

**AGREEMENT  
BETWEEN THE TOWN OF WILTON  
AND  
HARDESTY AND HANOVER CONSTRUCTION SERVICES, LLC  
FOR  
CONSTRUCTION INSPECTION SERVICES  
REQUIRED IN CONJUNCTION WITH THE  
REPLACEMENT OF BRIDGE NO. 04975  
LOVERS LANE OVER COMSTOCK BROOK**

State Project No. 0161-0142

Federal Project No. 6161 (008)

THIS AGREEMENT, concluded at Wilton, Connecticut, this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the Town of Wilton, Connecticut, acting herein by The Honorable Lynne Vanderslice, its First Selectwoman, duly authorized, hereinafter referred to as the "Municipality", and Hardesty and Hanover Construction Services, LLC acting herein by Mr. Brendan J. O'Shea P.E., Principal, duly authorized, with an office and place of business at 59 Elm Street, Suite 406, New Haven, CT 06510, duly authorized to practice professional engineering in Connecticut under the provisions of Section 20-306a of the General Statutes of Connecticut, as revised, hereinafter referred to as the "Consulting Engineer".

WITNESSETH, THAT,

WHEREAS, the Municipality has entered into a Master Municipal Agreement for Construction Projects dated February 06, 2014, with the State of Connecticut, Department of Transportation, Bureau of Engineering and Construction, hereinafter referred to as the "State", to participate in federal funding for highways, bridges and mass transportation programs, hereinafter referred to as "Master Agreement"; and

WHEREAS, the Municipality desires to retain the Consulting Engineer to perform certain professional services for construction inspection of the replacement of the Lovers Lane Bridge (Bridge No. 04975) over Comstock Brook and roadway construction related to the bridge approaches, hereinafter referred to as the "Project"; and

WHEREAS, the State's issuance to the Municipality of a Project Authorization Letter, hereinafter referred to "PAL", approves the distribution of funding to the Municipality for the Project pursuant to the Master Agreement; and

WHEREAS, the Municipality has determined that because of municipal manpower requirements, expertise, completion dates and other factors concerning the project, retention of engineering consultants for construction inspection services is warranted; and

WHEREAS, in a letter dated March 16th, 2023 the Municipality received notification and approval from the State to enter into an Agreement to retain professional construction inspection services. A copy of said approval letter is attached hereto and made a part of this Agreement.

NOW, THEREFORE, FOR GOOD AND OTHER VALUABLE CONSIDERATION:

THE CONSULTING ENGINEER AGREES:

(1) Under the general supervision and the direct control of the Municipal Administrator assigned to the Project by the Municipality hereinafter referred to as Municipal Administrator, to perform the functions and operations described in the Connecticut Department of Transportation, Office of Construction publications entitled "Construction Manual, Version 2.2", January 2011, as amended, hereinafter referred to as the "Construction Manual", and the "Municipal Manual, Version 2", November 2013, as amended, hereinafter referred to as the "Municipal Manual", in accordance with the policies and procedures of the State as set forth in the documents enumerated in Article (1) (m) herein, which may be implemented and amended by the State by regulations during the term of this Agreement; and including but not limited to:

(a) All construction survey work, with the exception of that included in the construction contract to be done by the construction contractor;

(b) The checking of all construction operations and layout staking performed by the construction contractor;

(c) All survey work and measurements necessary for the computation of intermediate and final quantities such as, but not limited to, cross section measurements for borrow banks, rock excavation, structure excavation, excavation of unsuitable material and final cross section measurements along the completed roadway;

(d) Inspection of all construction, including work performed by public utility companies, railroads and governmental agencies;

(e) All on-the-job testing and sampling of materials, normally handled by the project inspection force and also as designated in the Construction Manual and Municipal Manual, is to be tested and sampled by the District Engineer, with the exception of those functions handled by the District's Laboratory and not specifically made a responsibility of the Consulting Engineer hereinafter;

(f) The preparation and certification of construction orders and all partial, monthly and final construction contractor's estimates;

(g) The revision of plans to show the facility "as-built". The as-built plans shall be prepared and distributed in accordance with requirements of Articles (8) and (9).

(h) The preparation of correspondence to the construction contractor and others, reports, memoranda, requests for material tests, forms, and all other documents, as are required of State forces;

(i) The technical investigation and/or analysis and recommendation for settlement of monetary or other claims brought against the Municipality or the State of Connecticut or others;

(j) The coordination required to schedule the District's Laboratory personnel to perform all necessary field density tests; or to engage a certified laboratory to perform these services if these services cannot be provided by the District's laboratory personnel. (Nuclear density testing CANNOT be performed by the District's laboratory personnel).

(k) The furnishing of batchmen at plants not being inspected by State personnel;

(l) The coordination and implementation of all soils and foundation determinations made by the Municipality or the State;

(m) All other operations which become necessary to properly inspect the work of the construction contractor to determine his compliance with the "State of Connecticut, Department of Transportation, Standard Specifications for Roads, Bridges and Incidental Construction", appropriate Form, hereinafter referred to as "Standard Specifications," including the latest Supplemental Specifications thereto, special provisions and all other contract documents, and the latest versions of the "Public Service Facility Policy and Procedures for Highways in Connecticut", November 2008, hereinafter referred to as "Public Service Facility Policy", and the Municipal Manual.

All inspection personnel employed by the Consulting Engineer shall meet the minimum requirements specified for their applicable classification of employment, as set forth in Article (12) herein, and **as defined in the current edition of the Municipal Manual**. The Construction Coordinator, in addition to the experience that is stipulated in the Municipal Manual, shall possess one of the following:

1. NICET Level IV Certification in Transportation Highway Construction.
2. Current Professional Engineer's License registered in the State of Connecticut.

(2) To verify all surveying, construction staking, and layout work that is necessary for the accurate installation of fencing by the construction contractor along the street line, highway line, non-access line, or at other locations as directed by the Municipality.

(3) To receive shop detail and construction drawings from the construction contractor and transmit same to the Municipality for review, checking and approval. These shop detail and construction drawings shall include, but are not limited to, cofferdam details, pile loading tests, false work, and details of all other items required to assure their general compliance with design plans, specifications and acceptable construction procedures and standards.

(4) To lift, properly protect and store the required number of test specimens from bituminous concrete surfaces until transported to the State Laboratory.

(5) To coordinate and schedule the District's Laboratory personnel who will perform the so-called Proctor Laboratory density test of the various fill materials to be used on the Project in accordance with AASHTO T-180, Method D except that the mold used in the test shall be 6.11 inches high. In this test, material retained on the 3/4" sieve shall be replaced with materials retained on the #4 sieve, as noted as an option in the specifications for this test. If these tests cannot be performed by the District's Laboratory personnel, the Consulting Engineer shall engage a certified laboratory to perform these tests.

