

EAST LYME BOARD OF SELECTMEN
REGULAR MEETING OF DECEMBER 20, 2023
EAST LYME TOWN HALL UPPER MEETING ROOM
7:00 p.m.

AGENDA

1. a) Call Meeting to Order and Pledge of Allegiance
b) Additional Agenda & Consent Calendar Items
c) Delegations
d) Approval of Minutes – Regular Meeting of December 6, 2023
e) Consent Calendar
2. Old Business
 - a) Discussion and Possible Action - Cini Dock Fishing Leases Subcommittee
 - b) Discussion and Possible Action – CTDOT Master Municipal Agreement
3. New Business
 - a) Presentation from Parks & Recreation – Darrow Pond
 - b) Adopt 2022 Hazard Mitigation and Climate Adaptation Plan
 - c) Appoint BOS Members to meet with Non-Affiliated Group Representatives
 - d) Appointments to Boards and Commissions
4. a) Ex-Officio Reports
b) First Selectman’s Report
5. Communications
6. Public Comment
7. Selectman’s Response
8. Adjourn

RECEIVED FOR RECORD
EAST LYME, CT
2023 DEC 14 P 4:45
COURTNEY M. BROWN
TOWN CLERK

EAST LYME BOARD OF SELECTMEN
REGULAR MEETING MINUTES
DECEMBER 6, 2023

IN ATTENDANCE: Dan Cunningham, Ann Cicchiello, Rose Ann Hardy, Candice Carlson, Don MacKenzie and Jason Deeble

ALSO IN ATTENDANCE: Town Attorney Tracy Collins

Mr. Cunningham called the regular meeting of the East Lyme Board of Selectmen to order at 7:00 p.m. and Mr. Paul "Wally" Christensen led the Pledge of Allegiance.

1b. Additional Agenda & Consent Items

There were none.

1c. Delegations

There were none.

1d. Approve Minutes

MOTION (1)

Ms. Cicchiello MOVED to approve the special meeting minutes of November 14, 2023, submitted.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (2)

Ms. Cicchiello MOVED to approve the public hearing minutes of November 15, 2023, as submitted.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (3)

Ms. Cicchiello MOVED to approve the regular meeting minutes of November 15, 2023, as submitted.

Seconded by Ms. Carlson. Motion passed 6-0.

1e. Consent Calendar

MOTION (4)

Ms. Cicchiello MOVED to approve the Consent Calendar for December 6, 2023, in the amount of \$5,849.52.

Seconded by Ms. Carlson. Motion passed 6-0.

1f. East Lyme High School Boys Soccer Team

Coach Paul "Wally" Christensen, Assistant Coach Jeff Handler, and members of the boys high school soccer team were present, and all introduced themselves to the Board. Congratulations to the boys on this year's win! Coach Christensen thanked the Town, the parents, the school and the community for all of the support the kids receive.

2a. Cini Dock Fishing Leases Subcommittee

MOTION (5)

Ms. Cicchiello MOVED to appoint Jason Deeble, Don MacKenzie and Rose Ann Hardy to the Cini Dock Fishing Lease Subcommittee.

Seconded by Ms. Carlson. Motion passed 6-0.

RECEIVED FOR RECORDS
EAST LYME, CT
2023 DEC 12 P 1:52
Candice Carlson
TOWN CLERK

3a. Deputy First Selectman

MOTION (6)

Mr. Deeble **MOVED** to appoint Ann Cicchiello, 11 Village Drive, East Lyme to serve as the Deputy First Selectman with a term to expire on December 1, 2025.

Seconded by Ms. Carlson. Motion passed 6-0.

3b. 2nd Deputy First Selectman

MOTION (7)

Ms. Cicchiello **MOVED** to appoint Jason Deeble, 5 MacKinnon Place, East Lyme, as 2nd Deputy First Selectman with a term to expire on December 1, 2025.

Seconded by Mr. Cunningham. Motion passed 6-0.

3c. CT DOT Master Municipal Agreement

This item is tabled to the next regular meeting.

3d. 2023 DESPP Homeland Security Grant

MOTION (8)

Ms. Cicchiello **MOVED** the following:

RESOLVED, that the Board of Selectmen may enter into with and deliver to the State of Connecticut Department of Emergency Services and Public Protection, Division of Emergency Management and Homeland Security, any and all documents which it deems to be necessary or appropriate; and

FURTHER RESOLVED, that Daniel R. Cunningham, as First Selectman of the Town of East Lyme, is authorized and directed to execute and deliver any and all documents on behalf of the Board of Selectmen and to do and perform all acts and things which he deems to be necessary or appropriate to carry out the terms of such documents.

The undersigned further certifies that Daniel R. Cunningham now holds the office of First Selectman and that he has held that office since December 4, 2023.

Seconded by Ms. Carlson. Motion passed 6-0.

3e. Ex-Officio Appointments

MOTION (9)

Ms. Cicchiello **MOVED** to approve the 2024/2025 Ex-Officio list of assignments, as submitted and attached hereto as Exhibit 1.

Seconded by Ms. Hardy. Motion passed 6-0.

3f. Appointments

MOTION (10)

Ms. Cicchiello **MOVED** to appoint Michelle Royce Williams, 2 Barrett Drive, Niantic, to serve as a Member on the Water & Sewer Commission on behalf of the Town of East Lyme with a term to expire on January 5, 2026.

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (11)

Ms. Cicchiello **MOVED** to appoint Justin Porter, Deputy Public Works Director, as the Alternate SCRRA Representative for the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (12)

Ms. Hardy **MOVED** to appoint the following people to serve as Members on the Commission on Aging on behalf of the Town of East Lyme with a term to expire on January 3, 2028:

Ilene Harris, 27 Stoneywood Drive, Niantic

Mike Bekech, 84 Hope Street, Niantic

Joseph Palazzo, 43 Sleepy Hollow Road, Niantic

Joan Bengtson, 67 Walnut Hill Road, East Lyme

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (13)

Ms. Cicchiello **MOVED** to appoint Michael Meinz, 1 Goldfinch Terrace, East Lyme, to serve as a Member on the Cable TV Advisory Council of Eastern Connecticut on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (14)

Ms. Hardy **MOVED** to appoint the following people to serve as Members on the Commission for Conservation of Natural Resources on behalf of the Town of East Lyme with a term to expire on January 3, 2028:

Harvey Beeman, 11 Green Valley Lakes Road, East Lyme

Penelope Howell-Heller, 61 E. Pattagansett Road, Niantic

Stephen Dinsmore, 57 Chesterfield Road, East Lyme

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (15)

Ms. Cicchiello **MOVED** to appoint Michael Finkelstein, East Lyme Police Department, as the Emergency Management Director for the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (16)

Ms. Cicchiello **MOVED** to appoint Julie Wilson, East Lyme Emergency Management, as the Emergency Management Deputy Director for the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (17)

Ms. Cicchiello **MOVED** to appoint Nicholas Menapace, 38 Hope Street, Unit 97, Niantic, to serve as an Alternate Member on the Historic Properties Commission on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Mr. Deeble. Motion passed 6-0.

MOTION (18)

Ms. Cicchiello **MOVED** to appoint Donna Massung, 68 Dean Road, East Lyme, to serve as an Alternate Member on the Historic Properties Commission on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (19)

Ms. Cicchiello **MOVED** to appoint Mark Christensen, 66 Grassy Hill Road, East Lyme, to serve as a Member on the Historic Properties Commission on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (20)

Ms. Cicchiello **MOVED** to appoint Anthony Attanasio, 97 West Main Street, Niantic, to serve as a Member on the Historic Properties Commission on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (21)

Ms. Cicchiello **MOVED** to appoint Leonard Salter, 3 Pepperidge Lane, East Lyme, to serve as a Member on the Inland Wetlands Agency on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (22)

Ms. Cicchiello **MOVED** to appoint Doreen Rhein, 5 Irvingdell Place, East Lyme, to serve as a Member on the Inland Wetlands Agency on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (23)

Ms. Cicchiello **MOVED** to appoint Phyllis Berger, 32 W. Pattagansett Road, Niantic, to serve as a Member on the Inland Wetlands Agency on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (24)

Ms. Cicchiello **MOVED** to appoint Donald Phimister, 18 Latimer Drive, East Lyme, to serve as a Member on the Inland Wetlands Agency on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (25)

Ms. Cicchiello **MOVED** to appoint Eric Kanter, 27 Wells Street, Niantic, to serve as a Member on the East Lyme Harbor Management Shellfish Commission on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Mr. MacKenzie. Motion passed 6-0.

MOTION (26)

Ms. Cicchiello **MOVED** to appoint Stephen Dinsmore, 57 Chesterfield Road, East Lyme, to serve as a Member on the East Lyme Harbor Management Shellfish Commission on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (27)

Ms. Cicchiello **MOVED** to appoint Donald Landers, Jr., 3 Beach Avenue, Niantic, to serve as a Member on the East Lyme Harbor Management Shellfish Commission on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Mr. MacKenzie. Motion passed 6-0.

MOTION (28)

Ms. Cicchiello **MOVED** to appoint Michael Strube, 13 Bayview Avenue, Niantic, to serve as an Alternate Member on the Zoning Board of Appeals on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (29)

Ms. Cicchiello **MOVED** to appoint Steven Carpenteri, 25 Harvest Glen, East Lyme, to serve as a Member on the Zoning Board of Appeals on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Hardy. Motion passed 6-0.

MOTION (30)

Ms. Cicchiello **MOVED** to appoint Kevin Mace, 25 Pattagansett Drive, East Lyme, to serve as a Member on the Zoning Board of Appeals on behalf of the Town of East Lyme with a term to expire on January 3, 2028.

Seconded by Ms. Carlson. Motion passed 6-0.

3g. Authorize First Selectman to Sign Check Registers

MOTION (31)

Ms. Cicchiello **MOVED** that the Board of Selectmen delegates to the First Selectman, Daniel Cunningham, and upon the absence or disability of the First Selectman, to the Deputy First Selectman, Ann Cicchiello, the Board's obligation to sign the orders of the Board of Selectmen on the Town Treasury for payment of regularly budgeted expenses of the Town, with exception of those of a capital nature over \$50,000 where bids are required; and further that the signed orders, covering the period subsequent to the previous regular meeting of the Board, be presented at each regular meeting of the Board for review.

In the absence of the First Selectman and his Deputy, the First Selectman may delegate the obligation to sign the orders of the Board of Selectmen to the Second Deputy First Selectman for payment of the expenses of the Town.

Seconded by Ms. Carlson. Motion passed 6-0.

3h. Authorize First Selectman to Sign Grant Applications

MOTION (32)

Ms. Cicchiello **MOVED** that the First Selectman is hereby authorized and directed to sign all grant applications and execute and deliver any and all documents on behalf of the Town of East Lyme for Fiscal Year 23/24 through Fiscal Year 24/25, and to do and perform all acts and things which he or she deems necessary or appropriate to carry out the terms of such documents, including but not limited to executing and delivering all applications contemplated by such documents.

Seconded by Ms. Carlson. Motion passed 6-0.

3i. Board of Selectmen Code of Ethics
Tabled to next meeting.

3j. Amend Charge for STR Subcommittee

DISCUSSION: Mr. Cunningham explained that the subcommittee was created with two board members appointed to it; Anne Santoro from the Board of Selectmen and Anne Thurlow from the Zoning Commission. It is in the best interest of the subcommittee and the work they are doing to keep those members in place even though they are no longer on said board. It was decided that both Ms. Santoro and Ms. Thurlow will remain on the subcommittee as members, and that a member of the Board of Selectmen will be appointed as an ex-officio member, and that the charge be amended as such.

MOTION (33)

Mr. Deeble **MOVED** to accept the amended Charge for the Short-Term Rentals Subcommittee. Attached hereto as Exhibit 2.

Seconded by Ms. Carlson. Motion passed 6-0.

MOTION (34)

Mr. Cunningham **MOVED** to appoint Candice Carlson as the Board of Selectmen Ex-Officio Member to the Short-Term Rentals Subcommittee.

Seconded by Ms. Cicchiello. Motion passed 6-0.

4a. Ex-Officio Reports

Mr. Deeble Reported:

- The Board of Education showcased the following students; one student for her device that detects gas leaks, which is now in a collection in a museum in London; and a 6th grade student whose story was recently published, *The Crystal Quest*.
- Five-year contract granted for a collaboration with Stars to STEM.
- There was a discussion on how to appoint members to the board; a special meeting will be held on December 14th for further discussion.

Ms. Carlson Reported:

- From the Board of Education meeting, the Viking Valor Award was awarded to Lillie B. Haynes teacher, Alicia Rose.

Ms. Cicchiello Reported:

- At the Inland Wetlands meeting, a number of cease-and-desist orders were issued.
- A public hearing will be scheduled for an application on Overbrook Road.

4b. First Selectman's Report

Mr. Cunningham Reported:

- He attended a workshop at Camp Nett, hosted by SCRRA regarding future challenges anticipated with disposal of waste and refuse. They have some initiatives coming up that will help to educate our community on how we can do things differently to help solve this problem.
- He met with the DOT and the construction engineering firm, GM2, for a meet and greet to become familiar with this ongoing project. Mr. Cunningham encourages the public to check out the DOT project website for some great information at www.i-95eastlyme.com.
- Nlantic Jingle Bell 5K is this Saturday morning starting at McCook's at 10am; registration opens at 8am.
- The annual Light Parade will be held on Saturday evening from 6-8; roads will be closed at 5pm.

5. Communications

There were none.

6. Public Comments

There were none.

7. Selectman's Response

There was none.

MOTION (35)

Ms. Cicchiello **MOVED** to adjourn the December 6, 2023, regular meeting of the Board of Selectmen at 7:50 p.m.

Seconded by Ms. Carlson. Motion passed 6-0.

Respectfully Submitted,



Sandra Anderson
Recording Secretary

Exhibit 1

Town of



East Lyme

108 Pennsylvania Ave.
P.O. Drawer 519

Niantic, Connecticut 06357
Phone: (860) 739-6931
Fax: (860) 739-6930

TO: Board of Selectmen
DATE: December 6, 2023
RE: Board of Selectmen Ex-Officio Assignments 2024/2025

Dan Cunningham
Board of Finance
Police Commission
Water & Sewer

2nd Wed.
2nd Thurs.
4th Tues.

Candice Carlson
Parks and Rec
Youth Services
Historic Properties

2nd Thurs.
2nd Thurs.
1st Tues.

Don MacKenzie
WELSCO
Planning Comm.

3rd Thurs.
2nd Tues.

Jason Deeble
Brookside Farm Museum
Town Building
Harbor Mgt.

4th Weds.
See Schedule
3rd Tues.

Ann Cicchiello
Inland Wetlands
Library

1st Tues.
See Schedule

Rose Ann Hardy
Zoning Commission
Comm. On Aging
Comm. Natural Resources

1st & 3rd Thurs.
2nd Mon.
2nd Wed.

Board of Education rotation as follows:
2nd and 4th Monday @ 6pm

January and July – Dan Cunningham
February and August – Ann Cicchiello
March and September – Don MacKenzie
April and October – Rose Ann Hardy
May and November – Jason Deeble
June and December – Candice Carlson

Exhibit 2

Board of
Selectmen

DEC 08 2011

Agenda Item
3J

REVISED CHARGE TO THE AD HOC SHORT TERM RENTAL COMMITTEE

Whereas, the Town of East Lyme is aware that the rental of residential properties on short term basis as a matter of concern to many East Lyme residents, and

Whereas, the Board of Selectmen wishes to investigate the issue of short-term rentals to determine whether and to what extent they may be regulated, if there exists a need in East Lyme to regulate such practices and any other related issues.

Therefore, the Board of Selectmen hereby establishes the Ad Hoc Short-Term Rental Committee and requests that conduct its business as follows:

1. The Committee shall be comprised of eight (8) members at large, each one being a resident elector of East Lyme. The composition of the Committee will comply with the minority representation statute. Five (5) members shall constitute a quorum. All members shall be recommended and appointed by the Board of Selectmen. A representative of the Board of Selectmen shall serve as a non-voting, ex officio member of the Committee.
2. The Committee shall conduct its business in accordance with all laws and regulations governing the actions of municipal agencies, including the requirements of the Freedom of Information Act.
3. The Committee shall conduct at least two (2) public hearings to receive comments and input from East Lyme residents. The first shall be early in the process and the second one shall be held prior to the report of recommendations to be given to the Board of Selectmen.
4. The Committee shall report its findings and any recommendations to the Board of Selectmen no later than 90 days after its first meeting, and the Committee may request additional time if necessary.
5. Any Committee member who has a financial interest in a short-term rental shall disclose same at the first meeting of the Committee.

- Anne Santoro, R, Co-Chair
- Gary Cicchjello, D, At-Large, Co-Chair
- Anne Thurlow, U,
- Dan Beachy, D, Crescent Beach Association
- John Cellino, U, Black Point Beach Association
- Gary Farrugia, U, Saunders Point
- Paul Formica, R, President, Giant's Neck Beach Association
- Greg McIntire, D., Oak Grove Beach Association

Pos Ex-Officio Member
Cardice Carlson

Request for Board of Selectmen Action

TO: Board of Selectmen
FROM: Joe Bragaw – Director of Public Works
CC: Kevin Seery – Current First Selectman
Dan Cunningham – First Selectman Elect

DATE: December 1, 2023

SUBJECT: CTDOT Master Municipal Agreement for Construction Projects

Summary of Agenda Item:

The Connecticut Department of Transportation requires each Town in the State of Connecticut to sign a Master Municipal Agreement for Construction Projects that explains the Town and State responsibilities with regards to CTDOT administered construction projects. The last time our First Selectman signed this agreement was in 2014 and now the CTDOT has revised the document and is looking for the First Selectman to sign again. Although it is a standard document that the State is not looking for each Town to amend, I have reviewed the new document with respect to the old document and don't see any reason why the First Selectman can't sign the document as presented. In my opinion, the Board should vote to authorize the First Selectman to sign the document.

Action Needed:

MOVE to approve a resolution authorizing First Selectman Dan Cunningham to sign an agreement with the CT DOT entitled "Master Municipal Agreement for Construction Projects".

Attachments:

- **Draft Resolution**

Sandi Anderson

From: Maura, Denise <Denise.Maura@ct.gov>
Sent: Monday, November 20, 2023 1:02 PM
To: Dan Cunningham; Sandi Anderson
Cc: Hayward, Hugh H
Subject: Master Municipal Agreement for Construction Projects - East Lyme
Attachments: MMAC-East Lyme.pdf; East Lyme_201402240738.pdf

You don't often get email from denise.maura@ct.gov. [Learn why this is important](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

On behalf of the Connecticut Department of Transportation (CTDOT), and pursuant to recent discussions between CTDOT and Municipality representatives, attached for the Municipality's review and signature, please find the revised Master Municipal Agreement for Construction Projects (Agreement/MMAC). This revised ten-year term Agreement is intended to replace the previously consummated MMAC, which was executed between CTDOT and the Municipality in February, 2024. Over the last ten years, the original MMAC, combined with specific Project Authorization Letters (PALs), has fundamentally streamlined, and improved how the CTDOT does project level business with the municipalities in Connecticut.

The revised ten-year term MMAC covers both municipally advertised construction projects, as well as projects advertised by the CTDOT on behalf of municipalities. Since the requirements differ, depending on who advertises and awards the construction contract, this MMAC is designed to address each scenario. The MMAC includes standard terms, conditions, and contracting "boiler plate" language that should generally govern all municipal construction projects involving the CTDOT, which are undertaken throughout the ten-year term.

Since the original MMAC was consummated ten years ago, the CTDOT's business practices have evolved to include many grant-type construction projects. The revised MMAC contains a new Article (4) specifically tailored to the administration of these more streamlined, typically State funded, grant-type construction projects. In addition, the revised MMAC includes various updated State and Federal-required provisions that were a part of the originally executed MMAC.

The existing MMAC, a copy of which is attached for reference, is set to expire on February 10, 2024. As such, any efforts on the part of the Municipality to expedite the review and approval of the revised MMAC would be greatly appreciated.

Please be informed that CTDOT no longer requires municipalities to obtain and provide a formal resolution which authorizes the First Elected Official or Municipal Administrator to sign a Master Agreement or Amendment thereto. However, each Municipality should adhere to its respective bylaws and established procedures in this regard. If it is necessary to present the revised MMAC to a Board of Alders or Selectmen before it can be signed, CTDOT requests that you please inform us of this and advise as to the anticipated meeting date.

At the Municipality's discretion, the revised MMAC may be signed digitally (preferred) or printed and signed manually, but CTDOT only requires a scanned (PDF) version of the signed document. It is no longer necessary to send a hard copy via USPS. Upon receipt of the Municipality's signature, CTDOT will countersign and a copy of the fully executed revised MMAC will be provided back to the Municipality.

