

## Rochester, Jacqueline

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**From:** Smeriglio, Frank  
**Sent:** Friday, February 2, 2024 2:08 PM  
**To:** Knickerbocker, Matthew  
**Cc:** Rochester, Jacqueline; Douglas LoMonte  
**Subject:** FW: [wiltonct] Action Requested: Master Municipal Agreement (Sent by Denise Maura, denise.maura@ct.gov)  
**Attachments:** mmac-wilton.pdf

Matt

Jackie is going to put the "Master Municipal Agreement between CTDOT and Wilton" on the agenda for Monday's BOS meeting.

The background of this agreement is - This is a standard agreement between CT DOT and Town of Wilton for various grants/construction projects. Historically, there's a separate agreement for every DOT grant- but these separate agreements were taking too long to execute at the State level. DOT changed the process to do 1 master agreement that applies to most grants to authorize construction, then DOT would issue a typical 5-10 page agreement specific to the project and reference the master agreement.

The Town executed this agreement in the past and is typical for all Town.

The request is to obtain BOS approval to allow Toni to sign the agreement.

Let me know if you would like me to present this on Monday or if you think the above explanation can be forwarded to the Board.

Thanks,  
Frank

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Town of Wilton  
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## **MASTER MUNICIPAL AGREEMENT FOR CONSTRUCTION PROJECTS**

THIS MASTER MUNICIPAL AGREEMENT FOR CONSTRUCTION PROJECTS (“Master Agreement”) is entered into by and between the STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION, (the “DOT”), and the Town of Wilton, 238 Danbury Road, Wilton, Connecticut 068970 (the “Municipality”). The DOT or the Municipality may be referred to each individually as the “Party” and collectively as the “Parties.”

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

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

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

WHEREAS, the Commissioner is authorized to enter into this Agreement and distribute state and federal financial assistance to the Municipality for these projects pursuant to § 13a-23, § 13a-98i, § 13a-98n, § 13a-165, § 13b-4(7) of the Connecticut General Statutes; and

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

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE THAT:

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

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

1.2 “Affirmative Action (‘AA’) Special Provision” is defined in Section 3.13(a).

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

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1.4 “Authorization to Advertise Notice” means the written notice from the DOT to the Municipality authorizing the Municipality to advertise an invitation to bid for the Construction Project.

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

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

1.7 “Authorized Department of Transportation (DOT) Representative” means the individual, duly authorized by a written delegation of the Commissioner of the DOT pursuant to Section 13b-17(a) of the Connecticut General Statutes, to sign PALs and other instruments as set forth in such delegation.

1.8 “Construction Order” means the instrument issued by the DOT to the Municipality authorizing funding for modification to the Project scope of work performed by the Prime Contractor.

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

1.10 “Construction Project” means the construction phase activities undertaken by the Municipality, and either Administered by the Municipality or by the DOT on the Municipality’s behalf, to construct improvements on an eligible locally and/or State maintained roadway or structure, to perform transportation activities (as defined by 23 U.S.C. § 101(a)(35), as revised), or any combination of the foregoing, based upon a design completed during a design phase of a Municipal Project, and in accordance with the PAL and this Master Agreement.

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

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

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1.13 “Demand Deposit” means an amount of money due to the DOT from the Municipality.

1.14 “Depreciation Reserve Credit” means the credit for the used life of the replaced utility facility when a new facility is installed.

1.15 “Design Services During Construction” means design services required during the construction phase, with the DOT’s prior approval, which may include, but are not limited to, construction engineering services, consultation in the field, advice, visits to the work site, review and approval of all shop plans and construction drawings received from the Prime Contractor (defined in section 1.26), design modification of original construction drawings as may be necessary, and any other design services as may be required, with the DOT’s prior approval, all in accordance with the Standard Specifications (as defined in section 1.32).

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

1.17 “Disadvantage Business Enterprise (DBE)” has the meaning defined in Schedule E.

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

1.19 “Effective Date” means the date which the Master Agreement is executed by the DOT.

1.20 “Extra Work” means potential additional work that is beyond the original scope or limits of work of the Construction Project specifically for which funds are set-aside as a line item category in the PAL and authorized in writing by the DOT.

1.21 “Funding” means funds from the state government, the federal government, the Municipality, or a combination of any of the foregoing, designated for a particular Construction Project, which the DOT disperses to the Municipality on a reimbursement or upfront payment basis.

1.22 “Grant” means an award or appropriation of State or DOT funds for a Construction Project that the DOT will disperse to the Municipality on an upfront payment basis, unless otherwise stated in the PAL.

1.23 “Incidentals to Construction” means items that were not included in the listing of Contract Items but that are necessary for the completion of the Construction Project, as determined

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by the DOT in its sole discretion. Advertising of a request for bids, inspection, construction and engineering services, field quality assurance testing, and material testing are examples of, but are not limited to, items that may be determined to be Incidentals to Construction for a particular Construction Project.

1.24 “Inspection Activities” means continuous inspection of the work on the Construction Project and associated administrative duties, including, but not limited to, inspection of grading, drainage, structure, pavement, facilities construction, and rail work; the required administrative functions associated with the Construction Project including, but not limited to, preparation of correspondence, construction orders, periodic payment estimates, quantity computations, material sampling and testing, Equal Employment Opportunity and DBE monitoring, final documentation, DOT and Federal reporting, construction surveys, reviews and recommendations of all construction issues, and claims analysis support; and other Construction Project-related functions deemed necessary by the DOT.

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

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

1.27 “Nonparticipating Items” means those items or portions of the Construction Project work determined upfront by the Federal Highway Administration (“FHWA”), the DOT, or both during the Municipal Project design phase to not be eligible for reimbursement with the Funding, in accordance with federal regulation or State requirement/Municipality Manual.

1.28 “Official Notice” means notice given from one Party to the other in accordance with Article 14.

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

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

1.31 “Project Amount” means the total estimated cost for all work for the Construction Project, as estimated at the time of the DOT’s issuance of the PAL.

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

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1.33 “Small Business Enterprise (SBE)” has the meaning defined in Schedule E.

1.34 “Small Business Participation Pilot Program (SBPPP)” has the meaning defined in Schedule G.

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

1.36 “Standard Specifications” means, collectively, the publications entitled “Standard Specifications for Roads, Bridges, Facilities and Incidental Construction (Form 818)” Connecticut Department of Transportation (2020) and its supplemental specifications issued from time to time by the DOT, entitled the “Supplemental Specifications to the Standard Specification for Roads, Bridges, and Incidental Construction (Form 818),” Connecticut Department of Transportation (January 2022), as may be revised.

1.37 “State” means the State of Connecticut, including the DOT and any office, department, board, council, commission, institution or other agency or entity of the State.

1.38 “Term” means the duration of the Master Agreement.

1.39 “Transportation Alternative Facilities” means the facilities installed or constructed under projects pursuant to 23 U.S.C. § 133(h)(3), as revised, including, but not limited to, pedestrian or bike trails.

1.40 “Transportation Amenity” means an item approved by the DOT, in its sole discretion, for installation or construction as part of the Project that serves as a nonfunctional accessory or aesthetic element to the functional items of the Project, including but not limited to park benches, garbage receptacles, painted mast arms and span poles, decorative street or sidewalk illumination, and decorative sidewalk or crosswalk elements.

1.41 “Transportation Facilities” means any roadway, structure, building or other associated facilities, including, but not limited to, traffic control signals and roadway illumination, Transportation Alternative Facilities, including, but not limited to, pedestrian or bike trails, any improvements to any of the foregoing, and any combination of the foregoing.

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

2.1 **Issuance of PAL.** The DOT shall issue to the Municipality a PAL for the applicable Construction Project, in the form substantially similar to Schedule A, which will be addressed to the Designated Official and signed by the Authorized DOT Representative. PALs issued under this Agreement will address Construction Projects and will not address design phase or right-of-way acquisition phase activities of Municipal Projects. The issuance of the PAL itself is not final authorization for the Municipality to begin performing work or awarding a contract with respect to the Construction Project. Additional required steps and approvals are set forth in this Agreement.