(6) To furnish controls for all relocations and installations made by public utility companies, railroads, and governmental agencies which affect the Project. When the reimbursement to the outside agency is on an actual costs basis, the Consulting Engineer will keep a daily record of man-hours, equipment hours and materials used, salvaged or scrapped in performing the work, including forms CON-40 and CON-41 for relocation of any municipality-owned utility facility covered under Section 13a-98f of the Connecticut General Statutes, as revised, and certain comparable railroad forms. He shall give sufficient inspection to the work to see that the work reasonably conforms to the approved plan of relocation.

(7) To prepare and submit for review certified construction contractors' monthly or semi-monthly estimates and a certified final construction estimate. The certified final estimate shall be supported by a complete set of all pertinent job records of the work performed under the construction contract and shall be furnished to the Municipality within forty-five (45) calendar days of the completion of the Project by the contractor.

(8) To furnish to the Municipality, and to the Connecticut Department of Transportation's Construction Division (District 3), Division of Rights of Way and Division of Bridge Safety and Evaluation, within forty-five (45) calendar days after the acceptance of the Project, a complete set of revised construction contract tracings and "pdf" files showing as-built details for the plans, profiles and cross sections. The Municipality shall also be furnished all diaries, field books, and all other data, in conformance with the requirements of the Construction Manual and/or the Municipal Manual.

(9) To furnish to the Municipality, and the Connecticut Department of Transportation's Construction Division (District 3), Division of Rights of Way and Division of Bridge Safety and Evaluation, a certified statement that the Project, as built, conforms to the contract plans and/or as modified by construction orders approved by the Municipality in all instances and that the work as performed and the materials furnished comply, or did comply, with the requirements of the plans, specifications, and orders of the Municipality, and that all payments to the construction contractor are in conformance with the specifications.

(10) That any amount paid out by the Municipality arising from or resulting from errors, omissions or failures on the part of the Consulting Engineer to meet professional standards of construction engineering and inspection, will be recovered from the Consulting Engineer by deductions from payments due him under the terms of this Agreement or other legal means. The Consulting Engineer shall be notified by the Municipality at the time any potential claim arises under this paragraph, and he shall be afforded full opportunity of defense against such claim or alleged claim.

(11) To assume full responsibility for the accuracy of all products of his work produced under this Agreement, including any supplements thereto. Any engineering work which may be required under this Agreement, shall be performed by a Professional Engineer registered in the State of Connecticut, throughout the life of this Agreement, including any supplements thereto, all in accordance with existing Statutes of the State of Connecticut and the regulations of the State Board of Registration for Professional Engineers and Land Surveyors. The Connecticut registered Land Surveyor either as a member of his organization or as an independent subcontractor to perform and accept shall be retained complete responsibility for all survey operations required under this Agreement, including any supplements thereto, all such performance being in strict conformance with all specifications and requirements established herein. Said Connecticut registered Land Surveyor shall assume full responsibility for the accuracy of all products of his surveying work produced under this Agreement, including any supplements thereto and shall indicate acceptance of said responsibility by affixing the Connecticut Certificate of Registration number for the Corporate Practice of Land Surveyor's by a corporation or limited liability company, as well as the signature and Connecticut Land Surveyor's Seal of the individual(s) in charge of the work performed, on the Title Sheet(s) of all maps, plans, and/or other documents so produced.

(12) To furnish all office and field equipment necessary for the satisfactory performance of the services required by this Agreement when authorized by the Municipality. To furnish a Construction Coordinator, a Chief Inspector – Level 2 (or in special cases, a Chief Inspector – Level 1), hereinafter referred to as Chief Inspector and an Inspector (as needed in support of the Chief Inspector AND as approved by Municipality and the District). The Chief Inspector shall work under the general supervision and the direct control of the Municipal Administrator or other personnel assigned by the Municipality to the Project. The Consulting Engineer shall furnish a staff of competent personnel on the Project which, in the opinion of the Municipality and the District is adequate in number and is qualified by experience and training to perform the services and activities referred to in this Agreement and/or the Municipal Manual. Additionally, the inspection staff requires the approval of the District's Municipal Systems Action Team (MSAT) Leader and all orders to the construction contractor on site will be transmitted by the Consulting Engineer's Construction Coordinator or Chief Inspector.

The Municipality reserves the right to require the removal from the Project of any person or persons employed by the Consulting Engineer in, about, or upon the work, who, in the opinion of the Municipality, has misconducted himself or is incompetent or negligent in the due and proper performance of his or their duties, or who neglects or refuses to require compliance with the plans, specifications, or Job Special Provisions. Such person or persons shall not be employed again without the written consent of the Municipality. The Municipality also reserves the right to prequalify the Consulting Engineer's supervisory and inspection personnel, determine the size of the inspection force required, and to direct the assignment and the reassignment, when reasonable, of inspection personnel as deemed necessary to provide inspection complying with the requirements of the Project. The Municipality also reserves the right to direct the presence of the Consulting Engineer's personnel at training schools, seminars or other meetings.

(13) To cooperate fully with other contracting engineers, State personnel, municipal officials, public utility companies, railroads, governmental agencies, and others engaged in surveying, mapping, designing, inspection and construction services, or work on traffic control, lighting, and other facilities within or adjacent to the Project; to attend such meetings, discussions and hearing as may be requested by the Municipality; to furnish plans and other data as may be requested from time to time by the Municipality to effectuate this cooperation; and to comply with all orders given by the Municipal Administrator in connection with the work under this Agreement.

(14) To cooperate fully with the Municipality and to maintain and protect complete construction records at the field office for review, use and approval at all times. These records shall be transferred to the custody of the Municipality when the Consulting Engineer has completed his assignment. Final payment to the Consulting Engineer shall be withheld until such transfer has been completed.

(15) That with respect to the operations performed by the Consulting Engineer under the terms of this Agreement and also those performed for the Consulting Engineer by its subcontractors, the Consulting Engineer will be required to carry, for the duration of this Agreement and any supplements thereto, with the Municipality and the State being named as additional insured parties for paragraphs (a), and (b) below, the following minimum insurance coverages at no direct cost to the Municipality. In the event the Consulting Engineer secures excess/umbrella liability insurance to meet the minimum requirements specified in paragraphs (a) and/or (b) below, the Municipality and the State of Connecticut shall be named as additional insured parties.

(a) COMMERCIAL GENERAL LIABILITY

The Consulting Engineer shall carry Commercial General Liability Insurance, including Contractual Liability Insurance providing for a total limit of One Million Dollars (\$1,000,000) 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 injuries to or destruction of property in any one accident or occurrence, and, subject to that limit per accident, a total (or 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.

(b) AUTOMOBILE LIABILITY

The operation of all motor vehicles, including those hired or borrowed, used in connection with this Agreement shall be covered by Automobile Liability Insurance providing for a total limit of One Million Dollars (\$1,000,000) 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. In cases where an insurance policy shows an aggregate limit as part of the automobile liability coverage, the aggregate limit must be at least Two Million Dollars (\$2,000,000).