Should there be any questions or concerns, please do not hesitate to contact Mr. Hugh Hayward at Hugh.Hayward@ct.gov so that he can coordinate with the necessary parties to achieve a prompt resolution.

Thank you for your cooperation in this matter.

Regards,

Denise Maura
Administrative Assistant
to the Division Chief
Division of Highway Design

Connecticut Department of Transportation
P.O. Box 317546
Newington, CT 06131-7546
denise.maura@ct.gov

RESOLUTION

Resolved, that the Honorable Dan Cunningham, First Selectman, is hereby authorized to sign the agreement entitled "Master Municipal Agreement for Construction Projects

**ADOPTED BY THE BOARD OF SELECTMAN OF THE TOWN OF EAST LYME,
CONNECTICUT, THIS 6TH DAY OF DECEMBER 2023.**

TOWN CLERK _____

DATE _____

**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 East Lyme, 108 Pennsylvania Avenue, PO Box 519, Niantic, Connecticut 06357 (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

Master Municipal Agreement for Construction Projects

the Construction Project.

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

Master Municipal Agreement for Construction Projects

establishment, Class A concrete, traffic person services, mobilization, and clearing and grubbing within the Construction Project limits.

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.

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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 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

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specified period of time.

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

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with respect to the Construction Project. Additional required steps and approvals are set forth in this Agreement.

2.2 Written Acknowledgement of the PAL. In order for the PAL to become effective and binding on both parties, the Municipality must return to the DOT a copy of the PAL signed by the Designated Official, hereinafter referred to as the “Written Acknowledgement of the PAL,” which serves to acknowledge the Municipality’s receipt of the PAL and confirm that the Municipality will undertake the particular Construction Project in accordance with the PAL and this Master Agreement). The Municipality shall submit the Written Acknowledgement of the PAL to the 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 East Lyme 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,

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and the Supplemental PAL will supersede the previously-issued PAL for the Construction Project 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 to 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

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forth, at a minimum:

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

(b) the maximum reimbursement 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

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the DOT.

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.

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3.4 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 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

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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 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

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

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

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

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

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

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employee of the Municipality to be in responsible charge of the Construction Project in accordance with 23 CFR § 635.105(c)(4), as may be revised.

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

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

3.11 Inadequate Administration. If, at any time during the Construction Project, the DOT determines that the Administration by the Municipality is not adequate, it may be deemed a breach by the Municipality, as determined by the DOT in its sole discretion, and the DOT may assume responsibility for, or supplement, the Administration of the Construction Project, at its sole discretion. The additional costs associated with the DOT's Administration of the Construction Project will be considered part of the Construction Project costs for DOT-provided Services and will be funded in accordance with the proportionate cost sharing set forth in the PAL. 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.

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

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

(a) The Municipality agrees to include the assigned DBE goal, SBE goal, or SBPPP goal, as applicable, and associated requirements, set forth in the PAL, as requirements within any contract the Municipality enters into with its Prime Contractor, and, if applicable, its Inspection Consultant, and to require its Prime Contractor and, if applicable, its Inspection Consultant, to comply with the current version of the "Special Provision, Disadvantaged Business Enterprises" (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

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requirements including but not limited to 40 USC §§ 1101-1104, 23 USC § 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

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Master Agreement. The Municipality shall incorporate by reference these publications and all 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

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or rented equipment will be based on an existing municipal audit, if available, completed no more than three (3) years before acknowledgment of the PAL, and provided the rates are acceptable to the 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

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in the Municipality Manual.

(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

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DOT.

3.24 Semi-Final and Final Inspections.

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

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

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receiving federal participation in Funding, receipt of written concurrence from FHWA (or other applicable federal authority) may be required prior to the DOT's approval of the request.

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

(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

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other applicable federal authority), the DOT or federal Funding that prior to the effective date of termination was disbursed to the Municipality to fund that unacceptable work.

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

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

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the work under the Construction Project.

(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

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requirements on any bidder, Prime Contractor, or Inspection Consultant, unless it has received 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 East Lyme
108 Pennsylvania Avenue
P.O. Box 519
Niantic, Connecticut 06357;

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.

Master Municipal Agreement for Construction Projects

(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

Master Municipal Agreement for Construction Projects

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.

Agreement No.: 11.15-04(23)
CORE I.D.: 24DOT0165AA

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 EAST LYME

By _____
Daniel R. Cunningham
First Selectman

_____ Date

Schedule A
PAL Template

[Addressee – Designated Municipal Official]

Local Roads

Dear [Addressee – Designated Municipal Official]:

Subject: Project Authorization Letter
For the [Project Description] (Construction Project)
Unique Entity Identifier (UEI) No.
State Project No.
Federal Project No.
Master Agreement No.
CORE ID No.
City/Town of

The State of Connecticut Department of Transportation (DOT) and the [City/ Town] of [NAME OF CITY/TOWN] (Municipality) entered into the Master Municipal Agreement for Construction Projects (Master Agreement) noted above. This Project Authorization Letter (PAL) is issued pursuant to the Master Agreement. The capitalized terms used in this PAL are the same as those used in the Master Agreement.

The [DOT/Municipality] is responsible for the Administration of the Construction Project.

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

Funding for the Construction Project is provided under [identify the Federal and or State program and associated funding ratio between F/S/T] and payment will be on a reimbursement basis. The maximum reimbursement to the Municipality under this PAL is \$[ENTER AMOUNT] dollars. In addition, any reimbursement for actual expenditures will be in accordance with the terms of the Master Agreement. Costs contained in this PAL shall not be exceeded without first obtaining written permission from the DOT. Enclosed is an estimated engineering cost break down for construction project activities. A Demand Deposit in the amount of \$[ENTER AMOUNT or \$0] dollars is due to the DOT. Upon the DOT's receipt of the Municipality's concurrence on the Written Acknowledgement of the PAL, the DOT's Revenue Accounting unit will send an invoice to the Municipality for the Demand Deposit.

In accordance with the Master Agreement, upon completion of the Construction Project, the Municipality shall be responsible for the proper maintenance and operation of all the Municipality-owned facilities constructed or installed as part of this Construction Project to the standards required by, and satisfaction of, DOT and, as applicable, the Federal Highway Administration.). Upon completion of the Construction Project, the Municipality shall assume maintenance responsibility of specific improvements constructed as part of the Construction

[enter to:]

[enter date:]

Project on the DOT-owned Transportation Facilities, including: (list of specific project elements).

This Construction Project has been assigned a [ENTER CORRECT DESIGNATION DBE/SBE/SBPPP] goal of []% and the Municipality shall comply with the requirements pertaining to the goal as stipulated in the Master Agreement.

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

Please indicate your concurrence with the PAL by signing below on or before [date] and returning a copy to [Mr./Ms.]the DOT's Project Manager, preferably by email [insert address] or by U.S. mail at the letterhead address. The Master Agreement and the PAL will be incorporated into one another in their entirety and contain the legal and binding obligations of the Municipality with respect to the Construction Project.

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

Very truly yours,

Authorized DOT Representative

Concurred By _____ Date _____

Print Name:
Designated Municipal Official

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

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

(NOTE: Depending on the federal program, the cost sharing between the Parties may vary and this PAL attachment shall be adjusted accordingly by the DOT initiating unit.)

Schedule B

STATE OF CONNECTICUT REQUIRED PROVISIONS

For the purposes of this Schedule, references to "contract" or "Contract" mean the Master Agreement, and references to "contractor" or "Contractor" mean the Municipality."

1. Audit Clause. Audit Requirements. For purposes of this paragraph, the word "contractor" shall be deemed to mean "nonstate entity," as that term is defined in Section 4-230 of the Connecticut General Statutes. The contractor shall provide for an annual financial audit acceptable to the DOT for any expenditure of state-awarded funds made by the contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The contractor will comply with federal and state single audit standards as applicable.

2. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

3. Forum and Choice of Law. The Parties deem the Contract 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 Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by federal law or the laws of the State of Connecticut do not bar an action against the DOT, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor 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.

4. Executive Orders and Other Enactments

All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to the Contract at any time during its term, or that may be made applicable to the Contract during its term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to perform under this Contract if it chooses to contest the applicability of the Enactments or the DOT's authority to require compliance with the Enactments.

This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.

This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

4. Consulting Agreements Representation. Pursuant to section 4a-81 of the Connecticut General Statutes, the person signing this Contract on behalf of the Contractor represents, to their best knowledge and belief and subject to the penalty of false statement as provided in section 53a-157b of the Connecticut General Statutes, that the Contractor has not entered into any consulting agreements in connection with this Contract, except for the agreements listed below or in an attachment to this Contract. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contracts. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of section 4a-81 of the Connecticut General Statutes.

Consultant's Name and Title

Name of Firm (if applicable)

Start Date

End Date

Cost

The basic terms of the consulting agreement are:

Description of Services Provided:

Is the consultant a former State employee or former public official? YES NO
If YES: _____

Name of Former State Agency

Termination Date of Employment

Schedule C Construction Contracts - Required Contract Provisions

1. Federal Highway Administration (FHWA) Form 1273. (Applies to FHWA Federally-Funded Contracts Only)

The Contractor shall comply with the Federal Highway Administration (FHWA), Form 1273 attached as Schedule C-1, as revised. The Contractor shall also require its subcontractors to comply with the FHWA – Form 1273 and include the FHWA – Form 1273 as an attachment to all subcontracts and purchase orders.

2. Title VI of the Civil Rights Act of 1964 Nondiscrimination Assurances

The Contractor shall comply with Title VI of the Civil Rights Act of 1964 as amended (78 Stat. 252, 42 U.S.C. § 2000 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.

3. Equal Employment Opportunity & Affirmative Action Requirements

The Contractor shall comply with the Equal Employment Opportunity & Affirmative Action Requirements, as applicable, attached to this Agreement as Schedule C-3 and Schedule C-4.

4. Requirements of Title 49, Code of Federal Regulations (CFR), Part 26, Participation by DBEs, as may be revised (Applies to FHWA Federally-Funded Contracts Only)

Pursuant to 49 CFR § 26.13, the following paragraph is part of this Contract and shall be included in each subcontract the Prime Contractor enters into with a subcontractor:

“The Contractor, or subcontractor(s) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26, Participation by DBEs, in the award and administration of U.S. DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this contract or such other remedy as the Connecticut Department of Transportation (DOT) or Municipality deems appropriate.”

5. Contract Wage Rates

The Contractor shall comply with:

The Federal and State wage rate requirements stated respectively in Schedules C-5 and C-6, as revised. The Federal wage rates (Davis-Bacon Act) applicable to this Contract shall be the Federal wage rates that are current on the US Department of Labor website (<http://www.wdol.gov/dba.aspx>) as may be revised 10 days prior to bid opening. These applicable Federal wage rates shall be attached to the final contract document executed by the parties. During the bid advertisement period, bidders are responsible for obtaining the appropriate Federal wage rates from the US Department of Labor website.

To obtain the latest Federal wage rates go to the US Department of Labor website (link above). Under Davis-Bacon Act, choose “Selecting DBA WDs” and follow the instruction to search the

latest wage rates for the State, County and Construction Type. Refer to the Notice to Contractor (NTC) - Federal Wage Determinations (Davis Bacon Act).

If a conflict exists between the Federal and State wage rates, the higher rate shall govern.

Prevailing Wages for Work on State Highways; Annual Adjustments. With respect to contracts for work on state highways and bridges on state highways, the Contractor shall comply with the provisions of Section 31-54 and 31-55a of the Connecticut General Statutes, as revised.

As required by Section 1.05.12 (Payrolls) of the Standard Specification for Roads, Bridges and Incidental Construction (FORM 818), as may be revised, every Contractor or subcontractor performing project work on a Federal aid project is required to post the relevant prevailing wage rates as determined by the United States Secretary of Labor. The wage rate determinations shall be posted in prominent and easily accessible places at the work site.

6. Americans with Disabilities Act of 1990, as Amended

The Contractor shall comply with the terms of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 et seq.) ("Act"), during the term of the Contract. The Contractor represents that it is familiar with the terms of this Act and that it is in compliance with the Act. Failure of the Contractor to satisfy this standard as the same applies to performance under this Contract, either now or during the term of the Contract as it may be amended, will render the Contract voidable at the option of the State upon notice to the contractor. The Contractor warrants that it will hold the State and/or the Municipality harmless, indemnify, and defend the Municipality and the State from any liability which may be imposed upon the Municipality and/or State as a result of any failure of the Contractor to be in compliance with this Act, as the same applies to performance under this Contract.

7. Connecticut Statutory Labor Requirements

(a) Construction, Alteration or Repair of Public Works Projects; Wage Rates. The Contractor shall comply with Section 31-53 of the Connecticut General Statutes, as revised. The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of section 31-53 of the Connecticut General Statutes, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.

(b) Debarment List. Limitation on Awarding Contracts. The Contractor shall comply with Section 31-53a of the Connecticut General Statutes, as revised.

(c) Construction Safety and Health Course. The Contractor shall comply with section 31-53b of the Connecticut General Statutes, as revised. The contractor shall furnish proof to the Labor Commissioner with the weekly certified payroll form for the first week each employee begins work on such project that any person performing the work of a mechanic, laborer or

worker pursuant to the classifications of labor under section 31-53 of the Connecticut General Statutes, as revised, on such public works project, pursuant to such contract, has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, has completed a new miner training program approved by the Federal Mine Safety and Health Administration in accordance with 30 CFR 48 or, in the case of telecommunications employees, has completed at least ten hours of training in accordance with 29 CFR 1910.268.

Any employee required to complete a construction safety and health course as required that has not completed the course, shall have a maximum of fourteen (14) days to complete the course. If the employee has not been brought into compliance, they shall be removed from the project until such time as they have completed the required training.

Any costs associated with this notice shall be included in the general cost of the contract. In addition, there shall be no time granted to the contractor for compliance with this notice. The contractor's compliance with this notice and any associated regulations shall not be grounds for claims as outlined in the Standard Specifications for Roads, Bridges, Facilities and Incidental Construction (Form 818) at Section 1.11 – "Claims."

(d) Awarding of Contracts to Occupational Safety and Health Law Violators Prohibited. The Contract is subject to Section 31-57b of the Connecticut General Statutes, as revised.

(e) Residents Preference in Work on Other Public Facilities. (NOT APPLICABLE TO FEDERAL AID CONTRACTS) Pursuant to Section 31-52a of the Connecticut General Statutes, as revised, in the employment of mechanics, laborers or workmen to perform the work specified herein, preference shall be given to residents of the state who are, and continuously for at least six months prior to the date hereof have been, residents of this state, and if no such person is available, then to residents of other states

8. Tax Liability - Contractor's Exempt Purchase Certificate (CERT – 141)

The Contractor shall comply with Chapter 219 of the Connecticut General Statutes pertaining to tangible personal property or services rendered that is/are subject to sales tax. The Contractor is responsible for determining its tax liability. If the Contractor purchases materials or supplies pursuant to the Connecticut Department of Revenue Services' "Contractor's Exempt Purchase Certificate (CERT-141)," as may be revised, the Contractor acknowledges and agrees that title to such materials and supplies installed or placed in the project will vest in the State simultaneously with passage of title from the retailers or vendors thereof, and the Contractor will have no property rights in the materials and supplies purchased.

Forms and instructions are available anytime by:

Internet: Visit the DRS website at www.ct.gov/DRS to download and print Connecticut tax forms;
Telephone: Call 1-800-382-9463 (Connecticut calls outside the Greater Hartford calling area only) and select Option 2 or call 860-297-4753 (from anywhere).

9. Nondiscrimination Requirement and Certification (pursuant to § 4a-60 and § 4a-60a of the Connecticut General Statutes, as revised). References to "minority business enterprises" in this Section are not applicable to Federal-aid projects/contracts. Federal-aid projects/contracts are instead subject to the Federal Disadvantaged Business Enterprise Program)

(a) For purposes of this Section, the following terms are defined as follows:

- i. "Commission" means the Commission on Human Rights and Opportunities;
- ii. "Contract" and "contract" include any extension or modification of the Contract or contract;
- iii. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
- iv. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;
- v. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
- vi. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
- vii. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
- viii. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
- ix. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
- x. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

- (b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.
- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by

the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.
- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (i) Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, (B) signing this Contract, or (C) initialing this nondiscrimination affirmation. _____

10. Summary of State Ethics Laws

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes (a) the Municipality has provided to the Contractor the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of this Contract as if the summary had been fully set forth in this Contract; (b) the Contractor represents that the chief executive officer or authorized signatory of the Contract and all key employees of such officer or signatory have read and understood the summary and agree to comply with the provisions of state ethics law; (c) prior to entering into a contract with any subcontractors or consultants, the Contractor shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state ethics law; (d) failure to include such representations in such contracts with subcontractors or consultants shall be cause for termination of the Contract; and (e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.

11. Bid Rigging and/or Fraud – Notice to Contractor

The Connecticut Department of Transportation is cooperating with the U.S. Department of Transportation and the Justice Department in their investigation into highway construction contract bid rigging and/or fraud.

A toll-free “HOT LINE” telephone number 800-424-9071 has been established to receive information from contractors, subcontractors, manufacturers, suppliers or anyone with knowledge of bid rigging and/or fraud, either past or current. The “HOT LINE” telephone number will be available during normal working hours (8:00 am – 5:00 pm EST). Information will be treated confidentially and anonymity respected.

12. Cargo Preference Act Requirements (46 CFR § 381.7(a)-(b)) – Use of United States Flag Vessels (Applies to FHWA Federally-Funded Contracts Only)

The Contractor agrees to comply with the following:

(a) *Agreement Clauses.*

- (1) Pursuant to Pub. L. 664 (43 U.S.C. § 1241(b)) at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.
- (2) Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a)(1) of this section shall be furnished to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(b) *Contractor and Subcontractor Clauses.* The contractor agrees—

- (1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

Schedule C-1

REQUIRED CONTRACT PROVISIONS

FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

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

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

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

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

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

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

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

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

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

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

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

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

1. Minimum wages (29 CFR 5.5)

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

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

4. Apprentices and trainees (29 CFR 5.5)

a. Apprentices (programs of the USDOL).

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

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

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

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

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility (29 CFR 5.5)

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

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

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

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

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

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

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

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

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

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

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

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

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

The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Schedule C-2
TITLE VI CONTRACTOR ASSURANCES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Schedule C-3
**EQUAL EMPLOYMENT OPPORTUNITY & AFFIRMATIVE ACTION
REQUIREMENTS**

1. General:

a) Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246, Executive Order 11375 are set forth in Required Contract Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23 U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968, 49 CFR Part 21, 4a-60a and 46a-68c to 46a-68f of the Connecticut General Statutes. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b) "Company" refers to any entity doing business with the Connecticut Department of Transportation and includes but is not limited to the following:

Contractors and Subcontractors
Consultants and Subconsultants
Suppliers of Materials and Vendors (where applicable)
Municipalities (where applicable)
Utilities (where applicable)

c) The Company will work with the Connecticut Department of Transportation (CTDOT) and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

d) The Company and all his/her subcontractors or subconsultants holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in volume 60, Chapter 4, Section 1, subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The company will include these requirements in every subcontract of \$10,000 or more with such modification of language as necessary to make them binding on the subcontractor or subconsultant.

e) CTDOT shall require each contractor with contracts of \$10,000 or more or who have fifty or more employees and are awarded a public works contract, to comply with all existing procedures of CTDOT's Contract Compliance Program.

2. Equal Employment Opportunity Policy:

a) Companies with contracts, agreements or purchase orders valued at \$10,000 or more or who have fifty or more employees are required to comply with the Affirmative Action Requirements attached as Schedule C-4. By signing a contract with CTDOT the contractor's commits to complying with federal and state requirements to provide equal employment opportunity to all persons without regard to their race, color, religion, creed, sex, gender identity or expression, marital status, age, national origin, ancestry, status as a veteran, intellectual disability, mental disability, learning disability or physical disability, including but not limited to blindness, unless

such disability prevents performance of the work involved and to promote the full realization of equal employment opportunity through a positive and continuous efforts.

3. Project Workforce Utilization Goals:

These goals are applicable to all construction projects performed in the covered area (whether the project is federal or state funded). If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where the work is actually performed.

a. **Appendix A** establishes the goals for minority and female utilization in all crafts statewide on all State funded construction projects.

b. **Appendix B** establishes the goals for minority and female utilization in all crafts statewide on Federally assisted or funded construction projects.

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

The goals for minority and female participation are expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, and are as follows:

State Utilization Goals
See Appendix A

Federal Utilization Goals
See Appendix B

4. Executive Order 11246

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

If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an

approved Pan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the plan goals and timetables.

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

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

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

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

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

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

c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor

by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason thereafter; along with whatever additional actions the Contractor may have taken.

