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CITY OF DANBURY
OFFICE OF THE CORPORATION COUNSEL
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

January 27, 2014

City Council Members
City of Danbury
155 Deer Hill Avenue
Danbury, CT 06810

Re: Crosby Street over Padanaram Brook Bridge #04125

Dear City Council Members:

Please approve the attached Resolution authorizing Mayor Boughton to sign the Grant Agreement as the final step for the above project. The funding from the State is \$654,322.00 and the remaining funds for this project were approved as part of the Vision 2020 bond which passed in November 2012.

Should you have any questions, please contact the Engineering Division or our office. Thank you.

Sincerely,

Laszlo L. Pinter
Deputy Corporation Counsel

Attachments

cc: Farid Khouri, P.E. City Engineer

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RESOLUTION

CITY OF DANBURY, STATE OF CONNECTICUT

_____ A.D. 2014

RESOLVED BY THE CITY COUNCIL OF THE CITY OF DANBURY

Project Description:

Local Bridge Program

State Project No. 9034-4125

Crosby Street over Padanaram Brook - Bridge No. 04125

WHEREAS, Mark D. Boughton, Mayor of the City of Danbury, is authorized to sign the agreement "PROJECT GRANT AGREEMENT BETWEEN THE STATE OF CONNECTICUT AND THE CITY OF DANBURY UNDER THE LOCAL BRIDGE PROGRAM for Crosby Street Over Padanaram Brook, Bridge No. 04125.

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AGREEMENT No. _____

CORE ID No. _____

GRANT AGREEMENT
BETWEEN THE STATE OF CONNECTICUT AND THE
CITY OF DANBURY
UNDER THE LOCAL BRIDGE PROGRAM
FOR CROSBY STREET OVER PADANARAM BROOK, BRIDGE NO. 04125
STATE PROJECT NO. 9034-4125

THIS AGREEMENT, concluded at Newington, Connecticut, this _____ day of _____, _____, by and between the State of Connecticut, Department of Transportation, James Redeker, Commissioner, acting herein by Thomas A. Harley, Bureau Chief, Bureau of Engineering and Construction, duly authorized, hereinafter referred to as the "State", and the City of Danbury, a municipal corporation chartered under the laws of the State of Connecticut, having its principal place of business at City Hall, 155 Deer Hill Avenue, Danbury, CT 06810, acting herein by Mark D. Boughton, Mayor, hereunto duly authorized, hereinafter referred to as the "Municipality".

WITNESSETH, THAT

WHEREAS, Section 13a-175s of the Connecticut General Statutes, as amended by Public Act 13-239, provides for the making of grants by the State to municipalities to finance in part the removal, replacement, reconstruction, rehabilitation or improvement of local bridges;

WHEREAS, the Municipality has applied for a Grant from the State to finance in part the removal, replacement, reconstruction, rehabilitation or improvement of the Bridge (defined below); and

WHEREAS, the State has issued a commitment to fund such grant dated July 12, 2005.

NOW THEREFORE, KNOW YE THAT:

THE STATE AND THE MUNICIPALITY MUTUALLY AGREE:

Section 1. Definitions

Section 1.1. For the purposes of this Agreement, the following words and terms shall have the respective meanings set forth as follows:

"Audit" means the audit of Project Costs provided by the Municipality in accordance with Section 5.6 of this Agreement and reviewed by the State in accordance with Section 6 of this Agreement.

"Bridge" means the bridge or culvert owned in whole or in part by the Municipality and/or which the Municipality must maintain under a legal or contractual obligation located at Crosby Street over Padanaram Brook, Bridge No. 04125.

"Claims" means 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.

"Commissioner" means the Commissioner of the Connecticut Department of Transportation, or his designee.

"Event of Default" means an event of default specified in Section 7.1 of this Agreement.

"Grant" means the grant of Local Bridge Program funds to be made by the State to the Municipality pursuant to Section 2.1 of this Agreement to finance in part the Project.

"Municipality Parties" means the Municipality's officials, officers, managers, representatives, agents, 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 Agreement in any capacity.

"Project" means the removal, replacement, reconstruction, rehabilitation or improvement of the Bridge by the Municipality.