(c) RAILROAD PROTECTIVE LIABILITY

When the Agreement involves work within fifty (50) feet of the railroad right-of-way or State-owned rail property, with respect to the operations performed by the Consulting Engineer, its Consultant and/or its subconsultant(s), the Consulting Engineer shall carry Railroad Protective Liability insurance providing coverage of at least Two Million Dollars (\$2,000,000) for each accident or occurrence resulting in damages from (1) bodily injury to or death of all persons and/or (2) injury to or destruction of property, and subject to that limit per accident or occurrence, an aggregate coverage of at least Six Million Dollars (\$6,000,000) for all damages during the policy period, and with all entities falling within any of the following listed categories named as insured parties: (i) the owner of the railroad right-of-way, (ii) the owner of any railcar licensed or permitted to travel within that affected portion of railroad right-of-way, (iii) the operator of any railcar licensed or permitted to travel within that affected portion of the railroad right-of-way, (iv) the State, and (v) any other party with an insurable interest. If such insurance is required, the Consulting Engineer shall obtain and submit evidence of the minimum coverage indicated above to the Municipality and/or the State prior to commencement of the rail related work and/or activities and shall maintain coverage until the work and/or activities is/are accepted by the Municipality and/or the State.

(d) VALUABLE PAPERS AND RECORDS

The Consulting Engineer shall secure and maintain a Valuable Papers Insurance Policy at no direct cost to the Municipality, until the work has been completed and accepted by the Municipality. Said Policy will assure the Municipality that all records, papers, maps, statistics, survey notes and other data shall be reestablished, recreated, or restored if made unavailable by fire, theft, flood, or any other cause. This policy shall provide coverage in the amount of Fifty Thousand Dollars (\$50,000) regardless of the physical location of the insured items.

(e) WORKERS' COMPENSATION

With respect to all operations the Consulting Engineer performs and all those performed for the Consulting Engineer by subcontractors, the Consulting Engineer and subcontractor(s) shall carry 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.

(f) PROFESSIONAL LIABILITY INSURANCE

The Consulting Engineer shall secure and maintain at no direct cost to the Municipality a Professional Liability Insurance Policy for errors and omissions in the minimum amount of Two Million Dollars (\$2,000,000). The Consulting Engineer shall obtain the appropriate and proper endorsement to its Professional Liability Policy to cover the Indemnification clause in this contract as the same relates to negligent acts, errors, or omissions in the work performed by the Consulting Engineer. The Consulting Engineer may, at his election, obtain a policy containing a maximum Two Hundred Fifty Thousand Dollars (\$250,000) deductible clause, but if he should obtain a policy containing such a clause the Consulting Engineer shall be liable, as stated above herein, to the extent of the deductible amount. The Consulting Engineer 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 and/or environmental impairment. However, the Consulting Engineer agrees to acquire and maintain pollution and environmental impairment coverage as part of his Professional Liability Insurance if such insurance is applicable to the work performed by the Consulting Engineer under this Agreement.

Failure of the Consulting Engineer to maintain insurance coverage in accordance with the terms of the Agreement shall constitute a violation of the Agreement and shall subject the Consulting Engineer to liquidated damages in the amount of ten percent (10%) of the total contract price, subject to the continued commercial availability of such insurance.

(16) The Consulting Engineer agrees to furnish to the Municipality a "Certificate of Insurance", in conjunction with paragraphs (a), (b), (c), (d), and (e) of Article (15) above, on a form acceptable to the Municipality, in conjunction with paragraph (f) of Article (15) above, fully executed by an insurance company or companies satisfactory to the Municipality, for the insurance policy or policies required hereinabove, which policy or policies shall be in accordance with the terms of said Certificate of Insurance. Each insurance policy shall state that the insurance company agrees to investigate and defend the insured against all claims for damages, even if groundless.

(17) The Consulting Engineer hereby acknowledges and agrees to comply with policy enumerated in the Connecticut Department of Transportation's Administrative Memorandum No. 104 dated August 28, 1984 Re: "Procurement and Property Management of Equipment Purchased by Construction Inspection Consultant Engineers", all conditions and requirements thereof being incorporated into this Agreement and made a part hereof.

(18) Vacant

(19) That the Consulting Engineer shall indemnify and save harmless the Municipality and the State of Connecticut, their officers, agents and employees from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance, negligent acts, errors or omissions in the work performed by the Consulting Engineer and/or any of its subcontractors under this Agreement, including any supplements thereto, or resulting from the nonperformance of the Consulting Engineer and/or any of its subcontractors of any of the covenants and specifications of this Agreement, including any supplements thereto, and such indemnity shall not be limited by reason of any insurance coverage.

(20) That the Consulting Engineer shall not sublet, subcontract, sell, transfer, assign, or otherwise dispose of this Agreement or any portion thereof, or of the work provided for herein, or of his right, title, or interest herein, to any person, firm, partnership or corporation without the written consent of the Municipality, and then he shall do so only by executing a subcontractor's agreement on a form to be supplied by the State and shall furnish the Municipality a certified copy of this subcontractor's agreement. He shall also furnish to the Municipality certification of Public Liability and Property Damage Insurance Coverage, Railroad Protective Liability Insurance (if applicable), and regular protective Public Liability Insurance coverage for and on behalf of the Municipality and the Municipality and the State of Connecticut from the subcontractor. Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages, even if groundless. In general, work that is to be sublet will be limited to that of an unusual or highly specialized nature, or work of relatively short or intermittent duration which can be more efficiently performed by a subcontractor. It is understood that the Municipality is not bound to the subcontractor for suits or other litigations resulting from the work performed by him.

(21) That the Municipality, by written notice to the Consulting Engineer, may postpone, suspend, abandon, or terminate this Agreement for the convenience of the Municipality, for violation by the Consulting Engineer of any provision contained in this Agreement, or for any failure by the Consulting Engineer to render to the satisfaction of the Municipality the services required under this Agreement, including any failure to make acceptable progress with work required under this Agreement. Such action on the part of the Municipality shall in no event be deemed a breach of contract. Upon receipt of written notification from the Municipality that this Agreement is to be suspended, postponed, abandoned or terminated, the Consulting Engineer shall immediately cease operations on work required under this Agreement. Upon receipt of written notification that this Agreement is to be abandoned or terminated, the Consulting Engineer shall also immediately assemble all material which is in its possession or custody and

which has been prepared, developed, furnished or obtained under the terms of this Agreement, and shall transmit the same, together with the Consulting Engineer's evaluation of the cost of the work performed, to the Municipality on or before the fifteenth day following receipt of written notice of abandonment or termination. Said material shall include, but not be limited to, documents, plans, computations, drawings, notes, records and correspondence. Upon receipt of this material, the Municipality shall make settlement with the Consulting Engineer in one of the following manners:

(a) If the Municipality terminates this Agreement for its convenience, the Municipality shall make an equitable adjustment of the contract price, but in doing so shall include no payment or other considerations for anticipated profit on unperformed services.