- d) Provide immediate written notification to CTDOT when the Union or Unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the Union referral process has impeded the Contractor's efforts to meet its obligations.
- e) Develop on-the-job training opportunities and/or participate in training programs that which expressly target minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under b above.
- f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations.
- g) Review at least annually, the company EEO Policy and affirmative action obligations with all employees having any responsibility for hiring, assignments, layoffs, terminations, or other employment decisions, prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h) Disseminate the Contractor's EEO Policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i) Direct its recruitment efforts, both oral and written, to minority female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.
- j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the project worksite and in other areas of the Contractor's workforce.
- k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for opportunities through appropriate training opportunities.
- m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and

employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- n) Ensure that all facilities and company activities are nonsegregated except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p) Conduct a review at least annually of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations:

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

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

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

The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

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

The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps so as to achieve maximum results from its efforts to ensure equal employment opportunity.

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

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

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

5. Subcontracting:

a. The Company will use his/her best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Companies shall obtain lists of minority-owned construction firms from the Office of Equity.

b. The Company will use its best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

6. Records and Reports:

a. The Company will keep such records as are necessary to determine compliance with equal employment opportunity obligations. The records kept by the Company will be designed to indicate:

1. The number of minority and non-minority group members and women employed in each classification on the project.
2. The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women; (applicable only to contractors who rely in whole or in part on unions as a source of their work force),
3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
4. The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.
5. Records of internal and external communication and outreach to document its affirmative efforts.

b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of CTDOT and/or the United States Department of Transportation.

c. For Federal Highway Administration funded projects only:

The Company will submit an annual report to CTDOT each July or as otherwise directed, for the duration of the project, indicating the number of minorities, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision", the Company will be required to furnish Form FHWA 1409 and 1415 as required by CTDOT.

APPENDIX A
STATE FUNDED PROJECTS (only)
(Labor Market Goals)

LABOR MARKET AREA GOAL

Minority

Female

Bridgeport	22.7%
1.4%	

Ansonia	Beacon Falls	Bridgeport	Derby
Easton	Fairfield	Milford	Monroe
Oxford	Seymour	Shelton	Stratford
Trumbull			

Danbury	10.7%
3.8%	

Bethel	Bridgewater	Brookfield	Danbury
Kent	New Fairfield	New Milford	Newtown
Redding	Ridgefield	Roxbury	Sherman
Washington			

Danielson	4.3%
1.8%	

Brooklyn	Eastford	Hampton	Killingly
Pomfret	Putnam	Scotland	Sterling
Thompson	Voluntown	Union	Woodstock

Hartford	13.7%
2.1%	

Andover	Ashford	Avon	Barkhamsted
Belin	Bloomfield	Bolton	Bristol
Burlington	Canton	Chaplin	Colchester
Columbia	Coventry	Cromwell	Durham
East Granby	East Haddam	East Hampton	East Hartford
East Windsor	Ellington	Enfield	Farmington
Glastonbury	Granby	Haddam	Hartford
Harwinton	Hebron	Lebanon	Manchester
Mansfield	Marlborough	Middlefield	Middletown
Newington	Plainville	Plymouth	Portland
Rocky Hill	Simsbury	Somers	South Windsor
Southington	Stafford	Suffield	Tolland
Vernon	West Hartford	Wethersfield	Willington
Winchester	Windham	Windsor	Windsor Locks

Lower River	4.3%
1.8%	

Chester	Deep River	Essex	Old Lyme
Westbrook			

LABOR MARKET AREA GOAL

Minority

Female

New Haven 3.1%	17.9%
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Bethany	Branford	Cheshire	Clinton
East Haven	Guilford	Hamden	Killingworth
Madison	Meriden	New Haven	North Branford
North Haven	Orange	Wallingford	West Haven
Woodbridge			

New London 3.1%	7.4%
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Bozrah	Canterbury	East Lyme	Franklin
Griswold	Groton	Ledyard	Lisbon
Montville	New London	North Stonington	Norwich
Old Lyme	Old Saybrook	Plainfield	Preston
Salem	Sprague	Stonington	Waterford
Hopkinton	RI – Westerly Rhode Island		

Stamford 2.1%	33.2%
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Darien	Greenwich	New Canaan	Norwalk
Stamford	Weston	Westport	Wilton

Torrington 1.8%	4.3%
----------------------------------	-------------

Canaan	Colebrook	Cornwall	Goshen
Hartland	Kent	Litchfield	Morris
Norfolk	North Canaan	Salisbury	Sharon
Torrington	Warren		

Waterbury 1.6%	12.4%
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Bethlehem	Middlebury	Naugatuck	Prospect
Southbury	Thomaston	Waterbury	Watertown
Wolcott	Woodbury		

APPENDIX B
FEDERALLY FUNDED OR ASSISTED PROJECTS
(Labor Market Goals)

Standard Metropolitan Statistical Area (SMSA)

Female

Minority

Bridgeport – Stamford – Norwalk – Danbury	10.2%
6.9%	

Bethel	Bridgeport	Brookfield	Danbury
Darien	Derby	Easton	Fairfield
Greenwich	Milford	Monroe	New Canaan
New Fairfield	Newton	Norwalk	Redding
Shelton	Stamford	Stratford	Trumbull
Weston	Westport	Wilton	

Hartford – Bristol – New Britain	6.9%
6.9%	

Andover	Avon	Berlin	Bloomfield
Bolton	Bristol	Burlington	Canton
Colchester	Columbia	Coventry	Cromwell
East Granby	East Hampton	East Hartford	East Windsor
Ellington	Enfield	Farmington	Glastonbury
Granby	Hartford	Hebron	Manchester
Marlborough	New Britain	New Hartford	Newington
Plainville	Plymouth	Portland	Rocky Hill
Simsbury	South Windsor	Southington	Stafford
Suffield	Tolland	Vernon	West Hartford
Wethersfield	Willington	Windsor	Windsor Locks

New Haven – Waterbury – Meriden	9.0%
6.9%	

Beacon Falls	Bethany	Branford	Cheshire
Clinton	East Haven	Guilford	Hamden
Madison	Meriden	Middlebury	Naugatuck
New Haven	North Branford	North Haven	Orange
Prospect	Southbury	Thomaston	Wallingford
Waterbury	Watertown	West Haven	Wolcott
Woodbridge	Woodbury		

New London – Norwich	4.5%
6.9%	

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

Non SMSA

Female

Minority

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

Schedule C-4
AFFIRMATIVE ACTION REQUIREMENTS

It is the policy of this firm to assure that applicants are employed, and that employees are treated during employment, without regard to an individual's race, color, religion, creed, sex, gender identity or expression, marital status, national origin, age, ancestry, status as a veteran, intellectual disability, mental disability, learning disability or physical disability, including but not limited to blindness, unless such disability prevents performance of the work involved and to promote the full realization of equal employment opportunity through positive and continuous affirmative efforts. Such action shall include employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or terminations, rates of pay or other forms of compensation, selection for training/apprenticeship, pre-apprenticeship opportunities, and on-the-job training opportunities.

This firm will implement, monitor, enforce and achieve full compliance with this Affirmative Action Policy Statement in conjunction with the applicable Federal and State laws, regulations, executive orders, and contract provisions, including but not limited to those listed below:

Dissemination of Policy:

All members of the firm who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, this firm's Equal Employment Opportunity (EEO) policy and contractual responsibilities to provide EEO in each grade and classification of employment. These actions shall include:

1. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the firm's EEO policy and its implementation will be reviewed and explained. These meetings will be conducted by the EEO officer.
2. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
3. All personnel who are engaged in direct recruitment for the firm will be instructed by the EEO Officer of the contractor's procedures for locating and hiring minority group employees.
4. Notices and posters setting forth the firm's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
5. The firm's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
6. Sexual Harassment Prevention Resources including training and remedies must be available to all employees. See Connecticut General Assembly Public Acts 19-16 and 19-93.

Recruitment:

When advertising for employees, the firm will include in all advertisements the notation; "An Affirmative Action/Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area where the workforce would normally be derived.

1. The firm will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified

- minority and female applicants. To meet this requirement, the firm will identify referral sources and establish procedures for recruitment to obtain the referral of minority and female applicants.
2. In the event the firm has a valid bargaining agreement providing for exclusive hiring referrals, he/she is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The United States Department of Labor has held that where implementation of such agreements has had the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 3. The firm will encourage his/her present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

Personnel Actions:

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to an individual's race, color, religion, creed, sex, gender identity or expression, marital status, national origin, age, ancestry, status as a veteran, intellectual disability, mental disability, learning disability or physical disability, including but not limited to blindness, unless such disability prevents performance of the work involved. The following procedures shall be followed:

1. The firm will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of personnel.
2. The firm will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take correction action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
3. The firm shall periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
4. The firm will promptly investigate all complaints of alleged discrimination made to the firm and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective actions shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

Training and Promotion:

The firm will assist in locating, qualifying, and increasing the skills of minorities and women. The firm will utilize the following tools to identify training and promotional opportunities in the firm:

1. The firm will advise employees and applicants for employment of available training programs and the entrance requirements.
2. The firm will periodically review the training and promotion of minority group and female employees and will encourage eligible employees to apply for such training and promotion.

Unions:

If the firm relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the firm either directly or through a contractor's association acting as agent will include the procedures set forth below:

1. The firm will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
2. The firm will use best efforts to incorporate an EEO clause into each union agreement to the extent that such union will be contractually bound to refer applicants without regard to their to an individual's race, color, religion, creed, sex, gender identity or expression, marital status, national origin, age, ancestry, status as a veteran, intellectual disability, mental disability, learning disability or physical disability, including but not limited to blindness, unless such disability prevents performance of the work involved.
3. The firm is to obtain information as to the referral practices and policies of the labor union except that to the extent that such information is within the exclusive possession of the labor union and such labor union refuses to furnish the information to the contractor, the contractor shall notify the Connecticut Department of Transportation (CTDOT) of the efforts made to obtain the information.
4. In the event the union is unable to provide the firm with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies. (The United States Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations under Executive Order 11246 as amended, and in compliance with 23 CFR Part 230, the firm will notify CTDOT.

Selection of Subcontractors:

The firm will not discriminate on the grounds race, color, religion, sex, sexual orientation, gender identity or expression, marital status, national origin, ancestry, age, intellectual disability, learning disability, physical disability, including, but not limited to, blindness, or status as a veteran in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

1. The firm shall use his/her best efforts to ensure subcontractor/subconsultant compliance with Federal and State Equal Opportunity (EO) and EEO requirements.

Records and Reports:

The Contractor shall keep records as necessary to document compliance with EO/EEO requirements. Such reports shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of CTDOT and/or the United States Department of Transportation. The following records should be maintained:

6. The number of minority and non-minority group members and women employed in each work classification;
7. The progress and efforts being made in cooperation with unions, when applicable to increase the employment opportunities for minorities and women;
8. The documentation showing progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
9. Complaints of Discrimination.

In implementing this policy and ensuring that affirmative action is being provided, each time a hiring opportunity occurs this firm will contact and request referrals from minority and female

organizations, referral sources, and media sources. All advertising will emphasize that the firm is "An Affirmative Action/Equal Opportunity Employer."

In order to substantiate this firm's efforts and affirmative actions to provide equal opportunity, the firm will maintain and submit, as requested, documentation such as referral request correspondence, copies of advertisements utilized and follow-up documentation to substantiate that efforts were made in good faith. This firm will maintain the necessary internal audit procedures and record keeping systems to report the firm's affirmative action efforts.

It is understood by Owner/CEO/President of the firm and the firm's Equal Employment Opportunity Officer and supervisory and managerial personnel that failure to effectively implement, monitor and enforce this firm's affirmative action program and/or failure to adequately document and submit as required, the affirmative actions taken and efforts made to recruit and hire minority and female applicants in accordance with our affirmative action program in each instance of hire, will result in this firm being required to recommit itself to a modified and more stringent affirmative action program as a condition of approval. It is recognized that this policy is a contractual requirement and is a prerequisite for performing services for the contracting agency. This policy in addition to CTDOT's EO/EEO contract provisions and requirements, shall constitute the CTDOT Affirmative Program requirements.

The ultimate responsibility for the full implementation of this firm's Affirmative Action Program rests with the Chief Executive Officer of this firm.

Schedule C-5

(Federal wage rate package will be inserted at the end after State wages for the final executed contract only. Refer to NTC – Federal Wage Determinations)

Schedule C-6

State Wages and Other Related Information

Please refer to the Department of Labor website for the latest updates, annual adjusted wage rate increases, certified payroll forms and applicable statutes.

<http://www.ctdol.state.ct.us/wgwkstnd/prevailwage.htm>

Prevailing Wage Law Poster Language

**THIS IS A PUBLIC WORKS PROJECT Covered by the
PREVAILING WAGE LAW CT General Statutes Section 31-53**

If you have QUESTIONS regarding your wages CALL (860) 263-6790

Section 31-55 of the CT State Statutes requires every contractor or subcontractor performing work for the state to post in a prominent place the prevailing wages as determined by the Labor Commissioner.

Informational Bulletin

THE 10-HOUR OSHA CONSTRUCTION SAFETY AND HEALTH COURSE (applicable to public building contracts entered into on or after July 1, 2007, where the total cost of all work to be performed is at least \$100,000)

- (1) This requirement was created by Public Act No. 06-175, which is codified in Section 31-53b of the Connecticut General Statutes (pertaining to the prevailing wage statutes);
- (2) The course is required for public building construction contracts (projects funded in whole or in part by the state or any political subdivision of the state) entered into on or after July 1, 2007;
- (3) It is required of private employees (not state or municipal employees) and apprentices who perform manual labor for a general contractor or subcontractor on a public building project where the total cost of all work to be performed is at least \$100,000;
- (4) The ten-hour construction course pertains to the ten-hour Outreach Course conducted in accordance with federal OSHA Training Institute standards, and, for telecommunications workers, a ten-hour training course conducted in accordance with federal OSHA standard, 29 CFR 1910.268;
- (5) The internet website for the federal OSHA Training Institute is http://www.osha.gov/fso/ote/training/edcenters/fact_sheet.html;
- (6) The statutory language leaves it to the contractor and its employees to determine who pays for the cost of the ten-hour Outreach Course;

(7) Within 30 days of receiving a contract award, a general contractor must furnish proof to the Labor Commissioner that all employees and apprentices performing manual labor on the project will have completed such a course;

(8) Proof of completion may be demonstrated through either: (a) the presentation of a bona fide student course completion card issued by the federal OSHA Training Institute; or (2) the presentation of documentation provided to an employee by a trainer certified by the Institute pending the actual issuance of the completion card;

(9) Any card with an issuance date more than 5 years prior to the commencement date of the construction project shall not constitute proof of compliance;

(10) Each employer shall affix a copy of the construction safety course completion card to the certified payroll submitted to the contracting agency in accordance with Conn. Gen. Stat. § 31-53(f) on which such employee's name first appears;

(11) Any employee found to be in non-compliance shall be subject to removal from the worksite if such employee does not provide satisfactory proof of course completion to the Labor Commissioner by the fifteenth day after the date the employee is determined to be in noncompliance;

(12) Any such employee who is determined to be in noncompliance may continue to work on a public building construction project for a maximum of fourteen consecutive calendar days while bringing his or her status into compliance;

(13) The Labor Commissioner may make complaint to the prosecuting authorities regarding any employer or agent of the employer, or officer or agent of the corporation who files a false certified payroll with respect to the status of an employee who is performing manual labor on a public building construction project;

(14) The statute provides the minimum standards required for the completion of a safety course by manual laborers on public construction contracts; any contractor can exceed these minimum requirements; and

(15) Regulations clarifying the statute are currently in the regulatory process, and shall be posted on the CTDOL website as soon as they are adopted in final form.

(16) Any questions regarding this statute may be directed to the Wage and Workplace Standards Division of the Connecticut Labor Department via the internet website of <http://www.ctdol.state.ct.us/wgwkstnd/wgemenu.htm>; or by telephone at (860)263-6790.

THE ABOVE INFORMATION IS PROVIDED EXCLUSIVELY AS AN EDUCATIONAL RESOURCE, AND IS NOT INTENDED AS A SUBSTITUTE FOR LEGAL INTERPRETATIONS WHICH MAY ULTIMATELY ARISE CONCERNING THE CONSTRUCTION OF THE STATUTE OR THE REGULATIONS.

November 29, 2006

Notice

To All Mason Contractors and Interested Parties Regarding Construction Pursuant to Section 31-53 of the Connecticut General Statutes (Prevailing Wage)

The Connecticut Labor Department Wage and Workplace Standards Division is empowered to enforce the prevailing wage rates on projects covered by the above referenced statute. Over the past few years the Division has withheld enforcement of the rate in effect for workers who operate a forklift on a prevailing wage rate project due to a potential jurisdictional dispute. The rate listed in the schedules and in our Occupational Bulletin (see enclosed) has been as follows:

Forklift Operator:

- **Laborers (Group 4) Mason Tenders** - operates forklift solely to assist a mason to a maximum height of nine feet only.
- **Power Equipment Operator (Group 9)** - operates forklift to assist any trade and to assist a mason to a height over nine feet.

The U.S. Labor Department conducted a survey of rates in Connecticut but it has not been published and the rate in effect remains as outlined in the above Occupational Bulletin.

Since this is a classification matter and not one of jurisdiction, effective January 1, 2007 the Connecticut Labor Department will enforce the rate on each schedule in accordance with our statutory authority.

Your cooperation in filing appropriate and accurate certified payrolls is appreciated.

**CONNECTICUT DEPARTMENT OF LABOR
WAGE AND WORKPLACE STANDARDS DIVISION**

**CONTRACTORS WAGE CERTIFICATION FORM
Construction Manager at Risk/General Contractor/Prime Contractor**

I, _____ of _____
Officer, Owner, Authorized Rep. Company Name

do hereby certify that the _____
Company Name

Street

City

and all of its subcontractors will pay all workers on the

Project Name and Number

Street and City

the wages as listed in the schedule of prevailing rates required for such project (a copy of which is attached hereto).

Signed

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

Return to: Connecticut Department of Labor
Wage & Workplace Standards Division
200 Folly Brook Blvd.
Wethersfield, CT 06109

Rate Schedule Issued (Date): _____

Information Bulletin ***Occupational Classifications***

The Connecticut Department of Labor has the responsibility to properly determine "job classification" on prevailing wage projects covered under C.G.S. Section 31-53(d).

Note: This information is intended to provide a sample of some occupational classifications for guidance purposes only. It is not an all-inclusive list of each occupation's duties. This list is being provided only to highlight some areas where a contractor may be unclear regarding the proper classification. If unsure, the employer should seek guidelines for CTDOL.

Below are additional clarifications of specific job duties performed for certain classifications:

ASBESTOS WORKERS

Applies all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems.

ASBESTOS INSULATOR

Handle, install apply, fabricate, distribute, prepare, alter, repair, dismantle, heat and frost insulation, including penetration and fire stopping work on all penetration fire stop systems.

BOILERMAKERS

Erects hydro plants, incomplete vessels, steel stacks, storage tanks for water, fuel, etc. Builds incomplete boilers, repairs heat exchanges and steam generators.

BRICKLAYERS, CEMENT MASONS, CEMENT FINISHERS, MARBLE MASONS, PLASTERERS, STONE MASONS, PLASTERERS. STONE MASONS, TERRAZZO WORKERS, TILE SETTERS

Lays building materials such as brick, structural tile and concrete cinder, glass, gypsum, terra cotta block. Cuts, tools and sets marble, sets stone, finishes concrete, applies decorative steel, aluminum and plastic tile, applies cements, sand, pigment and marble chips to floors, stairways, etc.

CARPENTERS, MILLWRIGHTS, PILEDRIVERMEN, LATHERS, RESILEINT FLOOR LAYERS, DOCK BUILDERS, DIKERS, DIVER TENDERS

Constructs, erects, installs and repairs structures and fixtures of wood, plywood and wallboard. Installs, assembles, dismantles, moves industrial machinery. Drives piling into ground to provide foundations for structures such as buildings and bridges, retaining walls for earth embankments, such as cofferdams. Fastens wooden, metal or rockboard lath to walls, ceilings and partitions of buildings, acoustical tile layer, concrete form builder. Applies firestopping materials on fire resistive joint systems only. Installation of curtain/window walls only where attached to wood or metal studs. Installation of insulated material of all types whether blown, nailed or attached in other ways to walls, ceilings and floors of buildings. Assembly and installation of modular furniture/furniture systems. Free-standing furniture is not covered. This includes free standing:

student chairs, study top desks, book box desks, computer furniture, dictionary stand, atlas stand, wood shelving, two-position information access station, file cabinets, storage cabinets, tables, etc.

LABORER, CLEANING

- The clean up of any construction debris and the general (heavy/light) cleaning, including sweeping, wash down, mopping, wiping of the construction facility and its furniture, washing, polishing, and dusting.

DELIVERY PERSONNEL

- If delivery of supplies/building materials is to one common point and stockpiled there, prevailing wages are not required. If the delivery personnel are involved in the distribution of the material to multiple locations within the construction site then they would have to be paid prevailing wages for the type of work performed: laborer, equipment operator, electrician, ironworker, plumber, etc.