"Project Costs" means the costs of the Project determined by the Commissioner to be necessary and reasonable.

"Records" means all working papers and such other information and materials as may have been accumulated by the Municipality in performing the Agreement, 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.

"Supplemental Grant" means the additional grant of Local Bridge Program funds to be made by the State to the Municipality pursuant to Section 2.2 of this Agreement to finance in part the Project.

Section 2. The Grant

Section 2.1. The Grant Commitment. Subject to the terms and conditions of this Agreement, the State agrees to grant to the Municipality Six Hundred Fifty-four Thousand Three Hundred Twenty-two and 79/100 Dollars (\$654,322.79) (the "Grant") through the Office of the State Comptroller's Electronic Funds Transfer Automated Clearing House ACH (EFT) Program, or by check if the Municipality has not provided account information to receive payment by EFT. The State's obligation to make the Grant shall terminate one hundred eighty (180) days from the date of this Agreement unless the conditions precedent to funding the Grant set forth in Section 4 of this Agreement are satisfied by that date.

Section 2.2. The Supplemental Grant Commitment. Subject to the terms and conditions of this Agreement and provided the Grant is made and Project Costs exceed Two Million Sixty-six Thousand Sixty-five and 00/100 Dollars (\$2,066,065.00), the State may, at the discretion of the Commissioner, and provided that sufficient funds are available, grant to the Municipality a

Supplemental Grant in a sum not to exceed an amount equal to 31.67% of the Project Costs minus the Grant. Such Supplemental Grant shall be made in accordance with Section 6.1 of this Agreement.

Section 2.3. Required Repayment of the Grant. If the Audit reveals that the Project Costs are less than Two Million Sixty-six Thousand Sixty-five and 00/100 Dollars (\$2,066,065.00), the Municipality shall, as soon as practicable, but not later than ninety (90) days after the State notifies the Municipality of the results of the Audit, repay the Grant in an amount equal to the Grant minus 31.67% of the Project Costs.

Section 3. Warranties and Representations

The Municipality hereby represents and warrants to the State (which representations and warranties will survive the making of the Grant and the Supplemental Grant, if any) that:

Section 3.1. Existence and Power. The Municipality is, and, except as provided in Section 5.4 hereof, will continue to be, a body politic and corporate, validly existing under the laws of the State of Connecticut, and has the power to execute and deliver this Agreement.

Section 3.2. Authority. The execution and delivery by the Municipality of this Agreement have been duly authorized by the Municipality in conformity with all applicable laws, including its charter, if any, and no proceedings or authority for the execution and delivery of this Agreement have or has been repealed, rescinded or revoked.

Section 3.3. Validity. This Agreement, upon the execution and delivery thereof, will be a legal, valid, and binding obligation of the Municipality enforceable against it in accordance with its respective terms.

Section 3.4. Litigation. No litigation of any nature is now pending or, to the best of the Municipality's knowledge, threatened which would restrain or enjoin the execution or delivery of this Agreement, or in any manner questioning the authority or proceedings for the execution or delivery of this Agreement.

Section 3.5. Events of Default. No Event of Default specified in Section 7.1 hereof, and no event which with the lapse of time or the giving of notice or both would become an Event of Default, has occurred and is continuing.

Section 4. Conditions Precedent

The obligation of the State to make the Grant and any Supplemental Grant is subject to the following conditions precedent:

Section 4.1. Conditions Precedent Established By Regulation. Prior to making the Grant, the Municipality shall deliver to the State, if applicable:

- (a) Certified copies of all bids of contractors with respect to the Project;

- (b) Written justification for awarding the construction contract to any bidder other than the lowest bidder;
- (c) Evidence that the Municipality and the contractor have entered into a legally binding construction contract;
- (d) Evidence that the Municipality has available to it, or has made arrangements satisfactory to the Commissioner to obtain, funds to pay that portion of the Project Costs for which it is legally obligated and which are not met by the Grant; and
- (e) If the Bridge is owned or maintained by more than one municipality, evidence that all municipalities are legally bound to complete their respective portions of the Project.