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2.2 **Written Acknowledgement of the PAL.** In order for the PAL to become effective and binding on both parties, the Municipality must return to the DOT a copy of the PAL signed by the Designated Official, hereinafter referred to as the “Written Acknowledgement of the PAL,” which serves to acknowledge the Municipality’s receipt of the PAL and confirm that the Municipality will undertake the particular Construction Project in accordance with the PAL and this Master Agreement). The Municipality shall submit the Written Acknowledgement of the PAL to the DOT Project Manager as designated in the PAL, no later than the deadline set forth in the PAL. Submission of the Written Acknowledgement of the PAL by electronic transmission is acceptable and preferred. The Written Acknowledgement of the PAL shall be deemed delivered on the date of receipt by the DOT if on a business day (or on the next business day after delivery if delivery occurs after business hours or if delivery does not occur on a business day). The PAL becomes effective on the date that the Written Acknowledgement of the PAL is delivered to the DOT.

2.3 **Designated Official.** The Municipality herein represents that the First Selectman of the Town of Wilton is the Designated Official to whom the Municipality has granted the authority, throughout the Term of this Master Agreement, to sign and submit on its behalf the Written Acknowledgement of the PAL(s) to the DOT. The Municipality agrees that the signature of the Designated Official shall bind the Municipality with respect to the PAL. Signature by the individual as the Designated Official upon any Written Acknowledgement of a PAL is a representation by such individual that he/she holds the title of the Designated Official as of the date of his/her signature. At any time during the Term, the Municipality may send written notice to the DOT (in accordance with Article 10) of its designation of a new individual to act as the authorized Designated Official specified in Schedule A and the effective date of such designation, upon which date the DOT shall address all PALs and Notices to Proceed or Award to such individual going forward.

2.4 **Obligations of Municipality.** Upon submission of the Written Acknowledgement of the PAL to the DOT, the Master Agreement and the PAL will be incorporated into one another in their entirety and contain the legal and binding obligations of the Municipality with respect to the Construction Project. By submitting the Written Acknowledgement of the PAL, the Municipality acknowledges that it understands the obligations to which it is committing itself with respect to the Construction Project. Further, the Municipality agrees to proceed with diligence to perform its obligations to accomplish the Construction Project and agrees to use the Funding to complete the same. The Municipality’s failure to diligently perform its obligations to progress the Construction Project in accordance with the project schedule may be deemed by the DOT, in its sole discretion, a breach of the respective PAL and, as a result, the DOT may seek any remedy available to it pursuant to this Master Agreement.

2.5 **Revisions to the PAL.** Any modification to the scope, the allowed Funding amount, or cost breakdown related to the Construction Project must be approved by the DOT, at its sole discretion, and set forth in a subsequent PAL newly-issued by the Authorized DOT Representative, hereinafter referred to as the “Supplemental PAL.” The Supplemental PAL shall be acknowledged by the Municipality in accordance with the procedure set forth in section 2.2, and the Supplemental PAL will supersede the previously-issued PAL for the Construction Project

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and will control.

**2.6 State Required Provisions.** With respect to this Master Agreement and each PAL issued and acknowledged under this Master Agreement, Municipality shall comply with the “State of Connecticut Required Provisions” attached as Schedule B to this Master Agreement, which may be revised from time to time to reflect changes in law. With respect to any contracts that the Municipality enters into in order to fulfill its obligations for a particular Construction Project, the Municipality agrees to include in such contracts the applicable requirements set forth in Schedule B.

### **2.7 Federal Requirements & Title VI Assurances.**

(a) With respect to this Master Agreement and each PAL issued and acknowledged under this Master Agreement that involves the passing of Funds from any agency or office of the federal government, including, but not limited FHWA, the Municipality shall comply with such federal agency or office’s contracting requirements, directives, and policies that are in place at the time the respective PAL is in effect, except to the extent that the DOT and the federal agency or office may permit otherwise in writing. With respect to any contracts that the Municipality enters into in order to fulfill its obligations for a particular Construction Project, the Municipality agrees to include in such contracts the applicable requirements imposed by this Section 2.7.

(b) The Municipality agrees that as a condition to receiving federal financial assistance, if any, under the Master Agreement, the Municipality shall comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d et seq.), all requirements imposed by the regulations of the United States Department of Transportation issued in implementation thereof (49 CFR Part 21 and 28 CFR § 50.3) and the “Title VI Contractor Assurances,” attached as Schedule C-2 to this Master Agreement, as may be revised. For the purposes of this Section 2.7(b), references to “Contractor” in Schedule C shall mean the Municipality.

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

**Article 3. Municipality-Administered Construction Projects.** When the Municipality is responsible for Administering the Construction Project with Funding provided on a reimbursement basis, or as otherwise disbursed by the DOT as specified in the PAL, the sections of this Article 3 apply.

**3.1 Content of the PAL.** The PAL issued by the DOT to the Municipality shall set forth, at a minimum:



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

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

(c) an estimated cost break-down for all work under the Construction Project;

(d) an amount for Contingencies, which upon written authorization from the DOT shall be available to fund required work or change in costs, as approved by DOT, via the Construction Order process and in accordance with applicable federal requirements and in accordance Municipality Construction Manual;

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

(f) the Project Amount; and

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

(1) if the Construction Project receives federal participation in Funding, the DBE goal assigned by the DOT applicable to the Prime Contractor, and additionally, where the Municipality retains an Inspection Consultant to perform the Inspection Activities, the DBE goal assigned by the DOT to the Inspection Consultant. If federal funds are not used to fund the Inspection Activities on the Construction Project, then no DBE goal will be assigned for the Inspection Activities;

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

(3) regardless of the Funding source(s), the SBPPP goal assigned by the DOT applicable to the Prime Contractor, and additionally, where the Municipality retains an Inspection Consultant, the SBPPP goal assigned to the Inspection Consultant.

(h) Any applicable Transportation Facilities or Transportation Amenities installed or constructed within State owned rights-of-way that will be maintained by the Municipality in accordance with the applicable PAL, subject to the review and approval by the DOT prior to the Municipality commencing maintenance. The Municipality shall comply with the applicable DOT process and requirements to secure permission to access the rights-of-way and perform maintenance activities pursuant to a separate agreement with or encroachment permit issued by the DOT.

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### **3.2 Authorization to Award and Authorization to Proceed.**

(a) When the Municipality is electing to perform work with its own staff, it shall not allow Municipality staff to commence work on the Construction Project until the Municipality has received from the DOT an Authorization to Proceed Notice.

(b) When the Municipality is hiring a Prime Contractor to perform work on the Construction Project, the Municipality shall not allow the Prime Contractor to commence construction work until the Municipality has received from the DOT an Authorization to Award Notice.

(c) The DOT will issue an Authorization to Award Notice or Authorization to Proceed Notice, as applicable, directly to the Municipality, addressed to the Designated Official. The DOT has no responsibility and incurs no liability for payments to the Municipality for Administration of the Construction Project or for any construction work performed by the Prime Contractor or the Municipality's staff on the Construction Project prior to the DOT's issuance of the Authorization to Award Notice or Authorization to Proceed Notice.

### **3.3 Municipality to Perform and Complete the Construction Project.**

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

(b) The Municipality, with prior written approval of the DOT, may elect to perform all or any part of the Construction Project work with its own staff. In requesting approval from the DOT, the Municipality must demonstrate, to the DOT's satisfaction, that there is sufficient personnel, equipment, and resources available to the Municipality and that it will be cost effective for the Municipality's staff to perform the work in accordance with the plans and specifications.

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

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

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

### **3.4 Engaging a Prime Contractor.**

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(a) Where the Municipality retains a Prime Contractor to perform the work on the Construction Project, upon receipt of an Authorization to Advertise Notice from the DOT, the Municipality shall advertise the Construction Project to engage the Prime Contractor utilizing an advertising and bidding procedure acceptable to the DOT and, if applicable, the federal government. In the event that a Municipality advertises a Construction Project without the DOT's prior written Authorization to Advertise, the DOT may in its sole discretion deem such to be a breach of the PAL, with all remedies under this Master Agreement available to the DOT, including but not limited to, the DOT terminating the PAL and the Municipality losing Funding for the Construction Project.

(b) The Municipality shall analyze all bids, submit a bid summary to the DOT, and request the DOT's approval to award a contract for the Construction Project. The Municipality shall perform all of the foregoing in accordance with the following publications (in their current version in effect during the performance under a particular PAL), as applicable, unless otherwise directed by DOT in writing:

- (1) Advertising Procedures for Construction Contracts Administered by Municipalities, Connecticut Department of Transportation (August 2016), as may be revised ("Advertising Procedures for Construction Contracts Administered by Municipalities");
- (2) The Standard Specifications. The version of the Standard Specifications in effect at the date of completion of the PS&E for the particular Construction Project is the version that must be followed and complied with for the particular Construction Project; and
- (3) The Municipality Manual, Version 1, Connecticut Department of Transportation (2013), as may be revised ("Municipality Manual").