(b) If the Municipality terminates this Agreement because the Consulting Engineer has failed to fulfill its obligations under the Agreement, the Municipality may complete the work required hereunder by contracting with another party or by any other means, and the Consulting Engineer shall be liable for any additional costs incurred by the Municipality in doing so.

(c) If the Municipality, after terminating the Consulting Engineer for alleged failure to fulfill its obligations under this Agreement, determines that the Consulting Engineer has not failed to fulfill those obligations, the rights and remedies of the parties shall be the same as if the Municipality had terminated the Agreement for convenience.

In determining the basis for such equitable settlement for items (a), (b), and (c) as indicated above, the Municipality shall take into account any monies owed the Consulting Engineer for work previously performed under this Agreement, less any payments previously made for said work, and the amount of reimbursable expenses incurred by the Consulting Engineer, less any payments previously made, to reimburse the Consulting Engineer for those expenses.

The Consulting Engineer agrees to accept the Municipality's valuation of the work performed under this Agreement, and the Municipality will not be liable for any profit that the Consulting Engineer expected or might have expected to make on portions of the Project work that have not been performed.

If postponement, suspension, abandonment, or termination is ordered by the Municipality because it lacks sufficient funding to complete or proceed with the Project, the Consulting Engineer may not make a claim against the Municipality in any form or forum for loss of anticipated profit or for any other reason related to the Project or this Agreement.

The rights and remedies of the Municipality under this Article are in addition to any other rights and remedies that the Municipality may possess by law under this Agreement.

Decisions of the Municipality on matters discussed in this Article shall be final and binding.

(22) To submit monthly progress reports, in quadruplicate, by calendar months to the Municipality showing the percentage of construction work performed to date. These construction progress reports, together with copies of certified monthly payrolls for all approved Consulting Engineers, field personnel, and office personnel, if required, along with such other supporting data as may be required, shall be subject to examination and approval by the Municipality or the State.

(23) To accept as payment in full for all services rendered in connection with this Agreement, the sums stipulated hereinafter in this Agreement.



(24) To furnish the following certified documents to the Municipality within forty-five (45) calendar days of the acceptance date of the construction project: (a) Final Estimate, (b) Index of Construction Orders, (c) Records of Daily Cost-Plus, (Form CON-9), (d) Receipted Bills Supporting Cost-Plus, (e) Final Construction Order, (f) Statement of Credits due the Municipality, if applicable, and (g) Substantiating Evidence, if escalator clause is invoked, (h) Construction Report, (i) Statement of Working Days, (j) Breakdown of Participating and Non-Participating Cost by Project, (k) Substantiation of Payments to D.B.E.'s and W.B.E.'s, (l) Determinations on monetary assessments for failure to meet contract assignment goals for DBE/WBE work performance and any other required documents. If the above documents cannot be provided within forty-five (45) days of the completion of work as determined by the Municipality due to a lack of submissions on the part of the construction contractor, the Consulting Engineer shall provide the Municipality with a listing of outstanding items.

If, for causes within his control, the Consulting Engineer fails to furnish the Municipality with the documents noted in Articles (8), (9) and (24) within the allotted time, the Consulting Engineer may be subject to liquidated damages in the amount of One Hundred Forty Dollars (\$140) per calendar day for each day beyond the allotted time until submission of the required documents. In addition, since it is required by Section 13a-96 of the Connecticut General Statutes as amended to pay the construction contractor interest at the rate of six percent (6%) per annum on any unpaid balance on a final estimate, starting sixty (60) days after the date of acceptance of the Project, the Consulting Engineer will be required to reimburse the Municipality for interest paid the construction contractor if the above documents are not furnished to the Municipality within forty-five (45) days of project acceptance.

(25) That the Secretary of the State of Connecticut (including any successor thereto) is hereby appointed by the Consulting Engineer as its agent for service of process for any action arising out of or as a result of this Agreement, such appointment to be in effect throughout the life of this Agreement including any supplements hereto, and all renewals thereof, if any, and six (6) years thereafter except as otherwise provided by Statute.

(26) That he shall submit to the Municipality each month four (4) copies of a certified payroll, in detail, of his own field forces and those of approved subcontractors. These payrolls shall be used as a basis in computing each month's payment. The certification shall be dated, signed and read as follows: "I (Name of Consulting Engineer or Subcontractor), do hereby certify that during the period covered by this payroll, all personnel shown were working on the project, and their salary, rate of compensation, hours worked and amount earned, is a true and accurate report." The personnel shown on the certified payroll, their employment and duration of employment, salary or hourly rate, hours of work, including overtime if any, overtime rate, and all changes in status of any of the before-mentioned information, shall have the prior written approval of the Municipality.

(27) And warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consulting Engineer, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consulting Engineer, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Municipality shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the payments due the Consulting Engineer, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

(28) To maintain any records, books or other documents relative to charges, including charges for extra work, alleged breaches of agreement, settlement of claims, soils and foundation services, or any other matter involving the Consulting Engineer's or Subcontractor's demand for compensation by the Municipality for a period of not less than three (3) years from the date of the final payment to the Consulting Engineer, and permit the Municipality and/or the State to examine, review and audit any records, books or other documents of the Consulting Engineer or Subcontractor relative to the above, and furnish copies thereof when requested.

(29) That he shall not begin performance under the terms of this Agreement until notified by the Municipality in writing. With written authorization from the Municipality, the Consulting Engineer may commence his operations prior to the start of the construction contract.

THE MUNICIPALITY AGREES:

(30) To furnish a Municipal Administrator who will be in direct control and general supervision of the Consulting Engineer's activities and to furnish a field office on or near the Project having adequate space for the Consulting Engineer's staff.

(31) To request the Consulting Engineer to obtain copies of all maps, locations and descriptions of coordinate values of existing points, descriptions of the locations and elevations of existing bench marks, and other materials and information, as specified in, and in accordance with, the Connecticut Department of Transportation's "Location Survey Manual", June 1997, as amended, hereinafter referred to as the "Location Survey Manual".

(32) To request the Consulting Engineer to obtain all applicable standard project inspection record books and standard State forms, in accordance with the Construction Manual, Municipal Manual, Standard Specifications, Location Survey Manual and Public Service Facility Policy.

(33) To furnish the Consulting Engineer with a complete set of construction contract tracings, to be revised by the Consulting Engineer under the terms of Article (8), a copy of the preliminary computations, one complete set of standard Grade List, and such staking information as may be available.

(34) To have the Connecticut Department of Transportation perform or to arrange for the performance of all off-site shop and mill inspections and laboratory tests and analyses of those classes of material which are normally inspected, tested and analyzed prior to delivery to the site of the work and to arrange for the Connecticut Department of Transportation District or Department Laboratory to transport and test all material sampled by the Consulting Engineer under the terms set forth in Articles (1), (4) and (5) of this Agreement.