Section 4.2. Proof of Municipal Action. Prior to the making of the Grant, the Municipality shall deliver to the State evidence of all municipal action taken by the Municipality to authorize the execution and delivery of the Agreement, certified by an authorized official of the Municipality, and such other papers and documents as the State may reasonably request.

Section 4.3. Opinion of Municipal Counsel. Prior to the making of the Grant, the Municipality shall deliver to the State a written opinion from its municipal counsel satisfactory to the State substantially in the form of Exhibit I attached hereto, to the effect that (a) the making and performance of the Municipality of this Agreement have been duly authorized by all necessary municipal action, and (b) this Agreement, upon execution and delivery, will constitute a legal, valid and binding obligation of the Municipality enforceable against it in accordance with its respective terms.

Section 4.4. Signature and No Litigation Certificate. Prior to the making of the Grant, the State shall have received from the Municipality a Signature and No Litigation Certificate substantially in the form of Exhibit II attached hereto.

Section 4.5. No Event of Default. No Event of Default and no event, which with the lapse of time or the giving of notice or both would become such an Event of Default, has occurred or is continuing.

Section 4.6. Representations and Warranties. The representations and warranties of the Municipality contained in Sections 3.1 through 3.5 hereof were on the date of this Agreement and remain on the date of the Grant and any Supplemental Grant true and correct.

Section 4.7. Insurance. The Municipality has provided the State with evidence that the Municipality or its contractor has obtained builder's risk insurance, or the Municipality maintains unrestricted reserves, complying with the requirements of Section 5.3 of this Agreement.

Section 4.8. Compliance with Federal and State Requirements. The Municipality shall at all times comply with all applicable Federal and State requirements pertaining to the Project.

Section 4.9. Electronic Funds Transfer. The Municipality shall complete the documentation required by the Office of the State Comptroller in order to participate in the

Electronic Funds Transfer ACH (EFT) Program, including designating a bank account into which the Grant can be deposited electronically.

THE MUNICIPALITY AGREES:

Section 5. Agreements of the Municipality

Section 5.1. Construction. (a) The Municipality will commence construction of the Project within thirty (30) days after the date of receipt of the Grant unless otherwise extended by the Commissioner; and (b) The Municipality will complete the Project in accordance with the final plans and specifications delivered to the State, no later than three (3) years from the date of this Agreement, unless otherwise extended by the Commissioner.

Section 5.2. Maintenance of Bridge. The Municipality will operate and maintain the Bridge properly after completion of the Project and will comply with all statutes, rules and regulations applicable to the operation of the Bridge. The covenant contained in this Section 5.2 shall survive the making of the Grant and any Supplemental Grant and will terminate ten (10) years from the date the Project is certified as being complete by the Municipality in accordance with Section 5.6 of this Agreement.

Section 5.3. Insurance. With respect to the operations the Municipality performs or engages a prime contractor to perform under the terms of this Agreement, and also those performed for the Municipality by subcontractors of the prime contractor, the Municipality will be required to carry, and shall ensure that its prime contractor and any subcontractor(s) performing work in conjunction with the Project shall carry, for the duration of this Agreement and any supplements thereto, with the State being named as an additional insured party for paragraphs (a) and (b) below, the following minimum insurance coverages at no direct cost to the State. In the event the Municipality secures excess/umbrella liability insurance to meet the minimum requirements specified in paragraphs (a) and/or (b) below, the State shall be named as an additional insured. Said coverages to be provided by an insurance company or companies satisfactory to the State; except that, with respect to work performed directly and exclusively by the Municipality, the Municipality may request the State to accept coverage provided under a municipal self-insurance program. If requested by the State, the Municipality shall provide evidence of its status as a self-insured entity and describe its financial condition, the self-insurance funding mechanism and the specific process of how to file a claim against the self-insurance program. If such self-insurance coverage is acceptable to the State, in its sole discretion, then the Municipality shall assume any and all claims as a self-insured entity, and the respective insurance requirements stated herein will not be applicable.