(c) The Municipality may not impose any local rules, policies, terms, conditions, or requirements on any bidder, Prime Contractor, or Inspection Consultant, unless it has received prior written approval from the DOT and, if applicable, FHWA (or other federal authority). If the Municipality imposes any local rules, policies, terms, conditions, or requirements, without all required prior written approvals, the DOT may in its sole discretion deem such imposition to be a breach of this Master Agreement and the respective PAL and may result in the Municipality losing Funding for the Construction Project.

**3.5 Pre-Award Requirements and Documentation.** The Municipality shall prepare and submit to the DOT a written determination of the Prime Contractor's responsiveness and qualifications to perform the work, based on review and analysis of the bids received. The Municipality shall require the selected Prime Contractor to meet all applicable pre-award requirements and submit any required documentation to the Municipality, which the Municipality, in turn, shall submit to the DOT for review and approval, all in accordance with the Advertising Procedures for Construction Contracts Administered by Municipalities, unless otherwise directed by DOT in writing. The pre-award requirements include, but are not limited to:

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- (a) Required documentation applicable to any assigned affirmative action goal;
- (b) A schedule of progress or time chart for the Construction Project developed by the Prime Contractor;
- (c) A complete statement of the origin and manufacturer of any manufactured materials to be used in the Construction Project provided on the DOT form “Anticipated Source of Materials (CON-83),” as revised;
- (d) A completed “State of Connecticut Certificate of Compliance with Connecticut General Statutes § 31-57b” form, as revised;
- (e) A completed Certificate of Insurance on the form(s) acceptable to the DOT; and
- (f) Any other documentation requested by the DOT or federal government as pre-award requirements.

### **3.6 Approval to Award Contract(s).**

- (a) The Municipality must receive the DOT’s prior written approval in order to award its contracts, enter into modifications or supplements to the contracts, or issue any Construction Orders under its contracts with the Prime Contractor and, where applicable, the Consulting Engineer and the Inspection Consultant, prior to incurring reimbursable costs in conjunction with the PAL. Without such written approval, costs incurred by the Municipality are ineligible for reimbursement under the PAL. DOT retains the authority, at its sole discretion, to review for compliance with applicable DOT and federal requirements the Municipality’s proposed contracts prior to the DOT issuing any written approval.
- (b) Upon receipt of the Authorization to Award Notice from the DOT, the Municipality shall comply with the Advertising Procedures for Construction Contracts Administered by Municipalities and in accordance therewith, award the contract to the bidder specified in the Authorization to Award Notice. The Municipality shall submit to the DOT copies of the award letter, the contract executed with the Prime Contractor, and all other documents required by the Advertising Procedures for Construction Contracts Administered by Municipalities and otherwise requested by the DOT.
- (c) As a condition of receiving Funding under the PAL, the Municipality may be required, at the direction of the DOT or the federal government, to obtain certain assurances from and include certain contract provisions in its contracts with the Prime Contractor and, where applicable, the Consulting Engineer and the Inspection Consultant. Without limiting the foregoing, this Article 3 sets forth certain of these requirements. Additional requirements may be set forth in the PAL. The Municipality’s failure to include the requirements in the contract with, and to ensure compliance by, the Prime Contractor and, where applicable, the Consulting Engineer and the Inspection Consultant, may amount to a breach of this Master Agreement and the

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respective PAL, as determined by the DOT in its sole discretion, and may result in the Municipality's loss of Funding for the Construction Project.

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

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

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

(a) If the Municipality elects to retain an Inspection Consultant, in order to be eligible for reimbursement for the associated costs, the Municipality must use a Qualifications Based Selection process as described in and in accordance with the "Consultant Selection, Negotiation and Contract Monitoring Procedures for Municipally Administered Projects," Connecticut Department of Transportation (2016), as may be revised.

- (1) When designating an Inspection Consultant, the Municipality shall submit to the DOT for review and approval, the name(s) and qualifications of the proposed Inspection Consultant prior to advertising the Construction Project. The Municipality shall comply with the "Construction Engineering and Inspection Information Pamphlet for Consulting Engineers," Connecticut Department of Transportation (2017) as may be revised, when determining the required qualifications of the Inspection Consultant.
- (2) If the Construction Project receives federal participation in Funding, when the Municipality retains an Inspection Consultant, it must designate a full-time employee of the Municipality to be in responsible charge of the Construction

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Project in accordance with 23 CFR § 635.105(c)(4), as may be revised.

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

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

**3.11 Inadequate Administration.** If, at any time during the Construction Project, the DOT determines that the Administration by the Municipality is not adequate, it may be deemed a breach by the Municipality, as determined by the DOT in its sole discretion, and the DOT may assume responsibility for, or supplement, the Administration of the Construction Project, at its sole discretion. The additional costs associated with the DOT's Administration of the Construction Project will be considered part of the Construction Project costs for DOT-provided Services and will be funded in accordance with the proportionate cost sharing set forth in the PAL. The DOT may, in its sole discretion, withhold any payments to the Municipality under the PAL, until such time that the Municipality resumes Administration at the direction, and to the satisfaction, of the DOT. Furthermore, the DOT's assumption or supplementing of the Administration of a Construction Project does not waive any of the DOT's remedies under this Agreement, nor relieve the Municipality from any liability related to its breach.

### **3.12 Federal and State Required Contract Provisions.**

(a) The Municipality shall include in the contracts with the Prime Contractor and, where applicable, the Inspection Consultant, the following requirements:

(1) "Construction Contracts-Required Contract Provisions" attached as Schedule C to this Agreement, as may be revised from time to time. Throughout the Term, the DOT will provide an updated attachment to the Municipality for use with its contracts for the Project; and

(2) all applicable provisions that pursuant to the Connecticut General Statutes the Municipality is required to include in its contracts.

(b) The Municipality's failure to comply with any requirement within this section 3.12

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may be deemed by the DOT, in its sole discretion, a breach of this Master Agreement and the respective PAL and, as a result, the DOT may seek any of its remedies under this Master Agreement.

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

(a) The Municipality agrees to include the assigned DBE goal, SBE goal, or SBPPP goal, as applicable, and associated requirements, set forth in the PAL, as requirements within any contract the Municipality enters into with its Prime Contractor, and, if applicable, its Inspection Consultant, and to require its Prime Contractor and, if applicable, its Inspection Consultant, to comply with the current version of the “Special Provision, Disadvantaged Business Enterprises” (2023), as may be revised, the “Special Provision, Small Contractor and Small Contractor Minority Business Enterprise (Set Aside)” (2023), as may be revised, or the “Special Provision, Small Business Participation Pilot Program” (2023), as may be revised, attached to this Master Agreement as Schedules D, E & F, respectively (the “AA Special Provision”). The Municipality shall include a provision within such contract(s) requiring compliance with the applicable AA Special Provision and attaching a copy of same.

(b) The Municipality acknowledges that with respect to any Construction Project that receives federal participation in Funding, the Construction Project may be subject to an On-the-Job Training (OJT) requirement and the “On-the-Job Training Program Special Provision” (2023) as may be revised, attached at Schedule G. The Municipality agrees that upon receiving notice from the DOT of the OJT requirement, the Municipality will include the OJT requirement in its contract with the Prime Contractor and attach a copy of Schedule G to the contract.

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

(d) The DOT, in its sole discretion, may determine whether the Municipality failed to comply with any requirement within this section 3.13 and may deem such failure a breach of this Master Agreement and the respective PAL. As a result of any such breach, the DOT, at its sole discretion, may withhold reimbursement to the Municipality for the Construction Project in an amount up to or equaling the goal shortfall, in addition to any other remedies the DOT may have under this Master Agreement or provided by law.

### **3.14 Inspection Consultant Fees and Auditing Requirements.**

(a) With respect to any contract entered into with an Inspection Consultant:

- (1) If the Inspection Consultant is paid utilizing federal funds through the Construction Project, the Municipality shall comply with all applicable federal requirements including but not limited to 40 USC §§ 1101-1104, 23 USC §

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112(b)2, and 48 CFR Part 36.

(2) If the Inspection Consultant is paid utilizing state funds through the Construction Project, the Municipality shall comply with DOT Policy Statement EX.O-33 (June 25, 2015) attached at Schedule H, as may be revised.