(35) To provide technical direction and make engineering determinations or to provide an agent capable of same on the various significant construction activities involving soils, rock and foundation matters listed as follows: (a) acceptability of proposed pile driving hammers and other driving appurtenances; (b) test pile driving operations; (c) acceptability of proposed pile loading test apparatus; (d) direction of inspection staff during pile loading test operations; (e) evaluation of pile load test data and establishment of pile driving criteria and allowable pile load capacity; (f) furnishing recommended pile order lengths; (g) evaluation and recommendations relative to problems encountered with ground water, embankment construction, bridge foundations, pile driving, and blasting operations.

(36) To make final inspection of the construction contract within ten (10) calendar days after the construction work is completed.

THE MUNICIPALITY AND THE CONSULTING ENGINEER MUTUALLY AGREE:

(37) That subject to the limitations stipulated in Article (38), the Consulting Engineer shall be paid in the following manner for all work performed in accordance with the terms of this Agreement with the exceptions of those services for which a different method of payment is stipulated: (a) the Consulting Engineer's actual costs, including the actual costs of approved subcontractors, plus (b) a fixed fee for profit.

The term "actual costs" as used in this Agreement shall be: (1) salaries of employees directly chargeable to the Project at rates not to exceed those shown in Article (50); (2) burden, fringe and overhead costs, hereinafter referred to as "BFO", properly allocable to the Project; and (3) direct non-salary costs directly allocable to the Project. For the year 2021, the approved BFO percentage is 93.74 percent for field office operations. This BFO percentage will be revised annually based on a State approved audit of burden, fringe and overhead costs of the previous year's experience. The term "Salaries" as used in this Agreement shall mean the gross wage or payment made to employees before deductions for employee paid taxes and fringe benefits. The final determination of the sum to be paid for actual costs will be made following an audit of the Consulting Engineer's records. The certified payroll shall cover salaries computed at straight-time rates. The certified percentage for burden, fringe, and overhead shall be applied only to the "straight-time" portion of overtime pay. No payment shall be made to partners or officials of the firm for those services unless they are engaged in production work in which case compensation will be made at production rates.

The Consulting Engineer may bill direct cost for transportation in accordance with the latest State Travel Regulations-State Managers limiting amounts. All mileage, including that for rental cars, will be reimbursed at the current mileage rate only. All direct costs, which include but are not necessarily limited to the items identified in the State's aforementioned construction inspection services approval letter, must be substantiated by receipts and may not exceed the actual cost to the Consulting Engineer.

(38) That **the total amount, including direct costs and fixed fee for profit**, which the Municipality shall pay to the Consulting Engineer for all work performed under the terms of this Agreement, excepting work for which payment is provided in Articles (42) and (48), shall not exceed Five-Hundred Twenty Seven Thousand Two Hundred Dollars (\$527,200). The aforementioned direct costs shall not exceed Twenty-Eight Thousand Five Hundred Dollars (\$28,500) and the fixed fee for profit shall be Forty-Seven Thousand Six Hundred Fifty Dollars (\$47,650).

The allowance for Extra Work shall not exceed Fifty-Two Thousand Seven Hundred Dollars (\$52,700). **The maximum payment for work performed under this Agreement, including Extra Work, shall not exceed Five Hundred Seventy-Nine Thousand Nine Hundred Dollars (\$579,900).**

The maximum amount will not be revised unless there is a substantial change in the scope or character of the work to be performed by the Consulting Engineer which would justify a revision of this figure; or if, for any reason, the Consulting Engineer does not or cannot start his work prior to or in sufficient time to meet the construction contractor's schedule of operations, and the Municipality finds it necessary to provide certain inspection and survey services, the limiting amount and fixed fee shall be reduced an equitable amount to reflect the Municipality's expense in connection therewith.

(39) That partial payments shall be made to the Consulting Engineer on a monthly basis for all work covered by this Agreement except work for which payment is provided in Articles (42) and (48) herein. Said partial payments are to be the sums of the following: (a) the actual costs shown on the voucher for the period, plus (b) eighty-five percent (85%) of the appropriate fixed fee amount for profit

stipulated in Article (38) divided by the number of monthly periods in the total time allowed for completion of the construction work and closeout period. From the partial payments thus computed each month there shall be deducted all credits, if any, due the Municipality. However, prior to the final payment, the Municipality may release such portion or portions of the retainage as it considers to be in its best interest.

(40) That when changes in design are necessary, the Municipality shall determine whether the changes shall be made by the Consulting Engineer performing the construction inspection or by others. In general, minor design changes shall be made by the Consulting Engineer performing construction engineering and inspection under the terms of this Agreement and the Connecticut Department of Transportation approved major design changes shall be made by others. When changes in design are performed by the Consulting Engineer performing construction engineering and inspection under the terms of this Agreement, he shall receive no additional payment for changes that can be made in the field. For changes in design which have to be made by designers at the main or home office, payment shall be made in accordance with the method outlined in Article (42).

(41) That if the Consulting Engineer is directed to investigate or analyze monetary or other claims brought against the Municipality or the State by the construction contractor or others and such claims investigation work is done prior to the submission of all final papers and final payment to the Consulting Engineer, he shall be paid actual costs, as described in Article (37), for analyses that can be made in the field. For analyses that have to be made by employees at the main or regional office, payment shall be made in accordance with the method outlined in Article (42). If the claims investigation work is done after the submission of all final papers and final payment to the Consulting Engineer, the Consulting Engineer shall furnish reports, when needed, and make his personnel available to the Municipality for meetings or litigation relating to the Agreement and/or the construction contract, and payment for such services shall be in accordance with the method outlined in Article (42), plus out-of-pocket costs. Out-of-pocket costs shall be limited to necessary printing for reports, telephone cost, stenographic services and travel when necessary. The Consulting Engineer may bill direct costs for transportation in accordance with the latest Standard State Travel Regulations – State Managers Limiting Amounts. All mileage, including that for rental cars, will be reimbursed at the correct mileage rate only. All direct costs must be substantiated by receipt and may not exceed the actual cost to the Consulting Engineer.

(42) That payment as referred to in Articles (40), (41) and (44) shall be made in the following manner: To the sum of the certified payroll plus the burden, fringe and overhead costs shall be added a fixed fee for profit, to be determined upon submission of an authorized extra work claim. The Consulting Engineer must have prior written approval of the Municipality for all work described in Articles (40), (41) and (44), including approval for the wages or rates of compensation to be paid for performing the required services. The Consulting Engineer shall also be reimbursed for approved direct non-salary costs.

(43) That final payment shall be made to the Consulting Engineer subsequent to the Municipality's acceptance of all construction work included in the Project; delivery by the Consulting Engineer to the Municipality of all papers and documents required in this Agreement and the auditing by the Municipality of the Consulting Engineer's records of actual costs.

The Consulting Engineer agrees to incorporate the entire Maintenance and Audit of Records article of this Agreement in all subconsultant agreements.