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

period, and

- b) The operation of all motor vehicles, including those hired or borrowed, used in connection with this Agreement shall be covered by Automobile Liability Insurance providing for a total limit of One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all damages arising out of injury to or destruction of property in any one accident or occurrence. In cases where an insurance policy shows an aggregate limit as part of the automobile liability coverage, the aggregate limit must be at least Two Million Dollars (\$2,000,000).
- c) 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.
- d) Until the Project is completed in accordance with Section 5.6 of this Agreement, builder's risk insurance in an amount not less than the amount of the Grant, or the Municipality shall maintain unrestricted reserves in an amount not less than the amount of the Grant.

The Municipality shall produce, within 5 business days, a copy or copies of all applicable insurance policies when requested by the State. In providing said policies, the Municipality may redact provisions of the policy that are proprietary. This provision shall survive the suspension, expiration or termination of this Agreement.

Section 5.4. Maintenance of Existence. The Municipality shall maintain its existence as a body politic and corporate, validly existing under the laws of the State; provided, however, that the Municipality may merge with or into another municipality so long as the surviving entity is a body politic and corporate validly existing under the laws of the State and such surviving municipality assumes all of the Municipality's obligations under this Agreement. The covenant contained in this Section 5.4 shall survive the making of the Grant and any Supplemental Grant and will terminate ten (10) years from the date the Project is certified as being complete in accordance with Section 5.6 of this Agreement.

Section 5.5. Use of Proceeds. The Municipality will use the proceeds of the Grant and the Supplemental Grant, if any, solely for the purpose of funding the Project.

Section 5.6. Completion of Project; Audit and Maintenance of Records. Upon completion of the Project, the Municipality shall certify to the State that the Project has been completed in accordance with the final plans and specifications for the Bridge delivered to the State. The municipality receiving federal funds must comply with the Federal Single Audit Act of 1984, P.L. 98-502 and the Amendments of 1996, P.L. 104-156. The municipality receiving state funds must comply with Connecticut General Statutes § 7-396a, and the State Single Audit Act, §§ 4-230 through 236 inclusive, and regulations promulgated thereunder. The Municipality also agrees that following completion of each full fiscal year during the term of this Agreement, it shall cause to be prepared and delivered to the State, an audit performed in accordance with the following requirements:

- a) **FEDERAL SINGLE AUDIT:** Each municipality that expends a total amount of Federal awards: 1) equal to or in excess of \$500,000 in any fiscal year shall have either a single audit made in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" or a program-specific audit (i.e. an audit of one federal program); 2) less than \$500,000 shall be exempt for such fiscal year.
- b) **STATE SINGLE AUDIT:** Each municipality that expends a total amount of State financial assistance: 1) equal to or in excess of \$300,000 in any fiscal year shall have an audit made in accordance with the State Single Audit Act, Connecticut General Statutes (C.G.S.) Sections 4-230 to 4-236, hereinafter referred to as the State Single Audit Act; 2) less than \$300,000 in any fiscal year shall be exempt for such fiscal year.

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

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

The audited municipality shall provide supplementary schedules with the following program/grant information: the program/grant number, CONNDOT project number, Federal project number, phase and expenditures by phase. The sum of project expenditures should agree, in total, to the program/grant expenditures in the Audit Reports. Federal and State programs/grants should be listed separately. (See attached schedule entitled "Supplementary Program Information" for format.)

Some programs/projects may have a "Matching" requirement, the matching portion of which must be met from local funds. Where matching requirements exist, the audit must cover the complete program/project, including all expenditures identified with or allocated to the particular program/project at the local level, whether the expenditures are from Federal, State or Local Funds.

Any differences between the project expenditures identified by the auditor and those amounts approved and/or paid by the Connecticut Department of Transportation must be reconciled and resolved immediately.

Except for those projects advertised by the State, the Municipality agrees that all fiscal records pertaining to the project shall be maintained for three (3) years after expiration or earlier termination of this Agreement or three (3) years after receipt of the final payment, whichever is later. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally and irrevocably resolved. These records shall include the contract, contractor's monthly and final estimates and invoices, construction orders, correspondence, field books, computations, contractor's payrolls, EEO/AA records/reports, and any other project related records. **Such records will be made available to the State, State Auditors of Public**

Accounts and/or Federal Auditors upon request. The audited municipality must obtain written approval from the Administrator of the Local Bridge Program for the Connecticut Department of Transportation prior to destruction of any records and/or documents pertinent to this Agreement.