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

### 3.15 Construction Project Standards and Manuals.

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

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

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



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

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

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

### **3.18 Demand Deposit Requirement; Depreciation Reserve Credit.**

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

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

### **3.19 Costs and Reimbursement.**

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

(b) The Municipality shall document all expenses it incurs and maintain all records related to the Construction Project costs, including, but not limited to its payments to the Prime Contractor and, if applicable, the Inspection Consultant and the Consulting Engineer, its payroll hours on time sheets for municipal staff working directly on the Construction Project, material purchases made by the Municipality, and reimbursement due to the Municipality for use of Municipality-owned or rented equipment. Rates of reimbursement for use of Municipality-owned or rented equipment will be based on an existing municipal audit, if available, completed no more

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than three (3) years before acknowledgment of the PAL, and provided the rates are acceptable to the DOT. In the absence of acceptable rates, or if there is no current municipal audit, the equipment rental rate will be established in accordance with Section 1.09.04(d) of the Standard Specifications, as may be revised. Reimbursable municipal payroll costs are limited to the actual municipal payroll for work on the Construction Project and fringe benefits associated with payroll.

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

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

- (1) On a monthly basis, the Municipality shall submit to the DOT using the DOT-required voucher form entitled "Invoice Summary and Processing (ISP) Form" ("**Voucher**") as may be revised, with supporting data, the cost of services rendered and expenses incurred for the prior month. With respect to any work that is performed in-house by the Municipality's staff, the Municipality's reimbursable costs shall be limited to the actual payroll, fringe benefits associated with payroll, and approved direct cost charges for the staff's performance of Design Services During Construction.
- (2) Upon review and approval of the Voucher by the DOT, payment of the reimbursement portion of said costs and expenses shall be made to the Municipality, in accordance with the proportional cost sharing established by the PAL.

3.21 **As-built Plans.** Upon completion of the Construction Project, the Municipality shall notify the DOT, in writing, of the completion and, upon request by the DOT, shall provide the DOT copies of the as-built plans for the Construction Project, in the format requested by the DOT.

### 3.22 **Contingencies & Extra Work.**

(a) The PAL will set forth an amount for Contingencies (included with the line item category for Contract Items) which upon written authorization from the DOT shall be available to fund required work or change in costs, as approved by DOT in a Construction Order and in accordance with applicable process and requirements including but not limited to those set forth in the Municipality Manual.

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(b) The PAL will provide a line item category for Extra Work to set-aside funds that may be requested later by the Municipality to fund the requested additional work if it is deemed, at the DOT's sole discretion and with the DOT's written approval, to be necessary for completion of the Construction Project. If the Municipality wishes to pursue any Extra Work, it must request approval in writing from the DOT of the type and scope of the Extra Work and the associated costs prior to the Municipality authorizing performance of the Extra Work by the Prime Contractor, the Consulting Engineer, the Inspection Consultant, or municipal staff, as applicable. The DOT has sole discretion as to approving funding of any Extra Work. If the Municipality fails to request and receive prior approval for Extra Work prior to performing the same, any such performance will be done at its sole risk and expense.

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

- (1) If the Extra Work results in an Accumulative Cost less than or equal to the Project Amount specified in the PAL, it will be funded according to the proportional cost sharing set forth in the PAL.
- (2) If the Extra Work results in an Accumulative Cost greater than the Project Amount specified in the PAL, the DOT determines that the appropriate federal or state government funding is available for the increased costs of the Construction Project, then the DOT will issue a Supplemental PAL to provide for the cost increase to the Construction Project for this Extra Work. If federal or state government funding is not available, the Municipality will be responsible for 100% of the additional cost.

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

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

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

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

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

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### **3.24 Semi-Final and Final Inspections.**

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

(b) Within one hundred twenty (120) calendar days of the final acceptance of the physical work by the Municipality and the DOT, the Municipality shall submit to the DOT the required documents as set forth in the Municipality Manual. The Municipality shall be available, and if applicable shall require its Inspection Consultant to be available, to assist the DOT with the review and acceptance of the documents required by the Municipality Manual. Upon the DOT's approval of the submitted documents, the DOT will reimburse the Municipality for the approved expenses on any outstanding Vouchers submitted by the Municipality. If the Municipality fails to submit the documents required by the Municipality Manual for the DOT's review and approval, the DOT, at its sole discretion, may assume responsibility for or supplement the Administration of the Construction Project, as described in section 3.11.

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

(a) Suspension, Postponement, or Termination by the DOT.

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

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

(b) Termination by the Municipality, with prior DOT approval.

(1) The Municipality may request termination of the Construction Project, and if determined by the DOT in its sole discretion to be in the best interests of the Parties, the DOT may agree to the request. Additionally, with respect to Construction Projects receiving federal participation in Funding, receipt of written concurrence from FHWA

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(or other applicable federal authority) may be required prior to the DOT's approval of the request.

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

(c) **Funding of Acceptable Work.** Upon suspension, postponement, or termination in accordance with subsection (a) or termination in accordance with subsection (b), the DOT may provide the Municipality with Funding in part for its expenditures, if any, up to the percentage of acceptable work completed as of the approved date of termination, in accordance with the following:

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

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effective date of termination was disbursed to the Municipality to fund that unacceptable work.

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

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

(f) Termination of a specific Construction Project shall not relieve the Municipality or its Prime Contractor, Inspection Consultant, or Consulting Engineer of its responsibilities for the work completed as of the termination date, nor shall it relieve the Municipality or any contractor or its surety or of its obligations concerning any claims arising out of the work performed on the Construction Project prior to the termination date or any obligations existing under bonds or insurance required by the Connecticut General Statutes or by this or any other agreement with the DOT or the Municipality.

**Article 4. Municipality-Administered Grant Construction Projects.** When the Municipality is responsible for Administering the Grant Construction Project, with Funding provided on an upfront basis, or as otherwise disbursed by the DOT as specified in the PAL, the sections of this Article 4 apply.

4.1 **Content of the PAL.** The PAL issued by the DOT to the Municipality shall set forth, at a minimum:

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

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

(c) an estimated cost break-down for all work under the Construction Project;

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

(e) the Project Amount; and

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- (f) any applicable affirmative action goal(s) , as follows:
- (1) the SBE or SBPPP goal as assigned by the DOT with respect to work on the Construction Project applicable to the Prime Contractor, and additionally, where the Municipality retains an Inspection Consultant, the SBE or SBPPP goal assigned to the Inspection Consultant; or
  - (2) reference to the Municipality's requirement to comply with its affirmative action goal setting requirements imposed pursuant to State law at § 4a-60g(b) of the Connecticut General Statutes, as may be revised, and associated reporting to the Commission on Human Rights and Opportunities.

### **4.2 Authorization to Award and Authorization to Proceed.**

(a) When the Municipality is electing to perform work with its own staff, it shall not allow Municipality staff to commence work on the Construction Project until the Municipality has received from the DOT an Authorization to Proceed Notice.

(b) When the Municipality is hiring a Prime Contractor to perform work on the Construction Project, the Municipality shall not allow the Prime Contractor to commence construction work until the Municipality has received from the DOT an Authorization to Award Notice.

(c) The DOT will issue an Authorization to Award Notice or Authorization to Proceed Notice, as applicable, directly to the Municipality, addressed to the Designated Official. The DOT has no responsibility and incurs no liability for payments to the Municipality for Administration of the Construction Project or for any construction work performed by the Prime Contractor or the Municipality's staff on the Construction Project prior to the DOT's issuance of the Authorization to Award Notice or Authorization to Proceed Notice.

### **4.3 Municipality to Perform and Complete the Construction Project.**

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

(b) The Municipality, with prior written approval of the DOT, may elect to perform all or any part of the Construction Project work with its own staff. In requesting approval from the DOT, the Municipality must demonstrate, to the DOT's satisfaction, that there is sufficient personnel, equipment, and resources available to the Municipality and that it will be cost effective for the Municipality's staff to perform the work in accordance with the plans and specifications.