(a) Project Accounts

The Consulting Engineer shall maintain an accounting system that is adequate to segregate and accumulate reasonable, allocable costs and shall maintain accounts and records in accordance with generally accepted accounting principles consistently applied.

(b) Allowable Costs

The authority for determining allowable costs under the Agreement shall be "Title 48, Federal Acquisition Regulations, Parts 31," which is incorporated herein by reference.

(c) Audit and Inspection of Records

The Consulting Engineer shall permit the authorized representatives of the State, the U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of the Consulting Engineer relating to his performance under the Agreement until the expiration of three (3) years after final payment under this Agreement.

The Consulting Engineer agrees to forward to the Office of External Audits of the Connecticut Department of Transportation (External Audits), upon request, a detailed job cost report of all project costs incurred under this Agreement.

The Consulting Engineer further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the State, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly-authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to work under the subcontract. The term "subcontract" as used in this clause excludes subcontract for work not exceeding \$25,000.00 in aggregate value.

The periods of access and examination described above, for records which relate to (1) appeals or claim disputes, (2) litigation regarding claims arising out of this Agreement, or (3) costs and expenses of this Agreement as to which exception has been taken by the State, by the Comptroller General, or by any of their duly-authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been finally and irrevocably disposed of.

In accordance with Title 23 CFR, Chapter 1, Part 172.11 (d), the Department as recipient or subrecipient of federal-aid highway funds, may share the aforementioned audit information with federal agencies, provided that the Consulting Engineer is given notice of each such use and transfer of information.

(d) Record Retention

The Consulting Engineer agrees that he shall preserve all of his records and accounts concerning the implementation of this Agreement including, but not limited to, any records, books, or other documents relative to charges, including charges for Extra Work, alleged breaches of agreement, settlement of claims, soils and foundation services, or any other matter involving the Consulting Engineer's or subcontractor's demand for compensation by the State, for a period of not less than three (3) years from the date of the final payment under this Agreement. 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 audit findings involving the records have been finally and irrevocably resolved.

(e) Annual Audit of Burden, Fringe and Overhead Costs

The Consulting Engineer agrees to prepare a "Statement of Direct Labor, Fringe Benefits and Overhead Costs" (Overhead Schedule) from its operations for each fiscal year which the Agreement covers. The Overhead Schedule shall consist of direct labor costs, fringe benefits and indirect costs listed by accounts for home office design and construction engineering/inspection (field) projects, if applicable.

The Consulting Engineer agrees to have an independent Certified Public Accountant (CPA) perform an audit or examination level attestation engagement of the Overhead Schedule, performed in accordance with Government Auditing Standards issued by the U.S. Government Accountability Office. The independent CPA shall be responsible for issuing an independent opinion on the Consulting Engineer compliance with Government regulations, including "Title 48, Federal Acquisition Regulations, Parts 31" and related laws; and issuing a report of the auditor's testing of the Consulting Engineer internal controls and the results of such testing. The independent CPA shall use the current edition of the American Association of State Highway and Transportation Officials, Uniform Audit and Accounting Guide in their audit/attestation of the Overhead Schedule.

The Consulting Engineer agrees to forward the above audit to External Audits within one hundred fifty (150) days following the close of each fiscal year for which the Agreement covers.

The Consulting Engineer agrees to forward to External Audits within thirty (30) days of issuance, copies of overhead schedule audits issued by other State or Federal Agencies that are performed in accordance with Government Auditing Standards using the criteria for determining acceptable costs contained in the "Title 48, Federal Acquisition Regulations, Parts 31".

While it is the intent of the Department to rely on the work of the other States, Federal Agencies or CPA, the Department reserves the right to audit or review any records of the Consulting Engineer, review the working papers of the CPA and contact or obtain information from any other State or Federal Agency when in its judgment, the best interests of the Department so require.

The Consulting Engineer also agrees it shall make arrangements with their independent CPA to have copies of their working papers forwarded to External Audits, when requested.

(f) Annual Consulting Engineer Certification

The Consulting Engineer agrees to provide an annual Certification of Final Indirect Costs in accordance with FHWA Directive 4470.1A of the allowability of costs in accordance with FAR cost principles, 48CFR, Part 31 of overhead costs for each fiscal year for which this Agreement covers in the form prescribed by the Department. This certification must be submitted with any annual audit of overhead costs.

The Consulting Engineer agrees to forward the above certification to External Audits within one hundred fifty (150) days following the close of each fiscal year for which the Agreement covers.

(44) That if the Consulting Engineer is of the opinion that any work he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, he shall promptly notify the Municipality of that fact. The Municipality shall reasonably determine whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that the Municipality determines that such work does constitute extra work, the Municipality shall provide extra compensation to the Consulting Engineer according to the provisions of Article (42).

(45) That the provisions of the following publications shall be considered part of this Agreement: Construction Manual, Municipal Manual, Standard Specifications, Location Survey Manual, and Public Service Facility Policy. In case of conflict between the terms of this Agreement and terms or requirements of documents mentioned herein, the stipulations contained in this Agreement shall govern.

(46) That the acceptance date of the work of this Agreement shall be established as the date the Municipality is in receipt of all papers and documents required in this Agreement. Within thirty (30) days of acceptance, the Consulting Engineer shall submit a final payment voucher for monies due him. If the Consulting Engineer fails to submit this voucher within the specified time, the Municipality shall process a final payment voucher based on the available information.

(47) That the Municipal Administrator shall be responsible for and in overall charge of the project. The Construction Coordinator, as the active head of the inspection staff, shall be responsible for the overall supervision of the construction engineering work and shall issue orders directly to the construction contractor. All documents, such as but not limited to, vouchers, reports and correspondence, shall be prepared and certified by the Consulting Engineer, prior to submission for the review and approval by, and the signature of, the Municipal Administrator.

(48) That if the construction contractor fails to complete the work of the construction contract within the calendar days specified in the construction contract, the Consulting Engineer shall be paid in the following manner for each day on which he furnishes construction engineering and inspection services excluding work described in Article (10): (a) actual costs for the services performed excluding work described in Article (10) plus (b) a fixed fee for profit. At the close of each working day for which the Consulting Engineer is to receive payment in accordance with this Article the Municipal Administrator and the Construction Coordinator shall mutually determine which, if any, portion of the certified payroll is attributable to work described in Article (10) and such portion shall not be considered in determining the sum to be paid the Consulting Engineer in accordance with this paragraph.

(49) That work for which payment is to be made in accordance with Article (40), (41), (44) and (48), that results in an accumulative fee which exceeds the maximum amount stipulated in Article (38) of this Agreement shall be paid for under a supplemental agreement.

(50) That the maximum hourly rate for each classification of employee to be used on the Project shall be as follows and additional classifications, if required, must be submitted for approval to the Municipal Administrator, prior to submission to the District's MSAT Leader for final approval.