- An example of this would be where delivery of drywall is made to a building and the delivery personnel distribute the drywall from one "stockpile" location to further sub-locations on each floor. Distribution of material around a construction site is the job of a laborer or tradesman, and not a delivery personnel.

ELECTRICIANS

Install, erect, maintenance, alteration or repair of any wire, cable, conduit, etc., which generates, transforms, transmits or uses electrical energy for light, heat, power or other purposes, including the Installation or maintenance of telecommunication, LAN wiring or computer equipment, and low voltage wiring. *License required per Connecticut General Statutes: E-1,2 L-5,6 C-5,6 T-1,2 L-1,2 V-1,2,7,8,9.

ELEVATOR CONSTRUCTORS

Install, erect, maintenance and repair of all types of elevators, escalators, dumb waiters and moving walks. *License required by Connecticut General Statutes: R-1, 2, 5, 6.

FORK LIFT OPERATOR

Laborers Group 4) Mason Tenders - operates forklift solely to assist a mason to a maximum height of nine (9) feet only.

Power Equipment Operator Group 9 - operates forklift to assist any trade, and to assist a mason to a height over nine (9) feet.

GLAZIERS

Glazing wood and metal sash, doors, partitions, and 2 story aluminum storefronts. Installs glass windows, skylights, store fronts and display cases or surfaces such as building fronts, interior walls, ceilings and table tops and metal store fronts. Installation of aluminum window walls and curtain walls is the "joint" work of glaziers and ironworkers, which require equal composite workforce.

IRONWORKERS

Erection, installation and placement of structural steel, precast concrete, miscellaneous iron, ornamental iron, metal curtain wall, rigging and reinforcing steel. Handling, sorting, and installation of reinforcing steel (rebar). Metal bridge rail (traffic), metal bridge handrail, and decorative security fence installation. Installation of aluminum window walls and curtain walls is the "joint" work of glaziers and ironworkers which require equal composite workforce.

INSULATOR

- Installing fire stopping systems/materials for "Penetration Firestop Systems": transit to cables, electrical conduits, insulated pipes, sprinkler pipe penetrations, ductwork behind radiation, electrical cable trays, fire rated pipe penetrations, natural polypropylene, HVAC ducts, plumbing bare metal, telephone and communication wires, and boiler room ceilings.

LABORERS

Acetylene burners, asphalt rakers, chain saw operators, concrete and power buggy operator, concrete saw operator, fence and guard rail erector (except metal bridge rail (traffic), decorative security fence (non-metal).

installation.), hand operated concrete vibrator operator, mason tenders, pipelayers (installation of storm drainage or sewage lines on the street only), pneumatic drill operator, pneumatic gas and electric drill operator, powermen and wagon drill operator, air track operator, block paver, curb setters, blasters, concrete spreaders.

PAINTERS

Maintenance, preparation, cleaning, blasting (water and sand, etc.), painting or application of any protective coatings of every description on all bridges and appurtenances of highways, roadways, and railroads. Painting, decorating, hardwood finishing, paper hanging, sign writing, scenic art work and drywall hhg for any and all types of building and residential work.

LEAD PAINT REMOVAL

- Painter's Rate 1. Removal of lead paint from bridges. 2. Removal of lead paint as preparation of any surface to be repainted. 3. Where removal is on a Demolition project prior to reconstruction. • Laborer's Rate 1. Removal of lead paint from any surface NOT to be repainted. 2. Where removal is on a TOTAL Demolition project only.

PLUMBERS AND PIPEFITTERS

Installation, repair, replacement, alteration or maintenance of all plumbing, heating, cooling and piping. *License required per Connecticut General Statutes: P-1,2,6,7,8,9 J1,2,3,4 SP-1,2 S-1,2,3,4,5,6,7,8 B-1,2,3,4 D-1,2,3,4.

POWER EQUIPMENT OPERATORS

Operates several types of power construction equipment such as compressors, pumps, hoists, derricks, cranes, shovels, tractors, scrapers or motor graders, etc. Repairs and maintains equipment. *License required, crane operators only, per Connecticut General Statutes.

☐ **ROOFERS**

Covers roofs with composition shingles or sheets, wood shingles, slate or asphalt and gravel to waterproof roofs, including preparation of surface. (demolition or removal of any type of roofing and or clean-up of any and all areas where a roof is to be relaid.)

☐ **SHEETMETAL WORKERS**

Fabricate, assembles, installs and repairs sheetmetal products and equipment in such areas as ventilation, air-conditioning, warm air heating, restaurant equipment, architectural sheet metal work, sheetmetal roofing, and aluminum gutters. Fabrication, handling, assembling, erecting, altering, repairing, etc. of coated metal material panels and composite metal material panels when used on building exteriors and interiors as soffits, facia, louvers, partitions, canopies, cornice, column covers, awnings, beam covers, cladding, sun shades, lighting troughs, spires, ornamental roofing, metal ceilings, mansards, copings, ornamental and ventilation hoods, vertical and horizontal siding panels, trim, etc. The sheet metal classification also applies to the vast variety of coated metal material panels and composite metal material panels that have evolved over the years as an alternative to conventional ferrous and non-ferrous metals like steel, iron, tin, copper, brass, bronze, aluminum, etc. Fabrication, handling, assembling, erecting, altering, repairing, etc. of architectural metal roof, standing seam roof, composite metal roof, metal and composite bathroom/toilet partitions, aluminum gutters, metal and composite lockers and shelving, kitchen equipment, and walk-in coolers. To include testing and air –balancing ancillary to installation and construction.

☐ **SPRINKLER FITTERS**

Installation, alteration, maintenance and repair of fire protection sprinkler systems. ***License required per Connecticut General Statutes: F-1, 2, 3, 4.**

☐ **TILE MARBLE AND TERRAZZO FINISHERS**

Assists and tends the tile setter, marble mason and terrazzo worker in the performance of their duties.

☐ **TRUCK DRIVERS**

~How to pay truck drivers delivering asphalt is under REVISION~

Truck Drivers are requires to be paid prevailing wage for time spent "working" directly on the site. These drivers remain covered by the prevailing wage for any time spent transporting between the actual construction location and facilities (such as fabrication, plants, mobile factories, batch plant, borrow pits, job headquarters, tool yards, etc.) dedicated exclusively, or nearly so, to performance of the contract or project, which are so located in proximity to the actual construction location that it is reasonable to include them. ***License required, drivers only, per Connecticut General Statutes.**

For example:

- Material men and deliverymen are not covered under prevailing wage as long as they are not directly involved in the construction process. If, they unload the material, they would then be

covered by prevailing wage for the classification they are performing work in: laborer, equipment operator, etc.

- Hauling material off site is not covered provided they are not dumping it at a location outlined above.
- Driving a truck on site and moving equipment or materials on site would be considered covered work, as this is part of the construction process.

Any questions regarding the proper classification should be directed to:

**Public Contract Compliance Unit
Wage and Workplace Standards Division
Connecticut Department of Labor
200 Folly Brook Blvd, Wethersfield, CT 06109
(860) 263-6543.**

**Connecticut Department of Labor
Wage and Workplace Standards Division
FOOTNOTES**

Please Note: If the “Benefits” listed on the schedule for the following occupations includes a letter(s) (+ a or + a+b for instance), refer to the information below.

Benefits to be paid at the appropriate prevailing wage rate for the listed occupation.

If the “Benefits” section for the occupation lists only a dollar amount, disregard the information below.

Bricklayers, Cement Masons, Cement Finishers, Concrete Finishers, Stone Masons
(Building Construction) and (Residential- Hartford, Middlesex, New Haven, New London and
Tolland Counties)

a. Paid Holiday: Employees shall receive 4 hours for Christmas Eve holiday provided the employee works the regularly scheduled day before and after the holiday. Employers may schedule work on Christmas Eve and employees shall receive pay for actual hours worked in addition to holiday pay.

Elevator Constructors: Mechanics

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day, plus the Friday after Thanksgiving.

b. Vacation: Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

Glaziers

a. Paid Holidays: Labor Day and Christmas Day.

Power Equipment Operators

(Heavy and Highway Construction & Building Construction)

a. Paid Holidays: New Year's Day, Good Friday, Memorial day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, provided the employee works 3 days during the week in which the holiday falls, if scheduled, and if scheduled, the working day before and the working day after the holiday. Holidays falling on Saturday may be observed on Saturday, or if the employer so elects, on the preceding Friday.

Ironworkers

a. Paid Holiday: Labor Day provided employee has been on the payroll for the 5 consecutive work days prior to Labor Day.

Laborers (Tunnel Construction)

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. No employee shall be eligible for holiday pay when he fails, without cause, to work the regular work day preceding the holiday or the regular work day following the holiday.

Roofers

a. Paid Holidays: July 4th, Labor Day, and Christmas Day provided the employee is employed 15 days prior to the holiday.

Sprinkler Fitters

a. Paid Holidays: Memorial Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day, provided the employee has been in the employment of a contractor 20 working days prior to any such paid holiday.

Truck Drivers

(Heavy and Highway Construction & Building Construction)

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas day, and Good Friday, provided the employee has at least 31 calendar days of service and works the last scheduled day before and the first scheduled day after the holiday, unless excused.

SEE BELOW FOR STATE WAGE RATES

INSERT STATE WAGES HERE

Schedule D

Disadvantaged Business Enterprise (“DBE”) Special Provision

Rev. 2023

I. ABBREVIATIONS AND DEFINITIONS

A. *CTDOT* means the Connecticut Department of Transportation.

B. *USDOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (“FHWA”), the Federal Transit Administration (“FTA”), and the Federal Aviation Administration (“FAA”).

C. *Broker* means a party acting as an agent for others in negotiating Contracts, Agreements, purchases, sales, etc., in return for a fee or commission.

D. *Contract, Agreement or Subcontract* means a legally binding relationship obligating a seller to furnish supplies or services (including but not limited to, construction and professional services) and the buyer to pay for them. For the purposes of this provision, a lease for equipment or products is also considered to be a Contract.

E. *Contractor* means a consultant, second party or any other entity under Contract to do business with CTDOT or, as the context may require, with another Contractor.

F. *Disadvantaged Business Enterprise (“DBE”)* means a for profit small business concern:

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
3. Certified by CTDOT under Title 49 of the Code of Federal Regulations, Part 26, (Title 49 CFR Part 23 of the Code of Federal Regulations for Participation of Disadvantaged Business Enterprise in Airport Concessions)

G. *USDOT-assisted Contract* means any Contract between CTDOT and a Contractor (at any tier) funded in whole or in part with USDOT financial assistance.

H. *Good Faith Efforts (“GFE”)* means all necessary and reasonable steps to achieve a DBE goal or other requirement which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

I. *Small Business Concern* means, with respect to firms seeking to participate as DBEs in USDOT-assisted Contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration (“SBA”) regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts in 49 CFR Part 26, Section 26.65(b).

J. *Socially and Economically Disadvantaged Individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who CTDOT finds, on a case-by-case basis, to be a socially and economically disadvantaged individual.

2. Any individuals in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- “Black Americans”, which includes persons having origins in any of the Black racial groups of Africa;
- “Hispanic Americans”, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- “Native Americans”, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
- “Asian-Pacific Americans”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, or Federated States of Micronesia;
- “Subcontinent Asian Americans”, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- Women;
- Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

K. *Commercially Useful Function (“CUF”)* means the DBE is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved with its own forces and equipment. The DBE must be responsible for procuring, determining quantity, negotiating price, determining quality and paying for all materials (where applicable) associated with their work. The DBE must also perform at least 30% of the total cost of its contract with its own workforce.

II. ADMINISTRATIVE REQUIREMENTS

A. General Requirements

A DBE goal percentage equaling _____ percent (%) of the Contract value has been established for this Contract. This DBE goal percentage will be applied to the final Contract value to ultimately determine the required DBE goal. If additional work is required, DBE firms should be provided the appropriate opportunities to achieve the required DBE goal.

In order to receive credit toward the Contract DBE goal, the firms utilized as DBE subcontractors or suppliers must be certified as DBEs in the type of work to be counted for credit by CTDOT’s Office of Contract Compliance prior to the date of the execution of the subcontract. Neither CTDOT nor the State of Connecticut’s Unified Certification Program (UCP) makes any representation as to any DBE’s technical or financial ability to perform the work. Prime contractors are solely responsible for performing due diligence in hiring DBE subcontractors.

All DBEs shall perform a CUF for the work that is assigned to them. The Contractor shall monitor and ensure that the DBE is in compliance with this requirement. The Connecticut DBE UPC Directory of certified firms can be found on the CTDOT website <http://www.ct.gov/dot>. The directory lists certified DBE firms with a description of services that they are certified to perform. Only work identified in this listing may be counted towards the project’s DBE goal. A DBE firm may request to have services added at any time by contacting CTDOT’s Office of Contract Compliance. No credit shall be counted for any DBE firm found not to be performing a CUF.

Once a Contract is awarded, all DBEs that were listed on the pre-award DBE commitment document must be utilized. The Contractor is obligated to provide the value and items of the work originally established in the pre-award documentation to the DBE firms listed in the pre-award documentation. Any modifications to the pre-award commitment must follow the procedure established in Section II-C.

The Contractor shall designate a liaison officer who will administer the Contractor's DBE program. Upon execution of this Contract, the name of the liaison officer shall be furnished in writing to CTDOT's unit administering the Contract, CTDOT's Office of Contract Compliance and CTDOT's Office of Construction ("OOC"). Contact information for the designated liaison officer shall be furnished no later than the scheduled date for the pre-construction meeting.

The Contractor shall submit a bi-monthly report to the appropriate CTDOT unit administering the Contract. This report shall indicate what work has been performed to date, with the dollars paid and percentage of DBE goal completed.

Verified payments made to DBEs shall be included in this bi-monthly report. A sample form is included on the CTDOT website.

In addition, the report shall include:

1. A projected time frame of when the remaining work is to be completed for each DBE.
2. A statement by the Contractor either confirming that the approved DBEs are on schedule to meet the Contract goal, or that the Contractor is actively pursuing a GFE.
3. If retainage is specified in the Contract specifications, then a statement of certification that the subcontractors' retainage is being released in accordance with 1.08.01 (Revised or supplemented).

Failure by the Contractor to provide the required reports may result in CTDOT withholding an amount equal to one percent (1%) of the monthly estimate until the required documentation is received.

The Contractor shall receive DBE credit when a DBE, or any combination of DBEs, perform work under the Contract in accordance with this specification.

Only work actually performed by and/or services provided by DBEs which are certified for such work and/or services, as verified by CTDOT, can be counted toward the DBE goal. Supplies and equipment a DBE purchases or leases from the Contractor or its affiliate cannot be counted toward the goal.

Monitoring of the CUF will occur by CTDOT throughout the life of the project. If it is unclear that the DBE is performing the work specified in its subcontract with the prime Contractor, further review may be required. If it is determined that the DBE is not performing a CUF, then the work performed by that DBE will not be counted towards the DBE goal percentage.

B. Subcontract Requirements

The Contractor shall submit to CTDOT's OOC all requests for subcontractor approvals on the standard CLA-12 forms provided by CTDOT. The dollar amount and items of work identified on the CLA-12 form must, at minimum, equal the dollar value submitted in the pre-award commitment. CLA-12 forms can be found at <http://www.ct.gov/dot/construction> under the "Subcontractor Approval" section. All DBE subcontractors must be identified on the CLA-12 form, regardless of whether they are being utilized to meet a Contract goal percentage. A copy of the legal Contract between the Contractor and the DBE subcontractor/supplier, a copy of the Title VI Contractor Assurances and a copy of the Required Contract Provision for Federal Aid Construction Contracts (Form FHWA-1273) (Federal Highway Administration projects only) must be submitted along with a request for subcontractor approval. These attachments cannot be substituted by reference.

If retainage is specified in the Contract specifications, then the subcontract agreement must contain a prompt payment mechanism that acts in accordance with Article 1.08.01 (Revised or supplemented).

If the Contract specifications do not contain a retainage clause, the Contractor shall not include a retainage clause in any subcontract agreement, and in this case, if a Contractor does include a retainage clause, it shall be deemed unenforceable.

In addition, the following documents are to be included with the CLA-12, if applicable:

- An explanation indicating who will purchase material.
- A statement explaining any method or arrangement for utilization of the Contractor's equipment.

The subcontract must show items of work to be performed, unit prices and, if a partial item, the work involved by all parties. If the subcontract items of work or unit prices are modified, the procedure established in Section II-C must be followed.

Should a DBE subcontractor further sublet items of work assigned to it, only lower tier subcontractors who are certified as a DBE firm will be counted toward the DBE goal. If the lower tier subcontractor is a non-DBE firm, the value of the work performed by that firm will not be counted as credit toward the DBE goal.

The use of joint checks between a DBE firm and the Contractor is acceptable, provided that written approval is received from the OOC prior to the issuance of any joint check. Should it become necessary to issue a joint check between the DBE firm and the Contractor to purchase materials, the DBE firm must be responsible for negotiating the cost, determining the quality and quantity, ordering the material and installing (where applicable), and administering the payment to the supplier. The Contractor should not make payment directly to suppliers.

Each subcontract the Contractor signs with a subcontractor must contain the following assurance:

“The subcontractor/supplier/manufacture shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor/subcontractor/supplier/manufacture to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

C. Modification to Pre-Award Commitment

Contractors may not terminate for convenience any DBE subcontractor or supplier that was listed on the pre-award DBE commitment without prior written approval of the OOC. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. Prior to approval, the Contractor must demonstrate to the satisfaction of the OOC, that it has good cause, as found in 49CFR Part 26.53 (f)(3), for termination of the DBE firm.

Before transmitting its request for approval to terminate pre-award DBE firms to the OOC, the Contractor must give written notice to the DBE subcontractor and include a copy to the OOC of its notice to terminate and/or substitute, and the reason for the notice.

The Contractor must provide five (5) days for the affected DBE firm to respond. This affords the DBE firm the opportunity to advise the OOC and the Contractor of any reasons why it objects to the termination of its subcontract and why the OOC should not approve the Contractor's action.

Once the Contract is awarded, should there be any amendments or modifications of the approved pre-award DBE submission other than termination of a DBE firm, the Contractor shall follow the procedure below that best meets the criteria associated with the reason for modification:

1. If the change is due to a scope of work revision or non-routine quantity revision by CTDOT, the Contractor must notify CTDOT's OOC in writing or via electronic mail that their DBE participation on

the project may be impacted as soon as they are aware of the change. In this case, a release of work from the DBE firm may not be required; however the Contractor must concurrently notify the DBE firm in writing, and copy the OOC for inclusion in the project DBE file. This does not relieve the Contractor of its obligation to meet the Contract specified DBE goal, or of any other responsibility found in this specification.

2. If the change is due to a factor other than a CTDOT directive, a request for approval in writing or via electronic mail of the modification from the OOC must be submitted, along with an explanation of the change(s), prior to the commencement of work. The Contractor must also obtain a letter of release from the originally named DBE indicating their concurrence with the change, and the reason(s) for their inability to perform the work. In the event a release cannot be obtained, the Contractor must document all efforts made to obtain it.
3. In the event a DBE firm that was listed in the pre-award documents is **unable** or **unwilling** to perform the work assigned, the Contractor shall:
 - Notify the OOC Division Chief immediately and make efforts to obtain a release of work from the firm.
 - Submit documentation that will provide a basis for the change to the OOC for review and approval prior to the implementation of the change.
 - Use the DBE Directory to identify and contact firms certified to perform the type of work that was assigned to the unable or unwilling DBE firm. The Contractor should also contact CTDOT's Office of Contract Compliance for assistance in locating additional DBE firms to the extent needed to meet the contract goal.

Should a DBE subcontractor be terminated or fail to complete work on the Contract for any reason, the Contractor must make a GFE to find another DBE subcontractor to substitute for the original DBE. The DBE replacement shall be given every opportunity to perform at least the same amount of work under the Contract as the original DBE subcontractor.

If the Contractor is unable to find a DBE replacement:

- The Contractor should identify other contracting opportunities and solicit DBE firms in an effort to meet the Contract DBE goal requirement, if necessary, and provide documentation to support a GFE. (Refer to GFE in Section III.)
- The Contractor must demonstrate that the originally named DBE, who is unable or unwilling to perform the work assigned, is in default of its subcontract, or identify other issues that affected the DBE firm's ability to perform the assigned work. The Contractor's ability to negotiate a more advantageous agreement with another subcontractor is not a valid basis for change.

III. GOOD FAITH EFFORTS

The DBE goal is **NOT** reduced or waived for projects where the Contractor receives a Pre-Award GFE determination from the Office of Contract Compliance prior to the award of the Contract. It remains the responsibility of the Contractor to make a continuing GFE to achieve the specified Contract DBE goal. The Contractor shall pursue every available opportunity to obtain additional DBE firms and document all efforts made in such attempts.