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

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

### 4.4 Engaging a Prime Contractor.

- (a) Where the Municipality retains a Prime Contractor to perform the work on the Construction Project, upon receipt of an Authorization to Advertise Notice from the DOT, the Municipality shall advertise the Construction Project to engage the Prime Contractor utilizing an advertising and bidding procedure acceptable to the DOT. In the event that a Municipality advertises a Construction Project without the DOT's prior written Authorization to Advertise, the DOT may in its sole discretion deem such to be a breach of this Master Agreement and the respective PAL, with all remedies available to the DOT under this Master Agreement, including but not limited to the DOT terminating the PAL and the Municipality losing Funding for the Construction Project.
- (b) The Municipality shall analyze all bids, submit a bid summary to the DOT, and request the DOT's approval to award a contract for the Construction Project. The Municipality shall perform all of the foregoing in accordance with the following publications (in their current version in effect during the performance under a particular PAL), as applicable, unless otherwise directed by DOT in writing:
- (1) Advertising Procedures for Construction Contracts Administered by Municipalities, Connecticut Department of Transportation (August 2016), as may be revised ("Advertising Procedures for Construction Contracts Administered by Municipalities");
  - (2) The Standard Specifications. The version of the Standard Specifications in effect at the date of completion of the PS&E for the particular Construction Project is the version that must be followed and complied with for the particular Construction Project;
  - (3) The Municipality Manual, Version 1, Connecticut Department of Transportation (2013), as may be revised ("Municipality Manual"); and
  - (4) The Local Transportation Capital Improvement Program (LOTICIP) Guidelines, Connecticut Department of Transportation (November 2021), as may be revised; and
  - (5) The Community Connectivity Program Guidelines, Connecticut Department of Transportation (March 2023), as may be revised.
- (c) The Municipality may not impose any local rules, policies, terms, conditions, or requirements on any bidder, Prime Contractor, or Inspection Consultant, unless it has received



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

**4.5 Pre-Award Requirements and Documentation.** The Municipality shall prepare and submit to the DOT a written determination of the Prime Contractor's responsiveness and qualifications to perform the work, based on review and analysis of the bids received. The Municipality shall require the selected Prime Contractor to meet all applicable pre-award requirements and submit any required documentation to the Municipality, which the Municipality, in turn, shall submit to the DOT for review and approval, all in accordance with the publications set forth in Section 4.4(b) unless otherwise directed by DOT in writing. The pre-award requirements include, but are not limited to:

- (a) Required documentation applicable to any assigned affirmative action goal;
- (b) A completed "State of Connecticut Certificate of Compliance with Connecticut General Statutes § 31-57b" form, as revised;
- (c) Any other documentation required by the DOT prior to award.

### **4.6 Approval to Award Contract(s).**

(a) The Municipality must receive the DOT's prior written approval in order to award its contracts and, as may be required by DOT in its sole discretion, in order to enter into Construction Orders under, or amendments to, such contracts with the Prime Contractor and prior to incurring costs in conjunction with the PAL. Without such written approval, the Municipality shall not use Funding under the PAL to pay for such costs, unless as may otherwise be allowed by the DOT in its sole discretion. The DOT retains the authority, at its sole discretion, to review for compliance with applicable DOT requirements the Municipality's proposed contracts prior to the DOT issuing any written approval.

(b) Upon receipt of the Authorization to Award Notice from the DOT, the Municipality shall comply with the publications set forth in Section 4.4 and in accordance therewith, award the contract to the bidder specified in the Authorization to Award Notice. The Municipality shall submit to the DOT all other documents as may be required by the DOT specified in the Authorization to Award Notice.

(c) As a condition of receiving Funding under the PAL, the Municipality may be required, at the direction of the DOT, to obtain certain assurances from and include certain contract provisions in its contracts with the Prime Contractor. Without limiting the foregoing, this Article 4 sets forth certain of these requirements. Additional requirements may be set forth in the PAL. The Municipality's failure to include the requirements in the contract with, and to ensure compliance by, the Prime Contractor may amount to a breach of this Master Agreement and the respective PAL, as determined by the DOT in its sole discretion, and may result in the

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Municipality's loss of Funding for the Construction Project and the DOT's exercise, at its discretion, of other remedies available under this Master Agreement.

4.7 **Changes in Scope.** The Municipality may not make changes to the Construction Project that will increase the cost or alter the termini, character or scope of the construction work without prior written approval from the Authorized DOT Representative. Such written approval may take the form of a Supplemental PAL issued by the DOT with respect to the Construction Project. The Supplemental PAL, once acknowledged in writing by the Municipality in accordance with the procedure set forth in section 2.2, will supersede the previously-issued PAL for the Construction Project and will control.

4.8 **Design Services During Construction.** The Municipality shall itself provide or retain a Consulting Engineer to provide Design Services During Construction. The scope of the Design Services During Construction is subject to the prior approval of the DOT.

4.9 **Inspection Activities.** The Municipality shall itself provide a qualified staff person, or retain a qualified person or entity, to serve as the Inspection Consultant to perform Inspection Activities. If the Municipality fails to provide adequate inspection, to the DOT's satisfaction and in the DOT's sole discretion, for any Construction Project during the construction phase, such may be deemed a breach of the PAL and the Master Agreement. In such instance, the DOT may require the Municipality to return Funding for the Construction Project, and exercise any other remedies available under this Master Agreement. The Municipality's failure to inspect a particular Construction Project may result in the DOT withholding approval of the Municipality's request to participate in future Grant and other DOT-overseen programs at DOT's sole discretion.

4.10 **Unacceptable Work.** If the DOT, in its sole discretion, deems any of the work under the PAL that the Municipality itself performed or engaged a third party to perform on its behalf, to be unacceptable, then within thirty (30) days from the written demand by the DOT, the Municipality shall promptly return, in whole or in part, to the DOT, the DOT Funding that was disbursed to the Municipality to fund that unacceptable work.

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

4.12 **Inadequate Administration.** If, at any time during the Construction Project, the DOT determines that the Administration by the Municipality is not adequate, it may be deemed a breach by the Municipality, as determined by the DOT in its sole discretion, and the DOT may assume responsibility for or supplement the Administration of the Construction Project, at its sole discretion. The DOT in its sole discretion, may withhold funding from the Municipality under other pending PALs, deny requests for future participation in Grant or other DOT-overseen

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programs, and exercise any other remedies available to it under the Master Agreement. The additional costs associated with the DOT's Administration of the Construction Project will be considered part of the Construction Project costs for DOT-provided Services and will be funded in accordance with the proportionate cost sharing set forth in the PAL, which may require the Municipality to return Funding to the DOT to pay for such DOT-provided services. Furthermore, the DOT's assumption or supplementing of the Administration of a Construction Project does not waive any of the DOT's remedies under this Agreement, nor relieve the Municipality from any liability related to its breach.

### **4.13 State Required Contract Provisions.**

(a) The Municipality shall include in the contracts with the Prime Contractor and, where applicable, the Inspection Consultant, the following requirements:

- (1) "Construction Contracts-Required Contract Provisions" attached as Schedule C to this Agreement and as may be revised from time to time. Throughout the Term, the DOT will provide an updated attachment to the Municipality for use with its contracts for the Project;
- (2) all applicable provisions that the Municipality is required to include in its contracts pursuant to the Connecticut General Statutes.

(b) The Municipality's failure to comply with any requirement within this section 4.13 may be deemed by the DOT, in its sole discretion, a breach of this Master Agreement and the respective PAL and, as a result, the DOT may seek any of its remedies under this Master Agreement.

### **4.14 Affirmative Action (AA) Goals.**

(a) The Municipality agrees to include the assigned SBE goal or SBPPP goal as set forth in the PAL or as imposed on the Municipality by the Commission on Human Rights and Opportunities, as requirements within any contract the Municipality enters into with its Prime Contractor.

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

(c) The DOT, in its sole discretion, may determine whether the Municipality failed to comply with any requirement within this section 4.14 and may deem such failure a breach of this Master Agreement and the respective PAL. As a result of any such breach, the DOT, at its sole discretion, may withhold payments and demand return of amounts already disbursed to the Municipality for the Construction Project in an amount up to or equaling the goal shortfall, in addition to any other remedies the DOT may have under this Master Agreement or provided by

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law.

### 4.15 Inspection Consultant Fees and Auditing Requirements.

With respect to any contract the Municipality enters into with an Inspection Consultant, the Municipality shall comply with Schedule H.

### 4.16 Construction Project Standards and Manuals.

(a) The Municipality shall comply with, and require its Prime Contractor and, if applicable, its Inspection Consultant, to comply with all applicable DOT requirements and applicable State laws and regulations and the current version (in effect during the performance under the particular PAL) of the following publications (except as otherwise noted), each as may be revised:

- (1) Construction Manual, Department of Transportation Office of Construction, Version 2.2, Connecticut Department of Transportation (2011);
- (2) The Standard Specifications. The version of the Standard Specifications in effect at the date of completion of the PS&E for the particular Construction Project is the version that must be followed and complied with for the particular Construction Project;
- (3) Public Service Facility Policy and Procedures for Highways in Connecticut, Connecticut Department of Transportation (2008); and
- (4) Utility Accommodation Manual, Connecticut Department of Transportation (2009).

