms and conditions.

Acceptability of Insurers: The policies shall be written by insurance companies licensed to do business in the State of Connecticut, with an AM Best rating of A-VII.

Deductibles and Self-Insured Retentions: Any deductible or self-insured retention must be declared to and approved by the Municipalities. All deductibles or self-insured retentions are the sole responsibility of the insured to pay and/or to indemnify.

Notice of Cancellation or Nonrenewal: Each insurance policy required shall be endorsed to state that coverage shall not be suspended, voided, or cancelled in coverage or in limits before the expiration date except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Municipalities. Notwithstanding this requirement, Friends is primarily responsible for providing such written notice to the Municipalities thirty (30) days prior to any policy change or cancellation that would result in a change of the amount or type of coverage provided. In the event of any such change Friends shall provide comparable substitute coverage so that there is no lapse in applicable coverage or reduction in the amount of coverage available to the Municipalities.

Waiver of Governmental Immunity: Unless requested otherwise by the Municipalities, Friends and its insurer shall waive governmental immunity as defense and shall not use the defense of governmental immunity in the adjustment of claims or in the defense of any suit brought against a Municipality.

Additional Insured: The liability insurance coverage, except Workers' Compensation, if

included, required by this Agreement shall include the Municipalities as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Waiver of Subrogation: Friends hereby waives the right to subrogate or seek recovery from the Municipalities and their insurance carriers.