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

The State, including the State Auditors of Public Accounts, reserves the right to audit or review any records/workpapers of the entity or municipality and the CPA pertaining to the Agreement.

Section 5.7. Administrative and Statutory Requirements. The Municipality shall comply with all the administrative and statutory requirements set forth in Exhibit III attached hereto and made a part hereof and agrees to be bound by the provisions therein contained.

Section 5.8. Indemnification.

(a) The Municipality shall indemnify, defend and hold 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 the Agreement, including the acts of commission or omission (collectively, the "Acts") of the Municipality or any Municipality Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Agreement. The Municipality shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Municipality's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Municipality's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance.

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

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

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

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

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

THE STATE AGREES:

Section 6. Agreements of the State

Section 6.1. Audit and Supplemental Grant. Upon receipt of the audit provided for in Section 5.6, the State will review the audit and notify the Municipality of the amount by which the Grant exceeds or is less than 31.67% of the Project Costs. In case the Grant is less than 31.67% of the Project Costs and the Commissioner in accordance with Section 2.2 has agreed to make a Supplemental Grant, then the State shall as soon as practicable after making such determination, make the Supplemental Grant, subject to the conditions precedent set forth in Sections 4.5, 4.6 and 4.8 of this Agreement.

THE STATE AND MUNICIPALITY FURTHER MUTUALLY AGREE:

Section 7. Defaults

Section 7.1. Events of Default. An Event of Default shall be deemed to exist under this Agreement upon the occurrence of any of the following events or conditions:

- (a) Failure by the Municipality to observe or perform any covenant contained in Sections 5.2, 5.3, 5.4, 5.5, 5.7, and 5.8 of this Agreement; or
- (b) Failure by the Municipality to observe or perform any covenant contained in Section 5.1 or 5.6 of this Agreement and the continuance thereof for a period of thirty (30) days unless the Municipality notifies the State in writing within such thirty (30) day period that for some reason beyond its control it is unable to commence or complete the Project, certify the Project as being complete or complete the Audit within the times provided in Sections 5.1 and 5.6, as the case may be, in which case no Event of Default shall occur if the Municipality is proceeding in good faith and with due diligence to commence or complete construction of the Project, provide certification of completion of the Project, or complete the Audit, as the case may be, but shall occur at the time the Municipality fails to so proceed; or
- (c) Any representation or warranty made by the Municipality herein, or any statement, certificate or other data furnished by the Municipality or any of its

agents in connection with the Project proves to be incorrect in any material respect as of the making or furnishing thereof; or

- (d) The Municipality shall: (1) apply for or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of any of its assets; (2) be unable, or admit in writing its inability to pay debts as they mature; (3) file or permit the filing of any petition, arrangement, reorganization, or the like under any insolvency or bankruptcy law, or the adjudication as a bankrupt, or the making of an assignment for the benefit of creditors, or the consenting to any form of arrangement for the satisfaction, settlement or delay of debt, or the appointment of a receiver for all or any part of its properties; or (4) take any action for the purposes of effecting any of the foregoing; or
- (e) The Municipality shall commence any proceeding to dissolve or be dissolved or cease to legally exist.

Section 7.2. Remedies. (a) If the Municipality fails to comply with its agreements contained in Sections 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, and 5.8, the State may declare that the Grant and Supplemental Grant are to be refunded by the Municipality to the State in which case the amount of the Grant and the Supplemental Grant shall be due and payable automatically without notice or demand of any kind, whereupon the same shall become forthwith due and payable.

(b) In addition to the remedy provided in subsection (a) of this Section 7.2, the State shall be entitled to injunctive relief upon the occurrence and continuance of a breach by the Municipality of any agreement contained in Section 5.2 of this Agreement, the parties recognizing that such breach shall result in irreparable injury to the State which does not have an adequate remedy at law.

Section 8. Miscellaneous

Section 8.1. Waivers. (a) The Municipality hereby waives diligence, presentment, demand, protest and notice of dishonor. (b) The State shall not be deemed to have waived any of its rights under this Agreement unless such waiver is in writing and signed by the State. No delay or omission on the part of the State in exercising any right under this Agreement shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion. The State may revoke a waiver previously granted to the Municipality and such revocation shall be effective whether given orally or in writing. All rights and remedies of the State under this Agreement shall be cumulative and may be exercised singularly or concurrently.