<u>Classifications*</u>	<u>Maximum Hourly Rates</u>
Construction Coordinator	\$ 138.72
Chief Inspector	\$ 77.73
Clerical	\$ 27.96

\*No participation for Project Manager, Resident Engineer and Project Engineer is allowed.

The above maximum hourly rates of pay shall be subject to renegotiation should the work required under this Agreement not be completed by September 1, 2024. Any adjustment to the maximum hourly rates stated above shall apply only to such services as may be rendered subsequent to the date of renegotiation. Overtime work, when authorized by the Municipality, shall be paid for by the Municipality at "straight-time" rates except when otherwise required by law or regulation or when otherwise approved by the Municipality. The surcharge for burden, fringe and overhead shall be applied only to the "straight-time" portion of any overtime pay.

(51) That the attached Certification of Consulting Engineer and Certification of Municipality are hereby made a part of this Agreement.

(52) That the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Municipality determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

(53) That it is mutually understood and agreed by the parties hereto that any official notice from one such party to the other such party (parties), in order for such notice to be binding thereon, shall:

(a) be in writing (hard copy) addressed to:

(i) When the Municipality is to receive such notice –

The Honorable Lynne Vanderslice  
First Selectwoman  
Town of Wilton  
238 Danbury Road  
Wilton, Connecticut 06897

(ii) When the Consulting Engineer is to receive such notice –

Mr. Brendan J. O'Shea, P.E.  
Principal  
59 Elm Street, Suite 406,  
New Haven, CT 06510

(b) be delivered in person or be mailed United States Postal Service – "Certified Mail" to the address recited herein as being the address of the party(ies) to receive such notice; and

(c) contain complete and accurate information in sufficient detail to properly and adequately identify and describe the subject matter thereof.

The term "official notice" as used herein, shall be construed to include but not be limited to any request, demand, authorization, direction, waiver, and/or consent of the party(ies) as well as any document(s) provided, permitted, or required for the making or ratification of any change, revision, addition to or deletion from the document, contract, or agreement in which this "official notice" specification is contained.

Further, it is understood and agreed that nothing hereinabove contained shall preclude the parties hereto from subsequently agreeing, in writing, to designate alternate persons (by name, title, and affiliation) to which such notice(s) is (are) to be addressed; alternate means of conveying such notice(s) to the particular party(ies); and/or alternate locations to which the delivery of such notice(s) is (are) to be



made, provided such subsequent agreement(s) is (are) concluded pursuant to the adherence to this specification.

(54) That the Consulting Engineer shall comply with all of the administrative and statutory requirements set forth in Exhibit A attached hereto and made a part hereof and agrees to be bound by the provisions therein contained.

(55) That the Consulting Engineer shall notify the Municipality in writing when there is a change in its Connecticut Certificate of Registration for the Corporate Practice of Engineering or Land Surveying by a corporation or limited liability company in the State of Connecticut or a change in the individual(s) in charge of the work specified herein. Neither change shall relieve the Consulting Engineer of any responsibility for the accuracy and completeness of all products of the work under this Agreement, including all supplements thereto.

(56) That the Municipality, on written notice by the Consulting Engineer of changes in the partnership structure of the organization, may enter into a supplemental agreement with the new partners providing releases are provided to the Municipality from the former partner, or partners, stating that he/she has been compensated in full or that provision has been made for compensation in full for all work performed under terms of this Agreement and a financial statement is submitted showing that solvency of the partnership is maintained. The death of a partner shall not release the partnership from the performance of this Agreement and the remaining functions must be performed by the surviving partner(s) until the terms of this Agreement are fully executed. The withdrawal of any partner from the partnership shall not relieve him from his liability for performance of this Agreement.

(57) (a) All products of the work under the terms of this Agreement shall become and remain the property of the Municipality. This shall include all partially completed work in the event that the Agreement is terminated before completion for any reason.

(b) (1) The Consulting Engineer shall transfer to the Municipality, as part of the consideration for this Agreement, any and all copyright rights or other propriety interests which the Consulting Engineer may have in materials ("Work Products") produced by it under the terms of this Agreement; and that the Consulting Engineer shall, whenever so requested by (the Municipality), sign (with proper notarization or other lawful acknowledgement of its signature) and deliver to the Municipality a letter agreement, in form and content satisfactory to the Municipality, stating that the Consulting Engineer thereby irrevocably transfers to the Municipality all of its copyright and other proprietary rights in the Work Products designated by the Municipality in its related request.

(2) If deemed appropriate by the Municipality in its sole discretion, the Consulting Engineer shall agree that any or all Work Products shall be deemed a work of joint authorship by the Municipality and the Consulting Engineer for copyright purposes, and shall be registered as such with the United States Copyright Office. The Consulting Engineer hereby waives any right to oppose or object to such a claim of joint authorship or to such related copyright registration.

(c) The Consulting Engineer shall not engage or allow any party ("Other Party") other than itself or the Municipality to contribute directly to the creation of any Work Product unless the Consulting Engineer has first obtained from said Other Party a written agreement ("Secondary Agreement") containing essentially the same terms as paragraphs (b)(1) and (2) above; i.e. the Other Party:

(1) shall agree to transfer to the Municipality any and all copyright or other proprietary rights said Other Party may have in designated Work Products, or, if the Municipality so requests, shall agree to deem such Work Product a work of joint authorship by the Municipality and by Other Party, and, if appropriate, by the Consulting Engineer also; and

(2) shall agree to sign (with proper notarization or other lawful acknowledgment of its signature) and deliver to the Municipality any letter agreement ("Letter Agreement") of the kind described in paragraphs (b)(1) and (2) above which the Municipality shall request from it. The Secondary Agreement between the Consulting Engineer and an Other Party shall provide expressly that any such Letter Agreement delivered by the Other Party to the Municipality shall be directly enforceable by the Municipality, and that the execution, delivery, and enforceability of such a Letter Agreement are part of the consideration for the Secondary Agreement.

(58) That the Consulting Engineer hereby acknowledges and agrees to comply with the policies enumerated in the Commissioner of the Connecticut Department of Transportation's Letter dated October 26, 1988 Re: Prompt Payment to Subcontractor(s), which is included in this Agreement by reference only.

The Consulting Engineer shall pay its subcontractors for satisfactory performance of their contracts no later than thirty (30) days from receipt of each payment from the State.

As a condition of receiving federal financial assistance under the Agreement, if any, the Consulting Engineer shall comply with the prompt payment requirements, as specified in 49 CFR § 26.29.

Any retained monies on a subcontractor's work shall be paid to the subcontractor within thirty (30) days after the subcontractor's work has been "satisfactorily completed", as defined below. If the Consulting Engineer determines that a subcontractor's work is not satisfactorily completed, the Consulting Engineer shall notify the subcontractor, the Municipality and the State, in writing, of the reasons why the subcontractor's work is not satisfactorily completed. This written notification shall be provided to the subcontractor, Municipality and the State within twenty-one (21) days of the subcontractor's request for release of retainage or, if the subcontractor fails to make a request, within thirty (30) days of Consulting Engineer making its determination.