At the completion of all Contract work, the Contractor shall submit a final report to CTDOT's unit administering the Contract indicating the work done by and the dollars paid to DBEs. Only verified payments made to DBEs performing a CUF will be counted towards the Contract goal.

Goal attainment is based on the total Contract value, which includes all construction orders created during the Contract. If the Contractor does not achieve the specified Contract goal for DBE participation or has not provided the value of work to the DBE firms originally committed to in the pre-award submission, the Contractor shall submit documentation to CTDOT's unit administering the Contract detailing the GFE made during the performance of the Contract to satisfy the goal.

A GFE should consist of the following, where applicable (CTDOT reserves the right to request additional information):

1. A detailed statement of the efforts made to replace an unable or unwilling DBE firm, and a description of any additional subcontracting opportunities that were identified and offered to DBE firms in order to increase the likelihood of achieving the stated goal.
2. A detailed statement, including documentation of the efforts made to contact and solicit bids from certified DBEs, including the names, addresses, and telephone numbers of each DBE firm contacted; the date of contact and a description of the information provided to each DBE regarding the scope of services and anticipated time schedule of work items proposed to be subcontracted and the response from firms contacted.
3. Provide a detailed explanation for each DBE that submitted a subcontract proposal which the Contractor considered to be unacceptable stating the reason(s) for this conclusion.
4. Provide documentation, if any, to support contacts made with CTDOT requesting assistance in satisfying the specified Contract goal.
5. Provide documentation of all other efforts undertaken by the Contractor to meet the defined goal. Additional documentation of efforts made to obtain DBE firms may include but will not be limited to:
 - Negotiations held in good faith with interested DBE firms, not rejecting them without sound reasons.
 - Written notice provided to a reasonable number of specific DBE firms in sufficient time to allow effective participation.
 - Those portions of work that could be performed by readily available DBE firms.

In instances where the Contractor can adequately document or substantiate its GFE and compliance with other DBE Program requirements, the Contractor will have satisfied the DBE requirement and no administrative remedies will be imposed.

IV. PROJECT COMPLETION

At the completion of all Contract work, the Contractor shall:

1. Submit a final report to CTDOT's unit administering the Contract indicating the work done by, and the dollars paid to DBEs.
2. Submit verified payments made to all DBE subcontractors for the work that was completed.
3. Submit documentation detailing any changes to the DBE pre-award subcontractors that have not met the original DBE pre-award commitment, including copies of the Department's approvals of those changes.
4. Retain all records for a period of three (3) years following acceptance by CTDOT of the Contract and those records shall be available at reasonable times and places for inspection by authorized representatives of CTDOT and Federal agencies. If any litigation, claim, or audit is started before the expiration of the

three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records are resolved.

If the Contractor does not achieve the specified Contract goal for DBE participation in addition to meeting the dollar value committed to the DBE subcontractors identified in the pre-award commitment, the Contractor shall submit documentation to CTDOT's unit administering the Contract detailing the GFE made during the performance of the Contract to satisfy the goal.

V. SHORTFALLS

A. **Failure to meet DBE goals**

As specified in (II-A) above, attainment of the Contract DBE goal is based on the final Contract value. The Contractor is expected to achieve the amount of DBE participation originally committed to at the time of award; however, additional efforts must be made to provide opportunities to DBE firms in the event a Contract's original value is increased during the life of the Contract.

The Contractor is expected to utilize the DBE subcontractors originally committed in the DBE pre-award documentation for the work and dollar value that was originally assigned.

If a DBE is terminated or is unable or unwilling to complete its work on a Contract, the Contractor shall make a GFE to replace that DBE with another certified DBE to meet the Contract goal.

The Contractor shall immediately notify the OOC of the DBE's inability or unwillingness to perform, and provide reasonable documentation and make efforts to obtain a release of work from the firm.

If the Contractor is unable to find a DBE replacement, then the Contractor should identify other contracting opportunities and solicit DBE firms in an effort to meet the Contract DBE goal requirement, if necessary, and provide documentation to support a GFE.

When a DBE is unable or unwilling to perform, or is terminated for just cause, the Contractor shall make a GFE to find other DBE opportunities to increase DBE participation to the extent necessary to at least satisfy the Contract goal.

For any DBE pre-award subcontractor that has been released appropriately from the project, no remedy will be assessed, provided that the Contractor has met the criteria described in Section II-C.

B. **Administrative Remedies for Non-Compliance:**

In cases where the Contractor has failed to meet the Contract specified DBE goal or the DBE pre-award commitment, and where no GFE has been demonstrated, then one or more of the following administrative remedies will be applied:

1. A reduction in Contract payments to the Contractor as determined by CTDOT, not to exceed the shortfall amount of the **DBE goal**. The maximum shortfall will be calculated by multiplying the Contract DBE goal (adjusted by any applicable GFE) by the final Contract value, and subtracting any verified final payments made to DBE firms by the Contractor.
2. A reduction in Contract payments to the Contractor determined by CTDOT, not to exceed the shortfall amount of the **pre-award commitment**. The maximum shortfall will be calculated by subtracting any verified final payments made by the Contractor to each DBE subcontractor from the amount originally committed to that subcontractor in the pre-award commitment.

3. A reduction in Contract payments to the Contractor determined by CTDOT for any pre-award DBE subcontractor who has not obtained the dollar value of work identified in the DBE pre-award commitment and has not followed the requirements of Section II-C or for any DBE firm submitted for DBE credit that has not performed a CUF.
4. The Contractor being required to submit a written DBE Program Corrective Action Plan to CTDOT for review and approval, which is aimed at ensuring compliance on future projects.
5. The Contractor being required to attend a Non-Responsibility Meeting on the next contract where it is the apparent low bidder.
6. The Contractor being suspended from bidding on contracts for a period not to exceed six (6) months.

VI. CLASSIFICATIONS OTHER THAN SUBCONTRACTORS

A. Material Manufacturers

Credit for DBE manufacturers is 100% of the value of the manufactured product. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

If the Contractor elects to utilize a DBE manufacturer to satisfy a portion of, or the entire specified DBE goal, the Contractor must provide the OOC with:

- Subcontractor Approval Form (CLA-12) indicating the firm designation,
- An executed "Affidavit for the Utilization of Material Suppliers or Manufacturers" (sample attached), and
- Substantiation of payments made to the supplier or manufacturer for materials used on the project.

B. Material Suppliers (Dealers)

Credit for DBE dealers/suppliers is limited to 60% of the value of the material to be supplied, provided such material is obtained from an approved DBE dealer/supplier.

In order for a firm to be considered a regular dealer, the firm must own, operate, or maintain a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. At least one of the following criteria must apply:

- To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of the regular dealers' own distribution equipment shall be by long term lease agreement, and not on an ad hoc or contract to contract basis.
- Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

If the Contractor elects to utilize a DBE supplier to satisfy a portion or the entire specified DBE goal, the Contractor must provide the OOC with:

- Subcontractor Approval Form (CLA-12) indicating the firm designation,
- An executed "Affidavit for the Utilization of Material Suppliers or Manufacturers" (sample attached), and
- Substantiation of payments made to the supplier or manufacturer for materials used on the project.

C. Brokering

- Brokering of work for DBE firms who have been listed by the Department as certified brokers is allowed. Credit for those firms shall be applied following the procedures in Section VI-D.
- Brokering of work by DBEs who have been approved to perform subcontract work with their own workforce and equipment is not allowed, and is a Contract violation.
- Firms involved in the brokering of work, whether they are DBEs and/or majority firms who engage in willful falsification, distortion or misrepresentation with respect to any facts related to the project shall be referred to the U.S. DOT, Office of the Inspector General for prosecution under Title 18, U.S. Code, Part I, Chapter 47, Section 1020.

D. Non-Manufacturing or Non-Supplier DBE Credit

Contractors may count towards their DBE goals the following expenditures with DBEs that are not manufacturers or suppliers:

- Reasonable fees or commissions charged for providing a bona fide service such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment materials or supplies necessary for the performance of the Contract, provided that the fee or commission is determined by the OOC to be reasonable and consistent with fees customarily allowed for similar services.
- The fees charged only for delivery of materials and supplies required on a job site when the hauler, trucker, or delivery service is a DBE, and not the manufacturer, or regular dealer of the materials and supplies, and provided that the fees are determined by the OOC to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- The fees or commissions charged for providing bonds or insurance specifically required for the performance of the Contract, provided that the fees or commissions are determined by CTDOT to be reasonable and not excessive as compared with fees customarily allowed for similar services.

E. Trucking

While technically still considered a subcontractor, the rules for counting credit for DBE trucking firms are as follows:

- The DBE must own and operate at least one fully licensed, insured, and operational truck used on the Contract.
- The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
- The DBE may lease trucks from a non-DBE firm; however the DBE may only receive credit for any fees or commissions received for arranging transportation services provided by the non-DBE firms. Additionally, the DBE firm must demonstrate that they are in full control of the trucking operation for which they are seeking credit.

VII. Suspected DBE Fraud

In appropriate cases, CTDOT will bring to the attention of the USDOT any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take the steps, e.g. referral to the Department of Justice for criminal prosecution, referral to USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules provided in 49 CFR Part 31.

**CONNECTICUT DEPARTMENT OF TRANSPORTATION
(OFFICE OF CONSTRUCTION)
BUREAU OF ENGINEERING AND CONSTRUCTION**

This affidavit must be completed by the State Contractor's DBE notarized and attached to the contractor's request to utilize a DBE supplier or manufacturer as a credit towards its DBE contract requirements; failure to do so will result in not receiving credit towards the contract DBE requirement.

State Contract No. _____

Federal Aid Project No. _____

Description of Project _____

I, _____, acting in behalf of _____,
(Name of person signing Affidavit) (DBE person, firm, association or corporation)

of which I am the _____ certify and affirm that _____
(Title of Person) (DBE person, firm, association or corporation)

is a certified Connecticut Department of Transportation DBE. I further certify and affirm that I have read and understand 49 CFR, Sec. 26.55(e)(2), as the same may be revised.

I further certify and affirm that _____ will assume the actual and
(DBE person, firm, association or Corporation)
for the provision of the materials and/or supplies sought by _____.

If a manufacturer, I operate or maintain a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required under the contract an of the general character described by the specifications.

If a supplier, I perform a commercially useful function in the supply process. As a regular dealer, I, at a minimum, own and operate the distribution equipment for bulk items. Any supplementing of my distribution equipment shall be by long-term lease agreement, and not on an ad hoc or contract-by-contract basis.

I understand that false statements made herein are punishable by Law (Sec. 53a-157), CGS, as revised).

(Name of Corporation or Firm)

(Signature & Title of Official making the Affidavit)

Subscribed and sworn to before me, this ____ day of _____ 20 ____.

Notary Public (Commissioner of the Superior Court)

My Commission Expires _____

CERTIFICATE OF CORPORATION

I, _____, certify that I am the _____
(Name) (Title)

of the Corporation named in the foregoing instrument; that I have been duly authorized to affix the seal of the Corporation to such papers as require the seal; that _____, who signed said instrument on behalf of the Corporation, was then _____ of said corporation; that said instrument was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporation powers.

(Signature of Person Certifying)

(Date)

Schedule E
Small Business Enterprise (“SBE”) Special Provision
Rev. 2023

I. GENERAL

- A. The Contractor shall cooperate with the Connecticut Department of Transportation (CTDOT) in implementing the required contract obligations concerning “Small Contractor” and “Minority Business Enterprise” use on this Contract in accordance with Section 4a-60g of the Connecticut General Statutes as revised. “Small Contractor” and “Minority Business Enterprise” are defined in subsection (a) of Section 4a-60g, and hereinafter throughout this Special Provision each shall be referred to as a “Small Contractor.” The Contractor shall also cooperate with CTDOT in reviewing the Contractor’s activities relating to this provision. This Special Provision is in addition to all other equal opportunity employment requirements of this Contract.
- B. For the purpose of this Special Provision, the Small Contractor(s) and Minority Business Enterprise(s) named to satisfy the set-aside requirement must be certified by the Department of Administrative Services, Business Connections/ Set-Aside Unit [(860) 713-5236 [Small Minority Business Center \(ct.gov\)](http://SmallMinorityBusinessCenter.ct.gov)]. A Small Contractor is subject to approval by CTDOT to do the work for which it is nominated pursuant to the criteria set forth in Section IIC-3.
- C. Contractors who allow work which they have designated for Small Contractor participation in the pre-award submission required under Section IIC to be performed by other than the approved Small Contractor organization and prior to concurrence by CTDOT, will not be paid for the value of the work performed by organizations other than the Small Contractor designated.
- D. If the Contractor is unable to achieve the specified contract goals for Small Contractor participation, the Contractor shall submit written documentation to CTDOT’s Manager of Construction Operations indicating his/her attempts to satisfy goal requirements. Documentation is to include but not be limited to the following:
1. A detailed statement of the efforts made to select additional subcontract opportunities for work to be performed by each Small Contractor in order to increase the likelihood of achieving the stated goal.
 2. A detailed statement, including documentation of the efforts made to contact and solicit contracts with each Small Contractor, including the names, addresses, dates and telephone numbers of each Small Contractor contacted, and a description of the information provided to each Small Contractor regarding the scope of services and anticipated time schedule of items proposed to be subcontracted and the nature of response from firms contacted.
 3. For each Small Contractor that placed a subcontract quotation which the Contractor considered not to be acceptable, provide a detailed statement of the reasons for this conclusion.
 4. Documents to support contacts made with CTDOT requesting assistance in satisfying the contract specified or adjusted Small Contractor dollar requirements.
 5. Document other special efforts undertaken by the Contractor to meet the defined goal.
- E. Failure of the Contractor to have at least the specified dollar amount of this contract performed by Small Contractor as required in Section IIA of this Special Provision will result in the reduction in contract payment to the Contractor by an amount equivalent to that determined by subtracting from the specific dollar amount required in Section IIA, the dollar payments for the work actually performed by each Small Contractor. The deficiency in Small Contractor

achievement, will therefore, be deducted from the final contract payment. However, in instances where the Contractor can adequately document or substantiate its good faith efforts made to meet the specified or adjusted dollar amount to the satisfaction of CTDOT, no reduction in payments will be imposed.

- F. All records must be retained for a period of three (3) years following completion of the contract and shall be available at reasonable times and places for inspection by authorized representatives of CTDOT.
- G. Nothing contained herein, is intended to relieve any contractor or subcontractor or material supplier or manufacturer from compliance with all applicable Federal and State legislation or provisions concerning equal employment opportunity, affirmative action, nondiscrimination and related subjects during the term of this Contract.

II. SPECIFIC REQUIREMENTS

In order to increase the participation of Small Contractors, CTDOT requires the following:

- A. Not less than _____ percent (___%) of the **final** value of this Contract shall be subcontracted to and performed by, and/or supplied by, manufactured by and paid to Small Contractors.
- B. The Contractor shall assure that each Small Contractor will have an equitable opportunity to compete under this Special Provision, particularly by arranging solicitations, time for the preparation of Quotes, Scope of Work, and Delivery Schedules so as to facilitate the participation of each Small Contractor.
- C. The Contractor shall provide to CTDOT's Manager of Contracts within Five (5) days after the bid opening the following items:
 - 1. A certification of work to be subcontracted (Exhibit 2) signed by both the Contractor and the Small Contractor listing the work items and the dollar value of the items that the nominated Small Contractor is to perform on the project to achieve the minimum percentage indicated in Section IIA above.
 - 2. A certification of past experience (Exhibit 3) indicating the scope of work the nominated Small Contractor has performed on all projects, public and private, for the past five (5) years.
 - 3. In instances where a change from the originally approved named Small Contractor (see Section IB) is proposed, the Contractor is required to submit, in a reasonable and expeditious manner, a revised submission, comprised of the documentation required in Section IIC, Paragraphs 1, 2 and 3 and Section E together with documentation to substantiate and justify the change, (i.e., documentation to provide a basis for the change) to CTDOT's Manager of Construction Operations for its review and approval prior to the implementation of the change. The Contractor must demonstrate that the originally named Small Contractor is unable to perform in conformity to specifications, or unwilling to perform, or is in default of its contract, or is overextended on other jobs. The Contractor's ability to negotiate a more advantageous contract with another Small Contractor is not a valid basis for change. Documentation shall include a letter of release from the originally named Small Contractor indicating the reason(s) for the release.

- D. After the Contractor signs the Contract, the Contractor will be required to meet with CTDOT's Manager of Construction Operations or his/her designee to review the following:
1. What is expected with respect to the Small Contractor set aside requirements.
 2. Failure to comply with and meet the requirement can and will result in monetary deductions from payment.
 3. Each quarter after the start of the Small Contractor the Contractor shall submit a report to CTDOT's Manager of Construction Operations indicating the work done by, and the dollars paid to each Small Contractor to date.
 4. What is required when a request to sublet to a Small Contractor is submitted.
- E. The Contractor shall submit to CTDOT's Manager of Construction Operations all requests for subcontractor approvals on standard forms provided by the Department.

If the request for approval is for a Small Contractor subcontractor for the purpose of meeting the contract required Small Contractor percentage stipulated in Section IIA, a copy of the legal contract between the Contractor and the Small Contractor subcontractor must also be submitted at the same time. Any subsequent amendments or modifications of the contract between the Contractor and the Small Contractor subcontractor must also be submitted to CTDOT's Manager of Construction Operations with an explanation of the change(s). The contract must show items of work to be performed, unit prices and, if a partial item, the work involved by both parties.

In addition, the following documents are to be attached:

1. A statement explaining any method or arrangement for renting equipment. If rental is from a Contractor, a copy of Rental Agreement must be submitted.
 2. A statement addressing any special arrangements for manpower.
 3. A statement addressing who will purchase material.
- F. Contractors subcontracting with a Small Contractor to perform work or services as required by this Special Provision shall not terminate such firms without advising CTDOT, in writing, and providing adequate documentation to substantiate the reasons for termination if the designated Small Contractor firm has not started or completed the work or the services for which it has been contracted to perform.
- G. Material Suppliers or Manufacturers

If the Contractor elects to utilize a Small Contractor supplier or manufacturer to satisfy a portion or all of the specified dollar requirements, the Contractor must provide the Department with:

1. An executed Affidavit Small Contractor (Set-Aside) Connecticut Department of Transportation Affidavit Supplier or Manufacturer (sample attached), and
2. Substantiation of payments made to the supplier or manufacturer for materials used on the project.

Brokers and packagers shall not be regarded as material Suppliers or manufacturer.

H. Non-Manufacturing or Non-Supplier Small Contractor Credit

Contractors may count towards its Small Contractor goals the following expenditures with Small Contractor firms that are not manufacturers or suppliers:

1. Reasonable fees or commissions charged for providing a bona fide service such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, material or supplies necessary for the performance of the contract provided that the fee or commission is determined by the Department of Transportation to be reasonable and consistent with fees customarily allowed for similar services.
2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Department of Transportation to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by the Department of Transportation to be reasonable and not excessive as compared with fees customarily allowed for similar services.

III. BROKERING

For the purpose of this Special Provision, a "Broker" is one who acts as an agent for others in negotiating contracts, purchases, sales, etc., in return for a fee or commission. Brokering of work by a Small Contractor is not allowed and is a contract violation.

IV. PRE-AWARD WAIVERS:

If the Contractor's submission of the Small Contractor listing, as required by Section IIC indicates that it is unable, by subcontracting to obtain commitments which at least equal the amount required by Section IIA, it may request, in writing, a waiver of up to 50% of the amount required by Section IIA. To obtain such a waiver, the Contractor must submit a completed "Application for Waiver of Small Contractor Minority Business Enterprise Goals" to CTDOT's Manager of Contracts which must also contain the following documentation:

1. Information described in Section ID.
2. For each Small Contractor contacted but unavailable, a statement from each Small Contractor confirming its unavailability.

Upon receipt of the submission requesting a waiver, the CTDOT's Manager of Contracts shall submit the documentation to the Director of the Office of Contract Compliance who shall review it for completeness. After completion of the Director of Contract Compliance's review, she/he should write a narrative of his/her findings of the application for a waiver, which is to include his/her recommendation. The Director of Contract Compliance shall submit the written narrative to the Chairperson of

the DBE Screening Committee at least five (5) working days before the scheduled meeting. The Contractor shall be invited to attend the meeting and present his/her position. The DBE Screening Committee shall render a decision on the waiver request within five (5) working days after the meeting. The DBE Screening Committee's decision shall be final. Waiver applications are available from the CTDOT Manager of Contracts.