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

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

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

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all aspects of the work related to the Construction Project, and such inspections shall be deemed DOT-provided Services.

### 4.19 Demand Deposit Requirement; Depreciation Reserve Credit.

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

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

### 4.20 Costs and Expenditures.

(a) The Municipality shall expend Grant Funding solely for approved costs related to Administering the Construction Project and for no other purpose.

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

(c) If the Municipality fails to adequately record expenses and maintain all related records for any Construction Project or promptly submit any records to the DOT, such failure to do so may be deemed a breach by the Municipality, at the DOT's sole discretion, and the DOT may deem certain expenses to be non-eligible costs of the respective Construction Project for which the Municipality will not be eligible for Grant Funding pursuant to the proportional cost sharing established by the PAL. In such event, the Municipality shall return to the DOT any applicable amounts already disbursed to the Municipality. Furthermore, the DOT's determination of certain costs to be non-eligible costs of the Construction Project does not waive any of the DOT's remedies for the breach by the Municipality of its obligations under this Master Agreement with respect to the respective Construction Project, nor relieve the Municipality from any liability related to its breach.

4.21 **As-built Plans.** Upon completion of the Construction Project, the Municipality shall notify the DOT, in writing, of the completion and, upon request by the DOT, shall provide the DOT copies of the as-built plans for the Construction Project, in the format requested by the DOT.

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### **4.22 Contingencies (including work defined by Construction Orders), Extra Work and Additional Funding.**

(a) Provided that a PAL provides an amount for Contingencies and/or Extra Work, in the event that the Municipality anticipates that Project costs will exceed the approved Funding set forth in the PAL, prior to incurring costs that will be eligible for Funding, the Municipality shall request the DOT's prior review and approval of use of Funding for Contingencies (including Construction Orders) items and/or Extra Work.

(b) If the DOT determines, in its sole discretion, the requested Funding under the PAL to be necessary for completion of the Construction Project, it shall issue written approval to the Municipality specifying the type and scope of the Contingencies item(s) and/or Extra Work and the associated costs eligible for Funding. Upon receipt of the DOT written approval, and, issuance of a Supplemental PAL as may be applicable pursuant to subsection (c), the Municipality is authorized to issue a Construction Order and/or authorize performance of the Extra Work by the Prime Contractor, the Consulting Engineer, the Inspection Consultant, or municipal staff, as applicable.

(c) Once approved in writing by the DOT, the Contingencies item(s) and/or Extra Work will be funded as follows:

- (1) If the Contingencies item(s) and/or Extra Work results in an Accumulative Cost less than or equal to the Project Amount specified in the PAL, it will be funded according to the proportional cost sharing set forth in the PAL.
- (2) If the Contingencies item(s) and/or Extra Work results in an Accumulative Cost greater than the Project Amount specified in the PAL, and the DOT determines in its sole discretion to provide additional state government funding for the increased costs of the Construction Project, then the DOT will issue a Supplemental PAL to provide for the cost increase to the Construction Project for this Extra Work or Construction Order. Without issuance of a supplemental PAL, the Municipality will be responsible for 100% of the additional cost.

### **4.23 Funding of Additional DOT-Approved Costs upon Final Audit.**

(a) Upon the DOT's final audit of the Construction Project, if additional costs, including, but not limited to, those resulting from approved Extra Work, Construction Orders, delays, or other cost over-runs, result in an Accumulative Cost less than the original Project Amount identified in the PAL, the additional costs, if approved by the DOT, shall be funded in accordance with the PAL.

(b) Upon the DOT's final audit of the Construction Project, additional costs, including, but not limited to, those resulting from approved Extra Work, Construction Orders, delays, or other cost over-runs, result in an Accumulative Cost greater than the original Project Amount identified in the PAL, the DOT, at its discretion, may issue a Supplemental PAL in order to fund these

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additional costs, provided that additional Funding is available.

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

(d) If during the course of the final audit the Municipality or DOT discovers that the Municipality expended Funding for improper or unauthorized costs or expenses, then the Municipality shall return the amount of such improper or unauthorized costs or expenses to the DOT and the DOT shall have all available remedies to it under the Agreement.

### 4.24 **Suspension, Postponement, or Termination of a Municipality-Administered Construction Project.**

(a) Suspension, Postponement, or Termination by the DOT.

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

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

(b) Termination by the Municipality, with prior DOT approval.

The Municipality may request termination of the Construction Project, and if determined by the DOT in its sole discretion to be in the best interests of the Parties, the DOT may approve the termination request by giving Official Notice to the Municipality specifying the extent to which performance of work under the PAL is terminated and the date upon which termination is effective.

(c) Funding of Acceptable Work. Upon suspension, postponement, or termination in accordance with subsection (a) or (b), upon request by the DOT, the Municipality shall promptly return the Funding disbursed prior to the effective date, in whole or in part in the amount determined by the DOT in its sole discretion giving consideration to the percentage balance of work not completed versus the acceptable work completed to the DOT's satisfaction as of the

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approved date of termination, suspension, or postponement. If the DOT, in its sole discretion, deems any of the work that the Municipality itself performed, or engaged a third party to perform on its behalf, to be unacceptable, then upon demand by the DOT, the Municipality shall promptly return, in whole or in part, to the DOT, the Funding that prior to the effective date of termination was disbursed to the Municipality to fund that unacceptable work.

(d) In the case of a Construction Project terminated by the Municipality without the DOT's prior approval, or terminated by the DOT for cause, and that Construction Project received no state government funding during its design phase, the Municipality shall pay for the costs of any DOT-provided services performed prior to termination, including but not limited to, DOT oversight services for the Construction Project. In such event, the DOT shall invoice, and within sixty (60) days, the Municipality shall promptly submit payment for the DOT-provided services. In the event the Municipality fails to timely submit payment, the DOT may pursue all remedies available under this Agreement, including but not limited to the right of set off in accordance with Article 22.

(f) Termination of a specific Construction Project shall not relieve the Municipality or its Prime Contractor, Inspection Consultant, or Consulting Engineer of its responsibilities for the work completed as of the termination date, nor shall it relieve the Municipality or any contractor or its surety or of its obligations concerning any claims arising out of the work performed on the Construction Project prior to the termination date or any obligations existing under bonds or insurance required by the Connecticut General Statutes or by this or any other agreement with the DOT or the Municipality.

**Article 5. DOT-Administered Construction Projects.** When the DOT is responsible for Administering the Construction Project, the sections of this Article 5 apply.

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

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

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

(c) the amount of the Demand Deposit(s) due to the DOT from the Municipality for the Municipality's proportionate share of applicable costs for work under the Construction Project; and

(d) the Project Amount.

**5.2 Engaging a Prime Contractor.** The DOT shall advertise the Construction Project, obtain bids for all Construction Project work and items to be supplied or constructed by the Prime Contractor, analyze all bids, and award a contract for the Construction Project, all of the foregoing in accordance with the Standard Specifications, DOT procedures, and if applicable, procedures that are acceptable to the federal government. Unless otherwise specified in the PAL, the DOT



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shall be responsible for providing, or engaging persons or entities to provide, any services required for the Construction Project, including but not limited to, Design Services During Construction and Inspection Activities, and for the procurement and oversight of those individuals or entities.

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

**5.4 Copies of Plans and Specifications.** Upon the completion of the design phase, prior to commencement of construction activities, the DOT shall provide the Municipality with copies of the plans and specifications regarding the Construction Project.

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

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

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

(1) The Municipality shall submit to the DOT the Voucher with supporting data, the cost of services rendered and expenses incurred for the billing period. Specifically, with respect to Design Services During Construction that are performed in-house by the Municipality's staff, the Municipality's reimbursable costs shall be limited to the actual payroll, fringe benefits associated with payroll, and approved direct cost charges for the staff's performance of Design Services During Construction.

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

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

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

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

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

### 5.9 **Suspension, Postponement, or Termination of a DOT-Administered Construction Project.**

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

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

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

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

## Article 6. Utilities and Highway Right-of-Way.

6.1 **Relocation.** Where the Construction Project requires readjustment or relocation of a utility facility in, or removal of a utility facility from, the state highway right-of-way or a Municipality-owned highway right-of way, the parties shall comply with the following provisions:

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

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the Municipality or by the DOT, and the Municipality shall take all necessary legal action to enforce compliance with the issuance of such order.