Section 8.2. Notices. It is mutually understood and agreed by the parties hereto that any "Official Notice" from one such party to the other such party, in order for such Notice to be binding thereon, shall:

- (a) Be in writing (hard copy) addressed to:
 1. When the State is to receive such Notice:

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

2. When the Municipality is to receive such notice:

The person(s) signing below on behalf of the Municipality at the address set forth on the first page hereof;

- (b) Be delivered in person with acknowledgement of receipt or be mailed by United States Postal Service "Certified Mail" to the address recited herein as being the address of the party to receive such Notice; and
- (c) Contain complete and accurate information in sufficient detail to properly and adequately identify and describe the subject matter thereof.

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

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

Section 8.3. Suspension or Debarment. Suspended or debarred contractors, municipalities, consulting engineers, suppliers, materialmen, lessors or other vendors may not submit proposals for a State contract or subcontract during the period of suspension or debarment regardless of their anticipated status at the time of contract award or commencement of work.

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

- 1. Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- 2. Has not, within the prescribed statutory time period preceding this Agreement, been convicted of or had a civil judgment rendered against him/her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of

embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- 3. Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)2 of this certification; and
- 4. Has not, within a five-year period preceding this Agreement, had one or more public transactions (Federal, State or local) terminated for cause or default.

(b) Where the Municipality is unable to certify to any of the statements in this certification, the Municipality shall attach an explanation to this Agreement.

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

- 1. The prospective subcontractors, sub-subcontractors participant(s) certify, by submission of its/their proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2. Where the prospective subcontractors, sub-subcontractors participant(s) are unable to certify to any of the statements in this certification, such prospective participant(s) shall attach an explanation to this proposal.

Section 8.4. Expenses. The Municipality will pay all reasonable expenses of the State arising out of the enforcement of this Agreement (including, without limitation, reasonable counsel fees).

Section 8.5. Litigation. The Municipality agrees that the sole and exclusive means for the presentation of any claim against the State arising from or in connection with this Agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims against the State) and the Municipality further agrees not to initiate legal proceedings in any State or Federal Court in addition to, or in lieu of, said Chapter 53 proceedings.

Section 8.6. Survival of Representations, Warranties and Covenants. Except as otherwise provided herein, all representations, warranties, covenants and agreements contained in this Agreement or made in writing in connection with this Agreement, shall survive the execution and delivery of this Agreement and shall continue in full force and effect until all amounts payable on account of this Agreement shall have been paid in full and this Agreement shall have terminated.

Section 8.7. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Municipality, the State and their respective successors. Except as otherwise provided herein, the rights and obligations hereunder may not be assigned to any other party by either the State or the Municipality.

Section 8.8. Waiver of Governmental Immunity. 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 State, at law or in equity, under this Agreement, including, but not limited to, those relating to damages.

Section 8.9. Incorporation of Other Documents. The Municipality's Local Bridge Program Preliminary Application and Supplemental Application(s) filed with the Commissioner in connection with the Project are incorporated herein and made a part hereof as if they were fully set forth herein.

Section 8.10. Jurisdiction and Forum. The parties deem this Agreement to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Municipality waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

Section 8.11. Non-waiver of State's Immunities. The parties acknowledge and agree that nothing in this Agreement shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Agreement. To the extent that this section conflicts with any other section, this section shall govern.

7-15

AGREEMENT No. _____

CORE ID No. _____

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be duly executed as of the day and year first above written.

Witnesses:

STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
James Redeker, Commissioner

Name:

By _____ (Seal)
Thomas A. Harley, P.E.
Bureau Chief
Bureau of Engineering and Construction

Name:

Date: _____

Witnesses:

MUNICIPALITY
CITY OF DANBURY, CONNECTICUT

Name:

By _____ (Seal)
Mark D. Boughton
Mayor

Name:

Date: _____

Approved as to Form:

Attorney General
State of Connecticut

Date: _____