Exhibit 1. Reserved
Exhibit 2

Exhibit 2
 Rev 7/2019

CONNECTICUT DEPARTMENT OF TRANSPORTATION (CTDOT)
PRIME-AWARD SBE COMMITMENT APPROVAL REQUEST

DO NOT SUBMIT THIS WITH THE TIME FRAME PROPOSAL IN THE BID DOCUMENTS

Only certified SBE firms will be approved. The SBE directory is available on the Department of Administrative Services's web site: <http://www.ct.gov/das/contracts/contracts/SBEtable.xlsx>

CTDOT Project Number (s): _____ Sheet _____ of _____

Town(s) of: _____ SBE Subcontractor: _____

Submitted By: _____ Address: _____

Original Bid (S): _____

Dollar amount subcontracted to this SBE firm (S): _____

Item Number & Description	Is This Item Partial? Yes/No	Firm Type Code*	Units	Quantity bid by the Prime	Contract Unit Price	Quantity subcontracted	Subcontract Unit Price**	Total New price subcontracted
	N <input checked="" type="checkbox"/>							0.00
	N <input checked="" type="checkbox"/>							0.00
	N <input checked="" type="checkbox"/>							0.00
	N <input checked="" type="checkbox"/>							0.00
	N <input checked="" type="checkbox"/>							0.00
	N <input checked="" type="checkbox"/>							0.00
	N <input checked="" type="checkbox"/>							0.00

If any of the items above are checked **Yes** as to **Partial**, please provide or use an attachment to offer an explanation of the work involved. Also please identify who is responsible for the remainder of the partial items.

* Firm Type Code: S (subcontractor), M (manufacturer), P (supplier), T (trucking), V (services)

** In instances where the Prime is paying the Subcontractor a higher unit price than the bid, by submitting this form the Prime agrees to the higher subcontracted price without additional costs to the Department.

Signature of Prime Contractor, Title

Date

Signature of Subcontractor, Title

Date

After this submittal is approved by the Department, any proposed changes to it must be submitted to the Department for approval.

Exhibit 3

Sample of Past Construction Experience

Only include the work within the last 5 years that are relevant to the work performed on this project

CTDDOT Project Number: _____

SBE Firm: _____

Project Description and Location	Your Contract Value	The Name of the Owner or the Prime Contractor on the Project/Contact Name and Phone Number	Actual or Estimated Completion Date	Overview of items Performed

Schedule F
Small Business Participation Pilot Program (“SBPPP”) Special Provision
Rev. 2023

I. ABBREVIATIONS AND DEFINITIONS AS USED IN THIS SPECIAL PROVISION

- A. “ConnDOT” means the Connecticut Department of Transportation.
- B. “DOT” means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (“FHWA”), the Federal Transit Administration (“FTA”), and the Federal Aviation Administration (“FAA”).
- C. “Broker” means a party acting as an agent for others in negotiating Contracts, Agreements, purchases, sales, etc., in return for a fee or commission.
- D. “Contract,” “Agreement” or “Subcontract” means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For the purposes of this provision, a lease for equipment or products is also considered to be a Contract.
- E. “Contractor,” means a consultant, second party or any other entity doing business with the Municipality or, as the context may require, with another Contractor.
- F. “Disadvantaged Business Enterprise” (“DBE”) means a small business concern:
1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock of which is owned by one or more such individuals; and
 2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- G. “DOT-assisted Contract” means any Contract between the recipient (the Municipality) and a Contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees.
- H. “Good Faith Efforts” means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Refer to Appendix A of 49 Code of Federal Regulation (“CFR”) Part 26 – “Guidance Concerning Good Faith Efforts,” a copy of which is attached to this provision, for guidance as to what constitutes good faith efforts.
- I. “Small Business Concern” means, with respect to firms seeking to participate as DBEs in DOT-assisted Contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration (“SBA”) regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26, Section 26.65(b).
- J. “Small Business Participation Pilot Program” (“SBPPP”) means small businesses certified as a Disadvantaged Business Enterprise (DBE) firm by ConnDOT; or firms certified as a Small Business Enterprise or Minority Business Enterprise by the Connecticut Department of Administrative Services; or firms certified by the United States Small Business Administration (USSBA) as an 8(a) or SDB or HUBZone firm; or firms that are a current active recipient of a United States Small Business Administration Loan (loan must be documented).

K. "Socially and Economically Disadvantaged Individuals" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

1. Any individual who ConnDOT finds on a case-by-case basis to be a socially and economically disadvantaged individual.
2. Any individuals in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. "Black Americans," which includes persons having origins in any of the black racial groups of Africa;
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - vi. Women;
 - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

II. GENERAL REQUIREMENTS

A. The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the Municipality and ConnDOT deem appropriate.

B. The Contractor shall cooperate with the Municipality, ConnDOT and DOT in implementing the requirements concerning SBPPP utilization on this Contract. The Contractor shall also cooperate with the Municipality, ConnDOT and DOT in reviewing the Contractor's activities relating to this Special Provision. This Special Provision is in addition to all other equal opportunity employment requirements of this Contract.

C. The Contractor shall designate a liaison officer who will administer the Contractor's SBPPP program. Upon execution of this Contract, the name of the liaison officer shall be furnished in writing to the Municipality.

D. For the purpose of this Special Provision, the SBPPP contractor(s) named to satisfy the requirements must meet one of the following criteria;

1. Certified as a Disadvantaged Business Enterprise (DBE) firm by ConnDOT;
2. Certified as a Small Business Enterprise or Minority Business Enterprise by the Connecticut

Department of Administrative Services;

3. Certified by the USSBA as an 8(a) or SDB firm;
4. Certified by the USSBA as a HUBZone firm; or
5. A current active recipient of a United States Small Business Administration Loan (loan documentation required).

E. If the Contractor allows work designated for SBPPP participation required under the terms of this Contract and required under III-B to be performed by other than the named SBPPP firm without concurrence from the Municipality, the Municipality will not pay the Contractor for the value of the work performed by firms other than the designated SBPPP.

F. In the event a SBPPP firm that was listed in the award documents is unable or unwilling to perform the work assigned; the Contractor shall notify the Municipality immediately and make efforts to obtain a release of work from the firm. If the Contractor is unable to find a SBPPP replacement, then the Contractor should identify other contracting opportunities and solicit SBPPP firms in an effort to meet the contract SBPPP goal requirement.

G. At the completion of all Contract work, the Contractor shall submit a final report to the Municipality indicating the work done by, and the dollars paid to SBPPPs. If the Contractor does not achieve the specified Contract goals for SBPPP participation, the Contractor shall also submit written documentation to the Municipality detailing its good faith efforts to satisfy the goal throughout the performance of the Contract. Documentation is to include, but not be limited to the following:

1. A detailed statement of the efforts made to select additional subcontracting opportunities to be performed by SBPPPs in order to increase the likelihood of achieving the stated goal.
2. A detailed statement, including documentation of the efforts made to contact and solicit bids with SBPPPs, including the names, addresses, dates and telephone numbers of each SBPPP contacted, and a description of the information provided to each SBPPP regarding the scope of services and anticipated time schedule of work items proposed to be subcontracted and nature of response from firms contacted.
3. Provide a detailed statement for each SBPPP that submitted a subcontract proposal, which the Contractor considered not to be acceptable stating the reasons for this conclusion.
4. Provide documents to support contacts made with ConnDOT requesting assistance in satisfying the Contract specified goal.
5. Provide documentation of all other efforts undertaken by the Contractor to meet the defined goal.

H. Failure of the Contractor, at the completion of all Contract work, to have at least the specified percentage of this Contract performed by SBPPPs as required in III-B will result in the reduction in Contract payments to the Contractor by an amount determined by multiplying the total Contract value by the specified percentage required in III-B and subtracting from that result, the dollar payments for the work actually performed by SBPPPs. However, in instances where the Contractor can adequately document or substantiate its good faith efforts made to meet the specified percentage to the satisfaction of the Municipality and ConnDOT, no reduction in payments will be imposed.

I. All records must be retained for a period of three (3) years following acceptance by the Municipality of the Contract and shall be available at reasonable times and places for inspection by authorized representatives of the Municipality, ConnDOT and or Federal agencies. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audits findings involving the records are resolved.

J. Nothing contained herein, is intended to relieve any Contractor or subcontractor or material supplier or manufacturer from compliance with all applicable Federal and State legislation or provisions concerning equal employment opportunity, affirmative action, nondiscrimination and related subjects during the term of this Contract.

III. SPECIFIC REQUIREMENTS:

In order to increase the participation of SBPPPs, the Municipality requires the following:

A. The Contractor shall assure that certified SBPPPs will have an opportunity to compete for subcontract work on this Contract, particularly by arranging solicitations and time for the preparation of proposals for services to be provided so as to facilitate the participation of SBPPPs regardless if a Contract goal is specified or not.

B. The SBPPP goal percentage will be provided as part of the Project Authorization Letter. The goal shall be based upon the total contract value. Compliance with this provision may be fulfilled when a SBPPP or any combination of SBPPPs perform work. Only work actually performed by and/or services provided by SBPPPs which are certified for such work and/or services can be counted toward the SBPPP goal. Supplies and equipment a SBPPP purchases or leases from the prime Contractor or its affiliate cannot be counted toward the goal.

If the Contractor does not document commitments, by subcontracting and/or procurement of material and/or services that at least equal the goal, it must document the good faith efforts that outline the steps it took to meet the goal in accordance with VII.

C. Within seven (7) days after the bid opening, the low bidder shall indicate in writing to the Municipality, on the forms provided, the SBPPPs it will use to achieve the goal indicated in III-B. The submission shall include the name and address of each SBPPP that will participate in this Contract, a description of the work each will perform, the dollar amount of participation, and the percentage this is of the bid amount. This information shall be signed by the named SBPPP and the low bidder.

D. The Prime Contractor shall submit to the Municipality all requests for subcontractor approvals on the standard forms provided by the Municipality.

If the request for approval is for a SBPPP subcontractor for the purpose of meeting the Contract SBPPP goal, a copy of the legal contract between the prime and the SBPPP subcontractor must be submitted along with the request for subcontractor approval. Any subsequent amendments or modifications of the contract between the prime and the SBPPP subcontractor must also be submitted to the Municipality with an explanation of the change(s). The contract must show items of work to be performed, unit prices and, if a partial item, the work involved by all parties.

In addition, the following documents are to be attached:

1. An explanation indicating who will purchase material.
2. A statement explaining any method or arrangement for renting equipment. If rental is from a prime, a copy of the rental agreement must be submitted.
3. A statement addressing any special arrangements for manpower.
4. Requests for approval to issue joint checks.

E. The Contractor is required, should there be a change in a SBPPP they submitted in III-C, to submit documentation to the Municipality which will substantiate and justify the change (i.e., documentation to

provide a basis for the change for review and approval by the Municipality) prior to the implementation of the change. The Contractor must demonstrate that the originally named SBPPP is unable to perform in conformity to the scope of service or is unwilling to perform, or is in default of its contract, or is overextended on other jobs. The Contractor's ability to negotiate a more advantageous contract with another subcontractor is not a valid basis for change. Documentation shall include a letter of release from the originally named SBPPP indicating the reason(s) for the release.

F. Contractors subcontracting with SBPPPs to perform work or services as required by this Special Provision shall not terminate such firms without advising the Municipality in writing, and providing adequate documentation to substantiate the reasons for termination if the SBPPP has not started or completed the work or the services for which it has been contracted to perform.

G. When a SBPPP is unable or unwilling to perform, or is terminated for just cause, the Contractor shall make good faith efforts to find other SBPPP opportunities to increase SBPPP participation to the extent necessary to at least satisfy the goal required by III-B.

H. In instances where an alternate SBPPP is proposed, a revised submission to the Municipality together with the documentation required in III-C, III-D, and III-E, must be made for its review and approval.

I. Each quarter after execution of the Contract, the Contractor shall submit a report to the Municipality indicating the work done by, and the dollars paid to, the SBPPP for the current quarter and to date.

J. Each contract that the Municipality signs with a Contractor and each Subcontract the Contractor signs with a subcontractor must include the following assurance: *The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*

IV. MATERIAL SUPPLIERS OR MANUFACTURERS

A. If the Contractor elects to utilize a SBPPP supplier or manufacturer to satisfy a portion or all of the specified SBPPP goal, the Contractor must provide the Municipality with substantiation of payments made to the supplier or manufacturer for materials used on the project.

B. Credit for SBPPP suppliers is limited to 60% of the value of the material to be supplied, provided such material is obtained from a regular SBPPP dealer. A "regular dealer" is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products, need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as material suppliers or manufacturers.

C. Credit for SBPPP manufacturers is 100% of the value of the manufactured product. A "manufacturer" is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Municipality, ConnDOT or Contractor.

V. NON-MANUFACTURING OR NON-SUPPLIER SBPPP CREDIT:

A. Contractors may count towards their SBPPP goals the following expenditures with SBPPPs that are not manufacturers or suppliers:

1. Reasonable fees or commissions charged for providing a bona fide service such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies necessary for the performance of the Contract, provided that the fee or commission is determined by the Municipality to be reasonable and consistent with fees customarily allowed for similar services.
2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is a SBPPP but is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fees are determined by the Municipality to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. The fees or commissions charged for providing bonds or insurance specifically required for the performance of the Contract, provided that the fees or commissions are determined by the Municipality to be reasonable and not excessive as compared with fees customarily allowed for similar services.

VI. BROKERING

A. Brokering of work by SBPPPs who have been approved to perform Subcontract work with their own workforce and equipment is not allowed, and is a Contract violation.

B. SBPPPs involved in the brokering of Subcontract work that they were approved to perform may be decertified.

C. Firms involved in the brokering of work, whether they are SBPPPs and/or majority firms who engage in willful falsification, distortion or misrepresentation with respect to any facts related to the project shall be referred to the U.S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U.S. Code, Section 10.20.

VII. REVIEW OF PRE-AWARD GOOD FAITH EFFORTS

A. If the Contractor does not document pre-award commitments by subcontracting and/or procurement of material and/or services that at least equal the goal stipulated in III-B, the Contractor must document the good faith efforts that outline the specific steps it took to meet the goal. The Contract will be awarded to the Contractor if its good faith efforts are deemed satisfactory and approved by ConnDOT. To obtain such an exception, the Contractor must submit an application to the Municipality, which documents the specific good faith efforts that were made to meet the SBPPP goal. An application form entitled "Review of Pre-Award Good Faith Efforts" is attached hereto.

The application must include the following documentation:

1. A statement setting forth in detail which parts, if any, of the Contract were reserved by the Contractor and not available for bid by subcontractors;
2. A statement setting forth all parts of the Contract that are likely to be sublet;
3. A statement setting forth in detail the efforts made to select subcontracting work in order to likely achieve the stated goal;
4. Copies of all letters sent to SBPPPs;
5. A statement listing the dates and SBPPPs that were contacted by telephone and the result of each contact;
6. A statement listing the dates and SBPPPs that were contacted by means other than telephone and the

result of each contact;

7. Copies of letters received from SBPPPs in which they declined to bid;
8. A statement setting forth the facts with respect to each SBPPP bid received and the reason(s) any such bid was declined;
9. A statement setting forth the dates that calls were made to ConnDOT's Division of Contract Compliance seeking SBPPP referrals and the result of each such call; and
10. Any information of a similar nature relevant to the application.

The review of the Contractor's good faith efforts may require an extension of time for award of the Contract. In such a circumstance, and in the absence of other reasons not to grant the extension or make the award, the Municipality will agree to the needed extension(s) of time for the award of the Contract, provided the Contractor and the surety also agree to such extension(s).

B. Upon receipt of the submission of an application for review of pre-award good faith efforts, the Municipality shall submit the documentation to ConnDOT's initiating unit for submission to the ConnDOT Division of Contract Compliance. The ConnDOT Division of Contract Compliance will review the documents and determine if the package is complete, accurate and adequately documents the Contractor's good faith efforts. Within fourteen (14) days of receipt of the documentation, the ConnDOT Division of Contract Compliance shall notify the Contractor by certified mail of the approval or denial of its good faith efforts.

C. If the Contractor's application is denied, the Contractor shall have seven (7) days upon receipt of written notification of denial to request administrative reconsideration. The Contractor's request for administrative reconsideration should be sent in writing to the Municipality. The Municipality will forward the Contractor's reconsideration request to the ConnDOT initiating unit for submission to the Screening Committee. The Screening Committee will schedule a meeting within fourteen (14) days of receipt of the Contractor's request for administrative reconsideration and advise the Contractor of the date, time and location of the meeting. At this meeting, the Contractor will be provided with the opportunity to present written documentation and/or argument concerning the issue of whether it made adequate good faith efforts to meet the goal. Within seven (7) days following the reconsideration meeting, the chairperson of the Screening Committee will send the Contractor, via certified mail, a written determination on its reconsideration request, explaining the basis of finding either for or against the request. The Screening Committee's determination is final. If the reconsideration is denied, the Contractor shall indicate in writing to the Municipality within fourteen (14) days of receipt of the written notification of denial, the SBPPPs it will use to achieve the goal indicated in III-B.

D. Approval of pre-award good faith efforts does not relieve the Contractor from its obligation to make additional good faith efforts to achieve the SBPPP goal should contracting opportunities arise during actual performance of the Contract work.

Schedule G
On-the-Job Training Program Special Provision
Rev. 2023

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

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

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

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

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

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

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

No employee shall be employed as a trainee or apprentice in any classification in which he/she has successfully completed a training course leading to journeyperson status or in which he/she has been employed as a journeyperson. Trainees, or apprentices, may be employed and trained in the advancement of their training or apprenticeship program.

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

training outline for each classification and an explanation of the start time of each trainee as it relates to the schedule of progress or time chart.

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

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

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

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

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

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

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor. It is normally expected that a trainee or apprentice will remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees or apprentices be on board for the entire length of the contract. A contractor will have fulfilled his responsibilities, under this Special Provision, if he has provided acceptable training for the number of hours specified.

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

the same classification who are covered by this Special Provision.

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

Pay Item
On-The-Job Training Program

Pay Unit
Hour

Schedule H

DOT Policy Statement No. E.X.O-33 (June 25, 2015) follows on next page



EAST LYME PUBLIC SCHOOLS

P.O. Box 220 • East Lyme, Connecticut 06333 • (860) 739-3966 • Fax (860) 739-1215

Board of
Selectmen

DEC 20 23

Agenda Item
30

Jeffrey R. Newton
Superintendent of Schools

Annaliese Spaziano
*Assistant Superintendent of
Curriculum, Instruction and Assessment*

Kimberly Davis
*Director of
Student Services*

Maryanna Stevens, CPA
*Director of Finance, Marketing,
and Growth Management*

RECEIVED

NOV 20 23

First Selectman
East Lyme, CT

November 27, 2023

Board of Selectmen
East Lyme Town Hall
108 Pennsylvania Avenue
Niantic, CT 06357


Dear Members of the East Lyme Board of Selectmen:

This letter signifies East Lyme Public Schools' support for the Darrow Pond Subcommittee and their proposal for program development in creating a multi-use public area in the vicinity of Darrow Pond. This development would provide our East Lyme school system with excellent learning opportunities for all students at varying grade levels. Particularly, our high school science classes could safely utilize the area to do ecological studies of both land and water.

Providing a designated space for additional experiential learning opportunities for students would be an amazing benefit to our science curriculum and would allow students to further study wildlife, observe wetlands and vernal pools, while also exploring the surroundings that Darrow Pond has to offer. Hence, we fully support this project given its amazing potential to serve both the school community and greater East Lyme community.

If I may be of any further assistance in the support of this program development, please contact me at jeffrey.newton@elpsk12.org or 860-739-3966 x5602.

Sincerely,


Jeffrey R. Newton
Superintendent of Schools

JN:cbg

CERTIFICATE OF ADOPTION
TOWN OF EAST LYME BOARD OF SELECTMEN

A RESOLUTION ADOPTING THE HAZARD MITIGATION AND CLIMATE ADAPTATION PLAN UPDATE, 2023-2028

WHEREAS, the Town of East Lyme has historically experienced severe damage from natural hazards and it continues to be vulnerable to the effects of those natural hazards profiled in the plan (e.g. flooding, extreme heat, droughts, severe storms such as thunderstorms and winter storms, dam failures, wildfires, and earthquakes) resulting in loss of property and life, economic hardship, and threats to public health and safety; and

WHEREAS, the East Lyme Board of Selectmen approved the previous versions of the Hazard Mitigation Plan in 2005, 2012, and 2018; and

WHEREAS, Southeastern Connecticut Council of Governments, of whom the Town of East Lyme is a member, has determined that climate change is affecting the frequency and severity of some hazards and therefore elected to expand the Hazard Mitigation Plan Update to become a Hazard Mitigation and Climate Adaptation Plan Update; and

WHEREAS, committee meetings were held and public input was sought in 2022 regarding the development and review of the Hazard Mitigation and Climate Adaptation Plan Update; and

WHEREAS, the Plan specifically addresses hazard mitigation and climate adaptation strategies and Plan maintenance procedures for the Town of East Lyme; and

WHEREAS, the Plan recommends several hazard mitigation actions that will provide mitigation for specific natural hazards that impact the Town of East Lyme, with the effect of protecting people and property from loss associated with those hazards while adapting to the effects of climate change; and

WHEREAS, Southeastern Connecticut Council of Governments has developed and received conditional approval from the Federal Emergency Management Agency (FEMA) for its Hazard Mitigation and Climate Adaptation Plan Update under the requirements of 44 CFR 201.6; and

WHEREAS, adoption of this Plan will make the Town of East Lyme eligible for funding to alleviate the impacts of future hazards; now therefore be it

RESOLVED by the Board of Selectmen:

1. The Plan is hereby adopted as an official plan of the Town of East Lyme;
2. The respective officials identified in the mitigation strategy of the Plan are hereby directed to pursue implementation of the recommended actions assigned to them;
3. Future revisions and Plan maintenance required by 44 CFR 201.6 and FEMA are hereby adopted as a part of this resolution for a period of five (5) years from the date of this resolution.
4. An annual report on the progress of the implementation elements of the Plan shall be presented to the Board of Selectmen.