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

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

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

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

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

**6.3 Access to Right-of-Way.** With respect to any work on the Construction Project that requires access to the state highway right-of-way or Municipality-owned highway right-of way, the Party with jurisdiction over the applicable right-of-way is responsible for reviewing the request and granting to the Prime Contractor, the Inspection Consultant, or any subcontractor or subconsultant thereof, as applicable, the right to enter into, pass over and utilize the right-of-way in accordance with all applicable requirements on a case by case basis. Nothing in this section 5.3 shall be construed as waiving any requirements under State of Connecticut laws or regulations relating to access to the highway right-of way, including but not limited to, applying for and obtaining an encroachment permit.

### **Article 7. Responsibilities of the Parties for Transportation Facilities.**

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

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

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- (a) The Municipality assumes all responsibility for:
- (1) the proper maintenance and operation of all Municipality-owned Transportation Facilities and Transportation Amenities constructed as part of the Construction Project;
  - (2) the proper maintenance and operation of any Transportation Facilities and Transportation Amenities installed or constructed within the DOT-owned right-of-way as authorized in the PAL, unless otherwise agreed to in writing by the DOT. In order to fulfill this obligation, the Municipality shall comply with the process required by the DOT and obtain all required permissions prior to performing maintenance activities, including but not limited to obtaining an encroachment permit or entering into an encroachment agreement with the DOT, as may be required by the DOT. This obligation survives the expiration or earlier termination of the PAL or the Master Agreement.
  - (3) the proper maintenance and operation of all traffic control signals installed on Municipality-maintained roadways as part of the Construction Project, provided that a thirty (30) day operational test period, which commences upon the Prime Contractor's installation of the respective traffic control signal, has been completed to the satisfaction of the Party Administering the Construction Project. (The Party Administering the Construction Project shall require its Prime Contractor to assume responsibility for any operational issues during the thirty (30) day test period.) In the event that the completion of the Construction Project occurs prior to the satisfactory completion of the thirty (30) day test period, then the Municipality's assumption of responsibility with respect to the traffic control signal commences upon satisfactory completion of the thirty (30) day test period.
  - (4) the payment of energy costs for operation of all traffic control signals and illumination installed as part of the Construction Project when these traffic control signals and illumination are (1) entirely on Municipality-maintained roadways, or (2) at locations (such as an intersection) including at least one roadway for which the Municipality is responsible for maintaining; and
  - (5) enforcement of all applicable State of Connecticut and municipal traffic laws, ordinances and regulations with respect to the Transportation Facilities and Transportation Amenities constructed as part of the Construction Project.

(b) The DOT shall assume responsibility for the proper maintenance of DOT-owned Transportation Facilities, and Transportation Amenities constructed as part of the Construction Project, unless otherwise set forth in the PAL or agreed to in a separate written agreement entered into by the authorized representatives of the Parties.

**7.3 Failure to Fulfill Maintenance Responsibilities.** If the Municipality fails to fulfill the maintenance responsibilities set forth in subsections (a)(1) or (a)(2) of section 7.2, it may be disqualified, at the DOT's sole discretion, from participating in any future federal or state

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government funded Municipal Projects that impart maintenance responsibilities on the Municipality. Nothing in this section shall limit any other remedies that DOT may have under this Master Agreement or under the law.

### **Article 8. Responsibility for Costs.**

8.1 **Non-participating Items.** The DOT has sole discretion as to determining ineligibility of Construction Project items for Funding. Reasons for ineligibility may include, but not be limited to, the requirements of Federal statute or regulation, or exceeding a funding cap. With respect to Construction Projects that receive federal Funding, the Municipality is responsible for one hundred percent (100%) of the total cost of all Nonparticipating Item(s) and the cost of any Incidentals to Construction that are related to or associated with the Nonparticipating Item(s). The cost of such associated Incidentals to Construction will be determined as follows: A percentage will be derived from the ratio of the total Incidentals to Construction cost to the total contract items cost, as determined by a post-construction final audit, and this percentage will be multiplied by the total cost for the Non-participating Items. The final audit governs the determination of all contract item costs and the final billing to the Municipality for Non-participating Items. However, if the cost of the total Nonparticipating Items is less than ten percent (10%) of the cost of the total contract items, the DOT, at its sole discretion, may deem the cost of such associated Incidentals to Construction to be participating and eligible for Funding.

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

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

### **Article 9. Disbursement of Grant Funds; Conditions of Payment.**

9.1 **Method of Disbursement.** With respect to each Construction Project undertaken pursuant to this Master Agreement, the DOT shall disburse the Funding to the Municipality

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according to a method determined at the DOT's sole discretion, and in accordance with any applicable state or federal laws, regulations, and requirements.

9.2 **Funding Basis.** The Funding in the PAL will be provided to the Municipality by the DOT on a reimbursement or Grant basis, provided the Municipality is in compliance with the PAL and this Master Agreement.

9.2 **Federal Approvals Required.** The Municipality agrees that with respect to PALs that include federal participation in Funding, no PAL issued by the DOT is effective until all required federal approvals are received by the DOT for the Construction Project.

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

- (a) the DOT has no obligation to reimburse the Municipality for its expenses incurred;
- (b) to the extent any Funding already has been disbursed to the Municipality, the Municipality shall return any disbursed funds and any interest earned to-date to the DOT within ten (10) business days of receipt of a request from the DOT; and
- (c) the DOT may recover from the Municipality the DOT's costs for the DOT-provided Services performed on the Construction Project. Upon receipt of written demand from the DOT, the Municipality shall provide payment for the DOT-provided Services within thirty (30) days.

### **Article 10. Records and Audit.**

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

10.2 **Retention.** With respect to each Construction Project undertaken under this Master Agreement, the Municipality shall maintain and secure all records for a period of three (3) years after issuance of the Construction Project's Certification of Acceptance, or three (3) years after the final payment has been made to the Prime Contractor or the termination of any litigation related to the Construction Project, whichever is later or for such longer time as instructed by the DOT, the State of Connecticut and its agents, or the federal government.

### **Article 11. Conflict.**

11.1. **Conflict.** In case of a conflict between the provisions of any particular PAL, the Master Agreement, including its Schedules, or any specification, guide, manual, policy, document,

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

**11.2 Revisions to Manuals.** With respect to any guide, manual, policy, document, or other publication referenced throughout the Master Agreement and noted to be subject to revision throughout the Term of this Agreement by way of the phrase "as may be revised," for the particular Construction Project the Municipality agrees to comply with the version of the document or publication that is in effect on the date of the Written Acknowledgement of the PAL for the Construction Project. This section does not apply to the Standard Specifications.

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

### **Article 13. Term and Termination of the Master Agreement.**

**13.1 Term.** The Term commences on the Effective Date and continues for ten (10) years, unless terminated earlier in accordance with this Article. The Parties may agree to extend the Term for an additional two (2) years by the exchange of mutual written consent signed by an authorized representative of each Party.

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

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

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### 13.4 Effect on In-progress PALs.

(a) Upon expiration of the Term or the DOT's earlier termination for convenience of the Master Agreement, any issued PAL for a Construction Project that is still in-progress will remain in full force and effect and will continue through completion and final acceptance by the DOT of the respective Construction Project, and the Municipality shall be subject to all applicable terms and conditions of the PAL and this Master Agreement, unless the respective PAL is itself terminated in accordance with section 3.25 (for Municipality-Administered projects) or section 4.9 (for DOT-Administered Projects).