For the purpose of this Article, a subcontractor's work is satisfactorily completed when:

(1) The subcontractor has fulfilled the contract requirements of the Municipality and the State and the subcontract for the subcontracted work, including the submission of all submittals and compliance with the audit requirements stipulated in Article 43, when applicable; and

(2) The subcontractor's work has been determined and agreed upon by the Consulting Engineer; and

(3) The work done by the subcontractor has been reviewed and accepted by the Municipality and the State.

The above requirements are also applicable to all sub-tier subcontractors and the above provisions shall be made a part of all subcontract agreements.

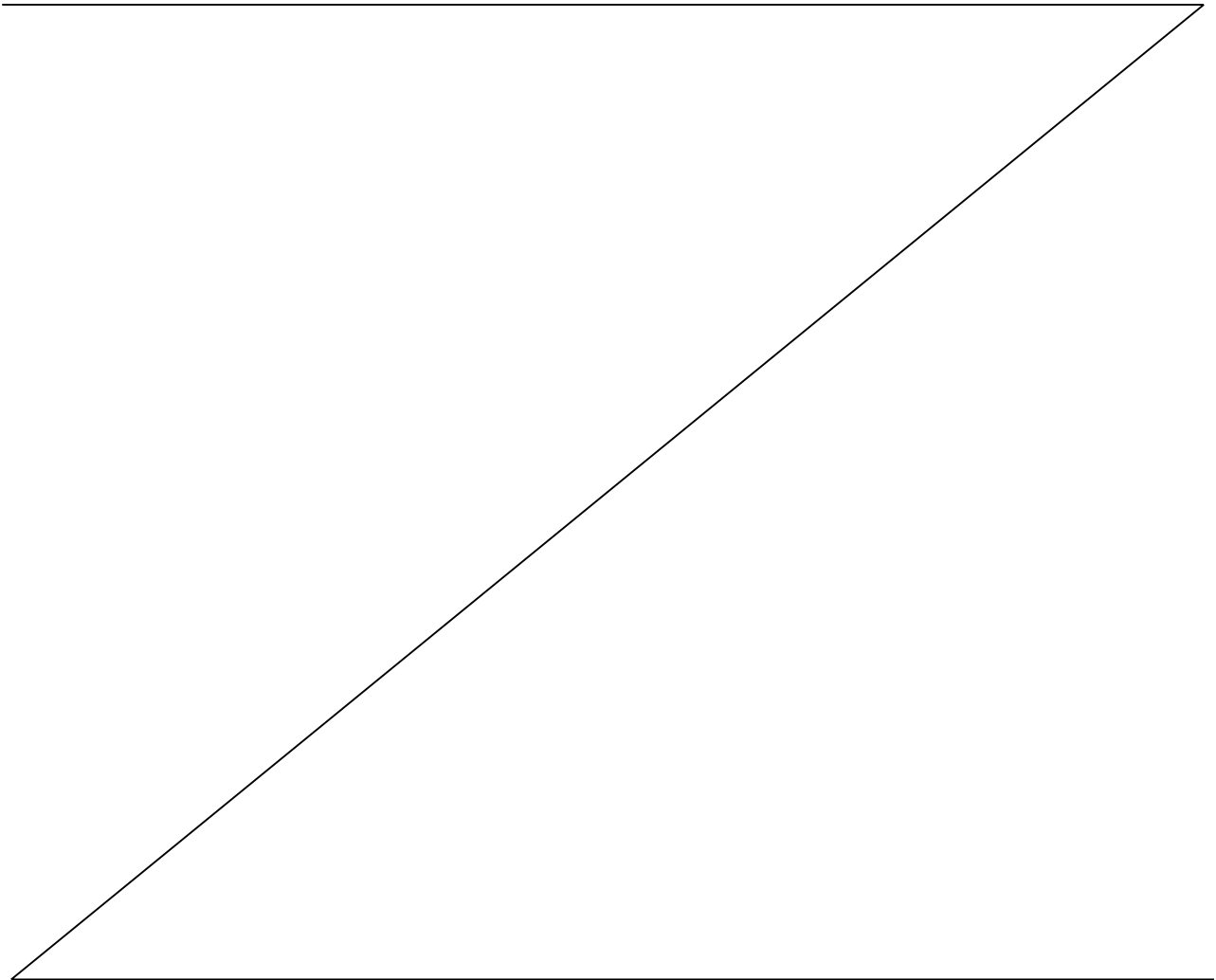
Failure of the Consulting Engineer to comply with the provisions of this Article will be reflected in the "Consultant Performance Evaluation" for future projects.

(59) That the Municipality makes no express or implied warranty of any kind with regard to the particular Computer Aided Design and Drafting File(s) provided to the Consulting Engineer under this Agreement, if any, its documentation, or its fitness for any use or purpose, including but not limited to the implied guarantees of fitness for a particular purpose. The Municipality shall not be held liable for errors contained herein, or for any consequential or incidental damages which may arise in connection with the use, performance, duplication, modification, transfer or distribution of these files or copies thereof.

(60) That the Consulting Engineer hereby acknowledges and agrees to comply with Chapter 219 of the Connecticut General Statutes pertaining to tangible personal property or services rendered that is/are subject to sales tax.

(61) That the consulting Engineer agrees to complete and furnish to the Municipality and the State a "Subconsultant Payment Log" form quarterly (each January, April, July and October) for each subconsultant the Consulting Engineer utilizes under this Agreement. A copy of said payment log form and related instructions are attached hereto and made a part hereof.

(62) That the Consulting Engineer represents and warrants that no person performing services under this Agreement (including, but not limited to, engineers, attorneys, appraisers, or financial or other person performing services under this Agreement) shall have, directly or indirectly, a financial or other personal interest in any contract or subcontract in connection with this Agreement other than his or her employment or retention by a State or other governmental instrumentality, in any contract or subcontract in connection with this Agreement. If such a conflict of interest should arise, the Consulting Engineer shall immediately notify the Municipality and the State, in writing, and indicate the steps taken to eliminate any such conflict of interest.



IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year indicated.

WITNESSES:

TOWN OF WILTON

\_\_\_\_\_  
Name:

By: \_\_\_\_\_  
The Honorable Lynne Vanderslice  
First Selectwoman

\_\_\_\_\_  
Name:

Date: \_\_\_\_\_

WITNESSES:

HARDESTY & HANOVER  
CONSTRUCTION SERVICES, LLC

\_\_\_\_\_  
Name:

By: \_\_\_\_\_  
Brendan J. O'Shea, P.E.  
Principal

\_\_\_\_\_  
Name:

Date: \_\_\_\_\_

CONNECTICUT CORPORATE ENGINEERING  
PRACTICE—CERTIFICATE OF  
AUTHORIZATION NO. \_\_\_\_\_