Adopted this _____ day of _____, 2023 by the Board of Selectmen of East Lyme, Connecticut

First Selectman

IN WITNESS WHEREOF, the undersigned has affixed his/her signature and the corporate seal of the Town of East Lyme this _____ day of _____, 2023.

Town Clerk

TOWN OF EAST LYME ANNEX DOCUMENT

Southeastern Connecticut Council of Governments
Multi-Jurisdictional Hazard Mitigation and Climate Adaptation Plan Update

March 2023



PREPARED FOR:
Town of East Lyme
108 Pennsylvania Avenue
Niantic, CT 06357
www.eltownhall.com

PREPARED BY:
Resilient Land and Water, LLC
With Assistance from
The Connecticut Institute for Resilience
and Climate Adaptation (CIRCA)

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LIST OF ACRONYMS

ARC	American Red Cross	HMCAP	Hazard Mitigation and Climate Adaptation Plan
ARPA	American Rescue Plan	HMP	Hazard Mitigation Plan
BOCA	Building Officials and Code Administration	IA	Individual Assistance
CCVI	Climate Change Vulnerability Index	NCDC	National Climatic Data Center
CIP	Capital Improvement Plan	NCEI	National Centers for Environmental Information
CIRCA	Connecticut Institute for Resilience and Climate Adaptation	NFIP	National Flood Insurance Program
CL&P	Connecticut Light and Power	NOAA	National Oceanic and Atmospheric Administration
DCRF	DEEP Climate Resilience Fund	NRCS	Natural Resources Conservation Service
DEEP	Connecticut Department of Energy and Environmental Protection	NWS	National Weather Service
DFIRM	Delineated Flood Insurance Rate Map	PA	Public Assistance
DOT	Connecticut Department of Transportation	PERSISTS	Permittable Equitable Realistic Safe Innovative Scientific Transferrable Sustainable
DPW	Department of Public Works	PMF	Probable Maximum Flow
EMD	Emergency Management Director	POCD	Plan of Conservation and Development
EMS	Emergency Medical Services	RL	Repetitive Loss
EO	Executive Order	SCCOG	Southeastern Connecticut Council of Governments
EOC	Emergency Operation Center	SFHA	Special Flood Hazard Area
EOP	Emergency Operation Plan	STAPLEE	Social, Technical, Administrative, Political, Legal, Economic, and Environmental
FEMA	Federal Emergency Management Agency	STEAP	Small Town Economic Assistance Program
GC3	Governor's Council on Climate Change	USACE	United State Army Corps of Engineers
GIS	Geographic Information System	USDA	United States Department of Agriculture
HMA	Hazard Mitigation Assistance	WUI	Wildland-Urban Interface

1. Introduction

1.1. Purpose of Annex

The planning process for the multi-jurisdiction hazard mitigation plan update commenced in April 2022 and ended in December 2022, spanning a period of nine months. The planning process included 24 jurisdictions (22 municipalities and two tribal governments) with two participating together (Griswold and Jewett City) for a net total of 23 local planning teams represented. For this 4th edition of the plan, SCCOG elected to link the planning process to a parallel planning process administered by the Connecticut Institute for Resilience and Climate Adaptation (CIRCA) that is known as “Resilient Connecticut 2.0” (stylized as *Resilient Connecticut*). The *Resilient Connecticut* program is described on CIRCA’s web site at <https://resilientconnecticut.uconn.edu/> and the expansion of the program into southeastern Connecticut is described at <https://circa.uconn.edu/2022/02/23/resilient-connecticut-expands-statewide/>.

The linkage of the two planning processes was advantageous for the following reasons:

- Incorporation of climate change into the hazard mitigation plan update
- Increased interest from the local communities, especially for those interested in developing climate adaptation strategies.
- Direct incorporation of climate change vulnerability products developed by CIRCA including the Climate Change Vulnerability Index (CCVI) for flood and extreme heat vulnerabilities.
- Direct incorporation of combined sea level rise and coastal flood inundation simulations from CIRCA
- Positioning of the SCCOG jurisdictions for new funding sources in Connecticut such as the new Department of Energy and Environmental Protection (DEEP) Climate Resilience Fund (DCRF)
- Consistency with the Governor’s Council for Climate Change (GC3) outcomes from the 2020-2021 planning process
- Positioning of the actions for incorporation on the State’s “resilience project pipeline” per Executive Order (EO) 21-3 issued at the end of 2021.

The planning process commenced for the local communities on April 20, 2022, with a presentation to the SCCOG Board. During this presentation, the consultant and CIRCA described the planning process and the approach for incorporating the *Resilient Connecticut* program into the hazard mitigation plan update, and notified the chief elected officials that invitations to local planning meetings would follow at the end of April. Local planning team meetings commenced on May 23, 2022, and ended on July 8, 2022. Workshops with local coordinators were conducted in July and September 2022, and supplemental meetings with water utilities in the region and specific stakeholders continued through November 2022.

The purpose of this HMP annex is to provide an update to the hazard risk assessment and capability assessment provided in the previous HMP, and to evaluate potential hazard mitigation measures and prioritize hazard mitigation projects specific to mitigating the effects of hazards on the Town of East Lyme. Background information and the regional effects of pertinent hazards are discussed in the main body of the Southeastern Connecticut Council of Governments (SCCOG) Multi-Jurisdictional Hazard

Mitigation and Climate Adaptation Plan. Thus, this annex is designed to supplement the information presented in the Multi-Jurisdictional HMCAP with more specific detail for East Lyme and is not to be considered a standalone document.

1.2. Hazard Mitigation and Climate Adaptation Goals

The primary goal of the previous hazard mitigation plans adopted in 2013 and 2018 was to identify risks to hazards and potential mitigation measures for such hazards in order to **reduce the loss of or damage to life, property, infrastructure, and natural, cultural, and economic resources**. This included the reduction of public and private damage costs. Limiting losses of and damage to life and property was also meant to reduce the social, emotional, and economic disruption associated with a natural disaster.

Coinciding with the incorporation of climate adaptation and the alignment of this HMCAP with the *Resilient Connecticut* planning process administered by CIRCA, the five goals of this HMCAP are:

- Ensure that critical facilities are resilient, with special attention to shelters and cooling centers.
- Address risks associated with extreme heat events, especially as they interact with other hazards.
- Reduce flood and erosion risks by reducing vulnerabilities and consequences, even as climate change increases frequency and severity of floods.
- Reduce losses from other hazards.
- Invest in resilient corridors to ensure that people and services are accessible during floods and that development along corridors is resilient over the long term.

2. Community Profile

The Town of East Lyme is a coastal community with a significant inland area located in the southeastern portion of Connecticut. The area was first settled in the 1640s and the Town was incorporated in 1839. East Lyme is approximately 34.8 square miles in land area and includes several historical villages including Niantic and Flanders. The Town is bordered by the Salem to the north, Montville to the northeast, Waterford to the east, Niantic Bay and Long Island Sound to the south, and Old Lyme and Lyme to the west. The Town can be accessed via several major transportation arteries including Interstate 95, Route 1, Route 156, Route 161, and the Amtrak/Metro North Railroad. Railroad stations are located nearby in New London and Old Saybrook.

While the northern area of town is relatively rural to suburban in nature, the shoreline area is more densely developed. The Town includes several beach communities in the Niantic area, including Attawan Beach, Black Point, Crescent Beach, Giants Neck Beach, Giants Neck Heights, Oak Grove Beach, Old Black Point, Pine Grove, and Saunders Point. Some of these communities have their own Zoning regulations.

2.1. Physical Setting

The Town of East Lyme is a geographically large community located on the Connecticut shoreline that also has a significant inland area. Elevations range from sea level to just over 460 feet on hilltops in the Nehantic State Forest in the northwestern portion of town. Several inhabited islands are located along the East Lyme shoreline, including Griswold Island and Brainard Island.

Geology is important to the occurrence and relative effects of natural hazards such as earthquakes. Thus, it is important to understand the geologic setting and variation of bedrock and surficial formations in lands underlying the Town of East Lyme. The town lays above several bedrock types which trend southwest to northeast across the area. These formations include the Hope Valley Alaskite Gneiss, Mamacoke Formation, New London Gneiss, Plainfield Formation (including a quartzite unit), Potter Hill Granite Gneiss, Rope Ferry Gneiss, Tatnic Hill Formation, and Westerly Granite. Each of these formations consists primarily of gneiss which is a relatively hard metamorphic rock with the exception of the Westerly Granite which is a hard igneous rock. Bedrock fault lines are not known to be mapped in East Lyme.

The surficial geologic formations in the town include glacial till, stratified drift, and coastal formations. Refer to the Multi-Jurisdictional HMP for a generalized view of surficial materials. The majority of the town is underlain by glacial till. Till contains an unsorted mixture of clay, silt, sand, gravel, and boulders deposited by glaciers as a ground moraine. Areas in the vicinity of the Four Mile River, Bride Brook, the Pattagansett River, Latimer Brook, and Oil Mill Brook are underlain by stratified drift, as is the majority of Niantic, Golden Spur, and the area between the State Department of Correction and Indian Woods. The amount of stratified drift present is important as areas of stratified materials are generally coincident with floodplains. The amount of stratified drift also has bearing on the relative intensity of earthquakes and the likelihood of soil subsidence in areas of fill.

Figure 2-1. Location of the Town of East Lyme in the SCCOG Region

2.2. Drainage Basins and Hydrology

The town lies within three regional drainage basins that eventually drain to Long Island Sound. These include the Eight Mile River, Southeast Western Complex, and the Southeast Shoreline regional basins as delineated by the Connecticut DEEP. Sub-regional drainage basins include those associated with Latimer Brook in the northeastern part of town, the Niantic River in the southeastern part of town, the Pattagansett River and Bride Brook in the central to southern part of town, and the Fourmile River on the western edge of the town. In addition, small areas of town drain to Harris Brook and the East Branch Eightmile River in Salem, Beaver Brook in Lyme, and the Lieutenant River in Old Lyme. One minor drainage basin also exists that drains an unnamed stream in the Giants Neck area to Long Island Sound.

There are many impoundments throughout the town including Bride Lake on Bride Brook, Dodge Pond in Niantic, Gorton Pond, Pattagansett Lake, and Powers Lake on the Pattagansett River, and Darrow Pond above Latimer Brook. Along the shoreline, recreational boaters enjoy protected harbors and coves such as the Niantic River, Smith Cove, and the Pattagansett River estuary. These areas are protected by from wave action by islands in Long Island Sound and the spit of land known as "The Bar" across the mouth of the Niantic River. Niantic Bay is located to the southeast of Niantic but does not have any protection from wave action on Long Island Sound.

2.3. Land Cover

According to the 2016 1-meter resolution land cover developed by the NOAA Office of Coastal Management, East Lyme is predominantly comprised of mixed forest, with approximately 68.39% of the town classified as such. The second largest land cover type is developed open space, which covers about 9.13%, and next is developed impervious which is about 8.32% of land cover. All land covers and their percent coverage can be found in Table 2-1.

Table 2-1 Town of East Lyme Land Cover

Land Cover Type (2016)	% Coverage
Barren Land	0.67
Cultivated Crops	0.65
Developed, Impervious	8.32
Developed, Open Space	9.13
Estuarine Emergent Wetland	0.92
Estuarine Scrub/Shrub Wetland	0.00
Grassland/Herbaceous	1.53
Mixed Forest	68.39
Open Water	2.83
Palustrine Aquatic Bed	0.42
Palustrine Emergent Wetland	0.65
Palustrine Forested Wetland	3.61
Palustrine Scrub/Shrub Wetland	0.32
Pasture Hay	0.88
Scrub/Shrub	1.32
Unconsolidated Shore	0.36

2.4. Population, Demographics, and Development Trends

As of the 2020 Decennial Census, the population for the town is 18,693, which equates to about 537 people per square mile. East Lyme is a suburban community which relies on diversified industries and commercial businesses rather than large industries to support its tax base. The northern section of the community is rural with increasing development density towards the coastline. Businesses are concentrated in the village centers of Flanders and Niantic, and extend west from Niantic along Route 154, with nine marinas located on the Niantic River. The largest employer in the community is the State Department of Corrections which operates several rehabilitation facilities for men and women.

Historically, East Lyme was an agricultural community supported by a modest textile industry in Golden Spur (a small village at the headwaters of the Niantic River), and maritime industries in Niantic. After the completion of Interstate 95, suburban expansion followed in the 1960's through the 1980's with many residential homes built outside of the major villages during this time period. Recent development has included additional single-family homes as well as infill development in Niantic and Flanders.

According to the 2020 Plan of Conservation and Development (POCD), there has been robust development throughout town, much of which is a product of the 2009 POCD. Some of the major projects include the development of the Gateway Planned Development District and the implementation of POCD recommendations for Niantic such as the inclusion of diversified housing options, a new park, and improvements to the Niantic Bay Boardwalk. On the residential front, the town has replaced traditional subdivision layouts with cluster developments by way of the Conservation Designs Developments (CDDs), and commercial development continues, but is limited to the commercial districts.

The town has also made significant headway in protecting natural resources since the 2009 POCD. The town has coordinated with and supported various entities on expanding and establishing nature trails. In 2020 East Lyme received two state grants for the acquisition of open space. One parcel, the Pattagansett River Watershed Preserve, is a 38.7-acre parcel surrounded by protected and includes wetlands and vernal pools. The other, in conjunction with the Town of Montville, is the Nehantic Nature Preserve. This is a 320-acre tract of open space in the Latimer Brook watershed which feeds into the Niantic River.

Overall, new development and redevelopment in East Lyme is not increasing risks to natural hazards. Redevelopment throughout the community offers significant opportunities for flood mitigation to be incorporated into buildings and stormwater management to be addressed on-site; and new development is constructed per the flood damage prevention, wind loading, and snow loading requirements in the State Building Code.

The 2020 American Community Survey 5-year estimates identified the annual average median income for East Lyme to be \$93,705, with an average of 48.5% of the population holding a bachelor's degree or higher, and an average unemployment rate of 5.8% throughout town.

2.5. Governmental Structure

The Town of East Lyme is governed by a Board of Selectman – Town Meeting form of government as authorized by the Town Charter most recently revised in December 2009. The First Selectman is the

chief executive officer of the Town and is directly responsible for the administration of all departments, agencies, and offices. The Board of Selectman reviews and approves all Town business.

The Town has several departments that provide municipal services. Departments pertinent to natural hazard mitigation include the Building Official, Engineering, Fire, Land Use, Police, Public Safety, and Public Works. In addition, there are several boards and commissions that can take an active role in hazard mitigation, including the Commission for the Conservation of Natural Resources, Inland Wetland Agency, the Harbor Management-Shellfish Commission, the Planning Commission, the Water & Sewer Commission, the Zoning Board of Appeals, and the Zoning Commission. The general roles of most of these departments and commissions are common to most municipalities in SCCOG and were described in Section 2.9 of the Multi-Jurisdictional HMP. More specific information for certain departments and commissions of the Town of East Lyme is noted below:

- The Building Official inspects new development and substantial redevelopment for compliance with current building codes. The Building Official is authorized by ordinance to review all applications and building permits for consistency with flood hazard regulations. The Town of East Lyme utilizes the Connecticut Building Code.
- The Commission for the Conservation of Natural Resources supervises the Town's open space and manages farmland preservation programs.
- The Public Safety Department oversees Police, Fire, and Ambulance services in the Town. It also maintains a comprehensive set of web links on the Town's website regarding how to prepare for natural hazards such as hurricanes and lightning strikes, how to sign up for the CT Alerts "Everbridge" notification system, as well as general safety tips. It also has a Facebook page that it uses to broadcast safety tips and reminders to residents.
- The Town Engineer, with the assistance of the Engineering staff, supports the Town's Land Use Commissions and Public Works, oversees certain construction projects, provides flood awareness information, and manages the Town's Community Rating System compliance including maintaining elevation certificates, distributing an annual awareness newsletter regarding the availability of flood mapping, and maintaining documents regarding flooding and mitigation in the local library.
- The Town of East Lyme has three volunteer fire departments that provide emergency medical, fire suppression, fire/ disaster prevention, rescue, hazardous materials, and disaster mitigation services to the town. Public Water Service for fire protection is provided by the East Lyme Water Department in certain areas. The Public Safety Director is also the Town's Fire Marshall. Patients are transported to Lawrence & Memorial Hospital in New London.
- The Harbor Management - Shellfish Commission maintains and enforces a Harbor Management Plan and ordinance.
- The Inland Wetland Agency reviews plans for compliance with the Town's Inland Wetland and Watercourse Regulations.
- The Planning Commission and the Zoning Commission oversee orderly and appropriate use and development of residential, commercial, and industrial land and the conservation of natural resources. They review and approve a wide range of land use applications, zoning regulation

amendments, planning and development projects, and grant opportunities to ensure that development and growth in the town is consistent with existing land use, environmental policy, regulations, and the objectives of the Plan of Conservation and Development. They are assisted by the professional staff of the Land Use Department who administer the Town's Zoning Regulations, Subdivision Regulations, administer the Coastal Management Program, perform planning studies, and provide technical assistance to developers. The Zoning Enforcement Officer is authorized by ordinance to review all applications and building permits for consistency with flood hazard regulations.

- Police services are provided by a Resident State Trooper of the Connecticut State Police and the Town of East Lyme Police Department. The Police Department consists of 21 full-time, paid personnel, one-part time officer, and support staff. The Department provides situation containment and traffic direction services during emergencies.
- The Public Works Department provides services including safe, efficient, and well-maintained infrastructure of roads and rights-of-way, bridges, and stormwater management. The Public Works Department also conducts snow removal and deicing on roads; tree and tree limb removal in rights-of-way; and maintains and upgrades storm drainage systems to prevent flooding caused by rainfall. Public Works also performs drainage system inspections and maintenance to ensure continued credit with the Community Rating System.

The roles of Town departments have not changed since the time of the previous HMP. Thus, the Town of East Lyme is technically, financially, and legally capable of implementing mitigation projects for natural hazards to the extent that grant funding is available. As discussed in the next section and the historic record throughout this annex, the Town is densely developed in certain areas and undeveloped in others, presenting particular vulnerabilities to different types of natural hazards in different areas.

2.6. Review of Existing Plans and Regulations

The Town has several Plans and regulations that suggest or create policies related to hazard mitigation. These policies and regulations are outlined in the Emergency Operations Plan, Plan of Conservation and Development, the Coastal Area Development Plan and Harbor Management Ordinance, Inland Wetland and Watercourse Regulations, Subdivision Regulations, and Zoning Regulations.

Emergency Operations Plan

The Town has an Emergency Operations Plan (EOP) that is updated and certified by the Board of Selectmen annually. This document provides general procedures to be instituted by the First Selectman, Public Safety Director, and/or designee in case of an emergency. Emergencies can include but are not limited to natural hazard events such as hurricanes and nor'easters. The EOP is directly related to providing emergency services prior to, during, and following a natural hazard event.

Plan of Conservation and Development (2020)

The POCD was most recently updated in 2020 with contributions from local boards, commissions, committees, citizens, and citizen groups. The Plan seeks to be a statement of policies, goals, and standards for the physical and economic development of the

The East Lyme POCD is relatively consistent with the current goals and actions of the HMCAP. The plan discusses several natural hazards, and the impacts on future development, along with some of the secondary impacts of responding to events, such as salt impacts on roadways from winter storms. Some of the specific POCD goals that align with hazard mitigation include:

- Protect East Lyme’s native ecosystems, biodiversity and maintain the quality of East Lyme’s wetlands, watercourses, and groundwater.
- Promote wise use of land in the coastal area, which recognizes the importance of the Town’s coastal resources and existing water-dependent uses.
- Develop adequate water supply to meet current and future demand for public water in the Town.
- Prepare for the impacts of climate change and sea level rise along our town’s coastline.