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

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

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

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

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

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

First Selectman  
Town of Wilton  
238 Danbury Road  
Wilton, Connecticut 06897;

14.2 Be delivered to the address recited herein in person, by electronic mail with acknowledgement of receipt, by United States Postal Service mail with return receipt requested by mail, electronic means, or any other methods of receiving the return receipt as identified by the Mailing Standards of the U.S. Postal Service, as may be revised, or by recognized overnight courier (that provides confirmation of delivery); and



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

### **Article 15. Insurance.**

#### **15.1 Minimum Limits of Coverage.**

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

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

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

(2) Automobile Liability Insurance with respect to the operation of all motor vehicles, including those hired or borrowed, used in connection with the Construction Project, providing for a total limit of One Million Dollars (\$1,000,000) per occurrence for all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all damages arising out of injury to or destruction of property in any one accident or occurrence, with the DOT being named an additional insured party. In cases where an insurance policy shows an aggregate limit as part of the automobile liability coverage, the aggregate limit must be at least Two Million Dollars (\$2,000,000);

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

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

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

(6) Professional Liability Insurance for errors and omissions in the minimum amount of Two Million Dollars (\$2,000,000), with the appropriate and proper endorsement to its Professional Liability Policy to cover the work performed by the Municipality, Inspection Consultant, or subconsultant, as applicable. The Municipality, Inspection Consultant, Consulting Engineer, or subconsultant shall, and shall continue this liability insurance coverage for a period of three (3) years from the date of acceptance of the completed design or work subject to the continued commercial availability of such insurance. It is understood that the above insurance may not include standard liability coverage for pollution or environmental impairment. However, the Municipality, Inspection Consultant, Consulting Engineer, or subconsultant shall acquire and maintain pollution and environmental impairment coverage as part of this

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Professional Liability Insurance, if such insurance is applicable to the work performed by the Municipality, Inspection Consultant, Consulting Engineer, or subconsultant under the PAL for the Construction Project.

(c) In the event the Municipality, Prime Contractor, subcontractor, Inspection Consultant, Consulting Engineer, or subconsultant, as applicable, secures excess/umbrella liability insurance to meet the minimum coverage requirements for Commercial General Liability or Automobile Liability Insurance coverage, the DOT must be named as an additional insured on that policy.

**15.2 Insurance Company Authorized Pursuant to State of Connecticut Law.** For each Construction Project, the required insurance coverage of the types and minimum limits as required by the Master Agreement must be provided by an insurance company or companies, with each company, or if it is a subsidiary then its parent company, authorized, pursuant to the Connecticut General Statutes, to write insurance coverage in the State of Connecticut and/or in the state in which it, or in which the parent company, is domiciled. In either case, the company must be authorized to underwrite the specific line coverage. Solely with respect to work performed directly and exclusively by the Municipality, the Municipality may request that the DOT accept coverage provided under a municipal self-insurance program as more particularly described in section 15.6.

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

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

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

### **15.6 Self-insurance.**

(a) With respect to activities performed directly and exclusively by the Municipality with Municipal forces or staff on a particular Construction Project, the Municipality may request

## Master Municipal Agreement for Construction Projects

that the DOT accept coverage provided under a self-insurance program in lieu of the specific insurance requirements set forth in section 15.1. The Municipality shall submit to the DOT a notarized statement, by an authorized representative:

- (1) certifying that the Municipality is self-insured;
  - (2) describing its financial condition and self-insured funding mechanism;
  - (3) specifying the process for filing a claim against the Municipality's self-insurance program, including the name, title and address of the person to be notified in the event of a claim; and
  - (4) agreeing to indemnify, defend and save harmless the State of Connecticut, its officials, agents, and employees from all claims, suits, actions, damages, and costs of every name and description resulting from, or arising out of, activities performed by the Municipality under the PAL issued for the Construction Project.
- (b) If requested by the DOT, the Municipality must provide any additional evidence of its status as a self-insured entity.
- (c) If the DOT, in its sole discretion, determines that such self-insurance program is acceptable, then the Municipality shall assume any and all claims as a self-insured entity.
- (d) If the DOT accepts a Municipality's particular self-insurance coverage, the Municipality will not be required to obtain from an insurance company the respective insurance requirement(s) displaced by that particular self-insurance coverage.
- (e) If the DOT does not approve the Municipality's request to provide coverage under a self-insurance program for the particular activities, the Municipality must comply with the respective insurance requirement(s) stated in the Master Agreement, including but not limited to, the type of coverage and minimum limits applicable to the coverage.

### **Article 16. Indemnification.**

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

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

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

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

16.2 With respect to Municipality-Administered Construction Projects, the Municipality agrees that it shall indemnify, defend and hold harmless, and it shall require the Municipality's Parties to indemnify, defend and save harmless, the State, and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Master Agreement and any PAL issued hereunder, including the acts of commission or omission (collectively, the "Acts") of the Municipality or the Municipality's Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts of the Municipality or the Municipality's Parties, or the Master Agreement and any PAL issued hereunder. The Municipality and the Municipality's Parties shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Municipality's and the Municipality's Parties' obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Municipality's or Municipality's Parties' bids, proposals or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance of this Master Agreement or any PAL issued hereunder.

16.3 With respect to DOT-Administered Construction Projects, the Municipality agrees to indemnify and hold harmless the State, its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with this Master Agreement and any PAL issued hereunder, including the acts of commission or omission (collectively, the "Acts") of the Municipality or the Municipality's Parties; and (2) liabilities, damages, losses, costs, and expenses including but not limited to, attorneys' and other professionals' fees, arising directly or indirectly, in connection with Claims, Acts of the Municipality or the Municipalities Parties this Master Agreement, and any PAL issued hereunder, including but not limited to, design errors or omissions and failures to make necessary arrangements for utility work.

16.4 The Municipality and the Municipality's Parties shall not be responsible for indemnifying or holding the DOT harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.

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

16.6 The Municipality's and the Municipality's Parties' duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Master

## **Master Municipal Agreement for Construction Projects**

Agreement and any PAL issued hereunder, without being lessened or compromised in any way, even where the Municipality and the Municipality's Parties are alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

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

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

### **Article 17. Sovereign Immunity.**

17.1 **No Waiver of the State's Immunities.** The parties acknowledge and agree that nothing in this Master Agreement or any PAL issued hereunder shall be construed as a modification, compromise or waiver by the DOT of any rights or defenses of any immunities provided by federal law or the laws of the State of Connecticut to the DOT or any of its officers and employees, which they may have had, now have or will have with respect to matters arising out of this Master Agreement. To the extent that this section conflicts with any other section, this section shall govern.

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

**Article 18. Amendment.** This Master Agreement may be amended by mutual written agreement signed by the authorized representative of each Party and approved by the Attorney General of the State of Connecticut, and upon receipt of any additional approvals required by law.

**Article 19. Severability.** If any provision of this Master Agreement or application thereof is held invalid, that invalidity shall not affect other provisions or applications of the Master Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Master Agreement are severable.

**Article 20. Waiver.** The failure on the part of the DOT to enforce any covenant or provision

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

**Article 21. Remedies are nonexclusive.** No right, power, remedy or privilege of the DOT shall be construed as being exhausted or discharged by the exercise thereof in one or more instances, and it is agreed that each and all of said rights, powers, remedies or privileges shall be deemed cumulative and additional and not in lieu or exclusive of any other right, power, remedy or privilege available to the DOT at law or in equity.

**Article 22. Right of Set Off.** In addition to other remedies available to the DOT, the DOT shall have the right to set-off against amounts otherwise due the Municipality under this Agreement, or under any other agreement that the Municipality has with the DOT, (a) any costs that the DOT incurs which are due to the Municipality's non-compliance with this Agreement which has continued, uncured, for more than thirty (30) days after receipt by the Municipality of written notice of such non-compliance from DOT, and (b) any other amounts that are due and payable from the Municipality to the DOT. Any sum taken in set-off from the Contractor shall be deemed to have been paid to the Contractor for purposes of the Municipality's payment obligations under § 49-41c of the Connecticut General Statutes.

### **Article 23. Electronic Signatures, Counterparts & Electronic Transmission**

23.1 This Agreement, and any PALs issued hereunder, may be executed by electronic signatures and such electronic signatures shall be deemed to be the original signatures of the Parties.

23.2 This Agreement, and any PALs hereunder, may be signed in counterpart copies, all of which taken together shall constitute but one and the same document and single binding agreement. The Parties agree that executed counterparts may be transmitted by electronic means and that such counterparts shall be treated as originally executed instruments.

**Article 24. Entire Agreement.** This Master Agreement constitutes, when fully executed and approved as indicated, the entire agreement between the parties and shall supersede all previous communications, representations, or agreements, either oral or written, between the Parties hereto with respect to the subject matter hereof; and no agreement or understanding varying or extending the same shall be binding upon either party hereto unless in writing signed by both parties hereto.

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

**STATE OF CONNECTICUT**  
**Department of Transportation**  
**Garrett Eucalitto, Commissioner**

By \_\_\_\_\_  
Scott Hill, P.E.  
Bureau Chief and Chief Engineer  
Bureau of Engineering and Construction

\_\_\_\_\_  
Date

**TOWN OF WILTON**

By \_\_\_\_\_  
Toni Boucher  
First Selectman

\_\_\_\_\_  
Date