The East Lyme POCD is considered relatively consistent with the goals and actions of the HMCAP as it addresses flooding, sea level rise, and climate change as a whole. However, there is room for incorporation of additional hazards as events like winter storms are not addressed. The next POCD updated will continue to incorporate elements of the HMCAP.

Coastal Area Development Plan and Harbor Management Ordinance

The East Lyme Coastal Area Development Plan was originally adopted by the Planning Commission in 1982 but is now included in the Plan of Conservation and Development. The Harbor Management Ordinance authorizes the individual Harbor Masters to carry out harbor management directives and enforce all provisions of the Plan, including collecting fees for mooring permits and assigning mooring locations; standardizing mooring tackle requirements; and enforcing wake and speed, waterskiing, motor, noise, and refuse regulations. In particular, these ordinances allow the Town to maintain a list of persons who currently have moored boats such that removal or emergency response can be coordinated.

Zoning Regulations

The Zoning Regulations of the Town of East Lyme, Connecticut have been amended through October 21, 2021. They include a variety of preventative regulations pertinent to mitigating natural hazards, including development limitations with regards to slopes, drainage, wetlands, and floodplains. These regulations are applied during the permitting process for new construction and during substantial improvement of existing structures.

Hazard-related regulations include:

- Private driveways must be wide enough and cleared to a sufficient height to ensure passage of fire and emergency vehicles. (§20.23)
- All structures must be more than 25 feet from a tidal wetland or watercourse. (§20.15)
- Conservation Design Development regulations provide more flexible standards to permit residential lots in specified districts to be reduced in dimension and designed to occupy less than the total tract to be subdivided, allowing designation of additional dedicated open space. (§23)

- A certain percentage of developments must be dedicated as open space, depending on the development zone and size (10% minimum).

New construction or substantial improvements are required to be elevated or resistant to flood damage, and utilities must be located to be free of flooding (such as underground) and specifically must be located underground for elderly housing developments in special use districts. Sections pertinent to flood hazard mitigation include:

- Section 14, Coastal Area Management outlines specific site plan requirements for development in areas located fully or partially within the coastal boundary as delineated on the Coastal Boundary Map for the Town of East Lyme. This section requires the applicant to conform to Section 22a-105 through 22a-109 of the Connecticut General Statutes.

Section 15, Flood Hazard Areas addresses specific requirements for development in Flood Plain Zone, Flood Hazard Areas, and the Coastal Area Boundary; construction adjacent to bodies of water and in wetland areas; and design standards in special flood hazard areas in conformance with NFIP regulations. Section 16, Tidal Marsh Districts addresses specific requirements for development in coastal areas and islands characterized by tidal wetlands. Subdivision Regulations

The Subdivision Regulations in the Town of East Lyme were last amended in February 2011. The regulations require that a Stormwater Management Plan be developed and submitted as part of the application process and that the peak runoff leaving the site under proposed conditions can be no greater than under existing conditions. The regulations further require fire protection water to be available dependent upon subdivision size and require that utilities be located underground whenever feasible.

Inland Wetland and Watercourses Regulations

The Inland Wetlands and Watercourses Regulations in the Town of East Lyme were last amended on March 24, 2016. The regulations require a permit for certain regulated activities which take place within 100 feet of a wetland or watercourse or that may impact a wetland or watercourse. These regulations build on the preventative flood mitigation provided by the Zoning Regulations and Subdivision Regulations by preventing fill and sedimentation that could lead to increased flood stages.

Water Supply Plan

East Lyme is in the process of updating its municipal Water Supply Plan, last updated in 2005. The Water Supply Plan outlines the capital improvements and operations necessary to meet the Town's water needs, and the steps to be taken to ensure a safe adequate source of future water supply. This plan includes the locations and needs of the Town's critical facilities, and addresses firefighting needs; therefore, it is relevant to hazard mitigation. The update is expected to be completed by the end of 2017.

2.7. Critical Facilities, Sheltering Capacity, and Evacuation

The Town of East Lyme considers several facilities to be critical to ensure that emergencies are addressed while day-to-day management of the Town continues. These include both buildings and

utility infrastructure. Critical facilities that are buildings are presented on figures throughout this annex and summarized in Table 2-2.

As shown in Table 2-2, critical structures in East Lyme are not located within the 1% annual chance floodplain. Note that several sewer pumping stations and Town water supply wellfields are partially located in the floodplain and could also be impacted by hurricane storm surge. These facilities are described in more detail below.

Table 2-2 Town of East Lyme Critical Facilities

Facility	Address or Location	Emergency Power	Shelter	Cooling Center	In SFHA
Emergency Services					
Flanders Fire Department	151 Boston Post Road	✓			
Niantic Fire Headquarters	8 Grand Street	✓			
Niantic Fire Station	227 West Main Street	✓			
Police Department	278 Main Street, Niantic	✓			
Public Safety Building: Police/EOC/Dispatch/Fire Marshal	277 West Main Street	✓			
Communications/state fiber hub	171 Boston Post Road	✓			
Public Works Field Services Complex	8 Capitol Drive	✓			
Public Works Sanitation Department	91 Roxbury Road				
Town Hall	108 Pennsylvania Avenue				
Shelters					
Community Center (Local)	41 Society Road	✓	✓	✓	
East Lyme High School (Secondary/pod)	30 Chesterfield Road		✓		
East Lyme Middle School (Regional)	31 Society Road	✓	✓		
Elderly Housing & Health Services					
Bride Brook Rehab Center	23 Liberty Way, Niantic	✓			
Charter Oak (Medical Clinic)	324 Flanders Road				
Crescent Point	417 Main Street	✓			

Volunteer Fire Departments and Emergency Services

The Town of East Lyme has a fire station headquarters in downtown Niantic, a station in Flanders, and a third station on Route 156 near Rocky Neck State Park. Equipment includes pump trucks, towers, ambulances, and forestry equipment. The Fire Departments and town staff perform emergency services training with local utilities each year. None of these facilities are susceptible to flooding or storm surge.

Police Department

The Town's Police Department has a generator and is protected from coastal flooding and storm surge by the Amtrak-Metro North railroad embankment located to the rear of the building.

Public Safety Building / Emergency Operations Center

The Town's Public Safety Building houses the Town's Fire Marshall, Emergency Management, and 9-1-1 dispatch services. This building is also the Town's Emergency Operations Center and has a generator and a radio antenna. The Town of East Lyme broadcasts government information and daily announcements on cable channel 22 from this building, and this channel can be used to broadcast emergency messages.

Public Works Facilities

East Lyme's primary Public Works facility is the relatively new Field Services Complex at 8 Capitol Drive (on the corner of Colton Road). This is the Town's primary fueling facility and operational center. It is used for vehicle and equipment storage and houses the Town's salt and sand supply. Public Works vehicles need to travel briefly through Old Lyme to leave the facility. This facility has had a generator installed since the previous HMP. The East Lyme Sanitation Department is located at the Old Public Works garage on Roxbury Road. This site focuses on water and sewer services and is a backup fueling facility.

The transfer station is the designated location for a brush-disposal operation for debris removal and processing following windstorms.

Town Hall

The East Lyme Town Hall houses records, plans, and other documents important for administering the Town. It is also the media center during emergencies. A generator is desired for this facility.

Utilities

The Town of East Lyme provides public water service to Niantic, Flanders, and the surrounding areas via water supply wells located along the Pattagansett River and Bride Brook. In general, well heads are elevated above the 100-year floodplain, although buildings may be susceptible to storm surge during a major hurricane event. As the public water supply wells diminish the flow in nearby watercourses, the Town has limitations on the amount of water it can withdraw during the summer months. The Town typically imposes mandatory water conservation measures each summer in order to reduce demand on its water system. This limitation does not apply to emergency situations. In order to increase summertime supply, the Town recently performed a \$10 million water main extension to Lake Konomoc in Waterford. The Town has formed an agreement with the New London Water Department to pump water into Lake Konomoc in the winter and spring and buy it back during the summer when demand is high.

East Lyme's water resources have improved in the past five years. A new interconnection has been developed with New London, facilitating water exchange between the two municipalities, and creating a water system redundancy. A new water tower constructed in Montville provides additional water supply during dry periods and adds water pressure to East Lyme's distribution system.

The Town of East Lyme has 22 sewer pumping stations and associated infrastructure that they consider to be critical facilities. Sewage is directed to the New London Wastewater Treatment Facility. Many of these pumping stations are also located in the 1% annual chance floodplain and/or coastal surge zones. The town has completed mapping and a vulnerability analysis of wastewater pumping stations throughout town. Some resilience improvements are already being incorporated into pump station upgrades. The town has previously identified one station (in the Black Point area) that is at-risk of flooding, and which they wish to relocate to a higher elevation.

Shelters

East Lyme Middle School is the Town's primary shelter and can hold approximately 700 people. The school has a generator, and the shelter is American Red Cross certified. The Town's backup shelter is the Community Center which can hold less than 50 people. This building also has a generator but is not American Red Cross Certified. East Lyme High School is also considered a backup shelter and can hold approximately 1,600 people. In addition to Town departments, the local Community Emergency Response Team (CERT), the American Red Cross and the Salvation Army provide services related to mitigation and emergency management. The CERT provides support to emergency personnel during large-scale emergencies and fulfills tasks that do not require a high level of training, leaving trained emergency personnel available to respond to incidents. The American Red Cross and the Salvation Army help provide shelter and vital services during disasters and participate in public education activities. If additional space was needed, the Town would send evacuees to a regional American Red Cross shelter.

The town has also identified the community center as a cooling center for residents during a heat wave or extreme heat event.

Communications

The Town's communication capability is considered adequate for most circumstances. Emergency communications are good except during long power outages. The Town relies on radios, cellular phones, and email for much of its communications. The Town is also part of the CT Alerts "Everbridge" Reverse 9-1-1 system for emergency notification of residents. Typically, Town personnel post notifications on bulletin boards and on the Town website prior to major storms and also utilize local media (newspapers, television, and radio) to pass information during and after storms. Residents can also contact the First Selectman or any Town staff directly with comments related to natural hazards or emergency response.

Communication was difficult during the power outages following Hurricane Irene and Winter Storm Alfred due to downed trees and power outages at the nearby cellular towers. Town personnel posted information in public locations made personal contact with many residents by going door-to-door during the outage to pass along necessary information.

Health Care and Senior Living Facilities

The Town has three walk-in medical clinics but only the Charter Oak Walk-In Medical Center is considered to be a critical facility. The Town has 150 units of elderly housing that they do not consider to be critical facilities, but they do consider the Bride Brook Rehabilitation Center and the Crescent Point

assisted living facility to be critical facilities since these house patients who almost certainly require additional assistance during an emergency. None of these facilities are susceptible to flooding.

Evacuation Routes

East Lyme has identified evacuation routes for hurricane events. Typically, residents utilize State roads or local roads to exit the town. The highest capacity egress routes from East Lyme include Interstate 95, Route 1, Route 156, or Route 161 into Old Lyme or Waterford.

2.8. Repetitive Loss Properties

A repetitive loss (RL) property is defined as any insurable building that has had two or more claims exceeding \$1,000 that were paid by the National Flood Insurance Program (NFIP) within a ten-year period. As of June 2022, the Town of East Lyme has 23 inland RL properties, with NFIP payments totaling \$1,512,677.31. There are also 13 coastal RL properties that have been flooded from the Niantic Bay, Niantic River, and Long Island Sound. All 36 RL properties in town are residential.

2.9. Exposure to Climate-Affected Natural Hazards

Properties, people, historic resources, and critical facilities in the Town are exposed to natural hazards affected by climate change (i.e., severe storms, coastal flooding, droughts) as well as hazards that are not affected by climate change (i.e., earthquakes). As an initial screening of exposure to hazards, areas of risk have been overlaid onto parcel and point data in a GIS to understand the maximum potential exposure to hazards. The results of this analysis are found in Table 2-3.

Table 2-3 Town of East Lyme Exposure Analysis

Hazard	At-Risk Parcels		At-Risk Facilities		At-Risk Historic Assets	
	Value	Number	Value	Number	Value	Number
Hurricane/Tropical Storm	\$2,548,547,623	9,384	\$305,026,950	10	\$267,521,130	15
Severe Thunderstorm	\$2,548,547,623	9,384	\$305,026,950	10	\$267,521,130	15
Severe Winter Storm	\$2,548,547,623	9,384	\$305,026,950	10	\$267,521,130	15
Tornado	\$2,548,547,623	9,384	\$305,026,950	10	\$267,521,130	15
Drought	\$822,154,772	2,214	\$294,224,200	4	\$821,720	2
Flood						
1% Annual Chance	\$870,592,893	1,574	\$271,116,150	3	\$40,766,870	4
Coastal (VE)	\$451,262,020	529	-	-	-	2
0.2% Annual Chance	\$1,076,564,263	2,511	\$272,792,020	4	\$41,227,310	6
Storm Surge						
Category 1	\$451,377,940	543	\$1,527,330	1	-	2

Category 2	\$540,742,530	848	\$5,370,470	2	-	2
Category 3	\$618,462,330	1,111	\$7,046,340	3	-	2
Category 4	\$755,098,200	1,488	\$7,046,340	3	\$40,431,300	3
Earthquakes	\$2,548,547,623	9,384	\$305,026,950	10	\$267,521,130	15
Wildfire	\$501,092,260	1,365	\$294,224,200	4	\$821,720	2

2.10. Community Climate Change Challenges

As is with all of the SCCOG communities, the Town of East Lyme has several concerns regarding climate change challenges. Most communities in the region are typically most concerned with the impacts of increased flooding and extreme heat events, however, there are often concerns about other climate driven hazards. The following summary sheet identifies the top flooding, heat, and other climate change concerns for the town, along with the hazard mitigation and climate adaptation actions that will work to address these concerns.

3. Extreme and Severe Storms

3.1. Climate Change Impacts

Climate change projections indicate varying changes in the frequency and intensity of severe storms and their relative hazards like precipitation and wind. It is expected that as global mean temperatures continue to rise, storms like hurricanes, tropical storms, and severe thunderstorms, may become more frequent and more intense. The degree to which these events might change, and the confidence levels in the models, vary by event type.

Hurricanes and tropical storms are likely to be accompanied by higher wind speeds and an overall increase in intensity. Warm water and air temperatures are essentially the fuel source for the storm, therefore warmer temperatures mean an increase in fuel which can produce more intense winds and high precipitation levels.

While the future behavior of tornado and high wind events is a little more challenging to predict in comparison to hurricanes, it has been noted that the number of days of tornadic activity has decreased in recent decades, though the number of tornadoes in a single day has increased.¹ There is a similar lack in confidence when projecting severe thunderstorm and wind events. Because these events are short-lived and relatively small-scale, monitoring and modeling are more challenging. Overall, however, future climate conditions are likely to become more conducive to the development of such events, therefore increasing the potential for occurrence.

Severe winter storm events, similar to hurricanes, are expected to become more intense under future climate conditions, however they are expected to become less frequent. These storms will continue to be capable of producing large amounts of precipitation, though in future decades this precipitation will consist of less snow and more wintry mix or rain.

These changes in storms could mean an increase in risk throughout town or for specific populations, more severe storm damages and impacts, or an increase in flooding occurrences.

3.2. Hurricanes and Tropical Storms

3.2.1 Setting and Recent Occurrences

Several types of hazards may be associated with tropical storms and hurricanes including heavy or tornado winds, heavy rains, and flooding. Flooding and storm surge hazards are discussed in Section 5.2 and Section 4.3 of this annex. Wind hazards are widespread and can affect any part of the town. However, some buildings and areas in the town are more susceptible to wind damage than others.

Tropical Storm Irene impacted the town in August 2011. Trees fell throughout the town and the region, causing power outages that on average lasted several days. Many town facilities were operated with generators. Debris removal took a few weeks to complete because a significant number of trees were damaged.

Super Storm Sandy in 2012 is still one of the most remembered and impactful events in the region's recent history. Although coastal flooding was the primary damage vector from the storm, wind gust of

¹ <https://nca2018.globalchange.gov/chapter/2/>

over 60 mph damaged trees and brought down power lines as well. East Lyme received over half a million dollars in FEMA federal aid immediately after the event in order to facilitate the cleanup.

On August 2, 2020, Tropical Storm Isaias swept through the State bringing severe winds which resulted in the highest number of outage events Connecticut has ever experienced. With over 620,000 outages reported by Eversource alone, the state's largest electric supplier, residents across the SCCOG region were without power, cable, and internet for extended periods of time. While this storm did not generate typical amounts of rainfall experienced during a tropical storm event, the wind damage exceeded expectations bringing down trees and power lines across the state.

In 2021, there were four tropical storm events that passed through, or within 50 miles of, the state. Some of these events, which are described in more detail below, resulted in flooding along several brooks and stream crossings, including roadway washouts. During Hurricane Ida, the Town reported that the areas that "are known to flood" did so during this heavy precipitation tropical event. Power outages during these events, and other severe storms, were still a challenge for the town.

The 2021 events included Elsa, Fred, Henri, and Ida.

- July 9, 2021 (T.S. Elsa) – Elsa made landfall as a tropical storm in Florida and traveled along the eastern seaboard. It passed through Southeastern New England bringing high winds and rainfall. Gusts were reported over 40 mph, and residents throughout the region and state were left without power.
- August 19, 2021 (Extratropical Storm Fred) – This tropical event passed north of the state bringing heavy rain to some areas in Connecticut; there was a reported 5.14 inches in West Hartford. Fred also produced an EF-0 tornado in Windham County.
- August 22, 2021 (T.D. Henri) – Hurricane Henri made landfall in Rhode Island as a tropical storm and then traveled northwest across the State of Connecticut. While the impacts for Henri were projected to be more severe than they actually were, the storm did result in heavy rainfall and thousands of power outages.
- September 1, 2021 (Extratropical Storm Ida) – Though Hurricane Ida made landfall in Louisiana as a category 1, the storm moved south of Long Island as an extratropical storm and is reported to be costliest storm even since Hurricane Sandy a decade earlier. Ida caused major flooding across Connecticut and the Southeastern Region. For the first time, a statewide flash flood warning was issued. Several communities in the state, including the City of Norwich, warned residents to have minimal contact with surface waters due to the discharge of untreated sewage. There were reports of 7 to 8 inches of rainfall in the Southeastern Region, and as high as 8.58 inches in Uncasville.

3.2.2 Existing Capabilities

Wind loading requirements are addressed through the state building code. The Connecticut State Building Code was most recently adopted with an effective date of October 1, 2016. The code specifies the design wind speed for construction in all the Connecticut municipalities. The ultimate design wind speed for East Lyme ranges from 125 to 145 miles per hour depending on the building use (for example, hospitals must be designed to the higher wind speed). Note that changes in design wind speed figures

since the previous HMP are largely the result of a shift from "nominal" to "ultimate" wind speeds, for compatibility purposes; see the Connecticut Building Code or the American Society of Civil Engineers website for more information. East Lyme has adopted the Connecticut Building Code as its building code. Town personnel note that recent buildings all meet the building code for wind loading.

The Town has a Tree Warden who can post notifications and schedule tree removal for damaged or dangerous trees located in rights-of-way or on Town land. The Highway Department also monitors trees as part of their normal rounds and has a budget for minor tree maintenance. The Town hires outside contractors for larger jobs such as tree removal. The Town also has links regarding hurricane preparedness and disaster preparedness on the Public Safety webpage on its website.

The Tree Warden coordinates tree removal and maintenance with the local power utility. Since the previous HMP, CL&P has been acquired by Eversource. In response to the major power-outages caused by Tropical Storm Irene and Hurricane Sandy, as well as significant winter storm events, Eversource has taken an aggressive approach to tree maintenance and has improved communication and coordination with municipalities. Municipal staff report that Eversource has enhanced its tree clearing efforts, has updated its facilities, and has been working to strengthen the power grid and build in redundancies. Communication and coordination have improved due to Eversource's liaison program.

Eversource reportedly maintains a list of critical facilities and uses that to prioritize outage prevention and response. The Town also has access to a circuit map, which shows the power distribution grid and includes critical facilities locations.

The Town requires that new subdivisions and new Elderly Housing developments must locate utilities underground and that utilities must be protected from flooding damage. The Town also encourages that utilities be placed underground for all new developments. However, utility lines are located underground in only a few areas of the town. While the Town of East Lyme would be interested in placing utilities underground (particularly along Main Street in Niantic), such activities would need to be localized and combined with private projects since the Town does not own any of the overhead utilities. For example, Town officials noted the estimated cost of burying power lines along Main Street would be \$2.5 million. The Town would need to work with Connecticut Light & Power and acquire grant funding to complete any large-scale utility relocation project since the Town could not fund it themselves.

Warning is one of the best ways to prevent damage from hurricanes and tropical storms, as these storms often are tracked well in advance of reaching Connecticut. The Town can access National Weather Service forecasts via the internet as well as listen to local media outlets (television, radio) to receive information about the relative strength of the approaching storm. This information allows the Town to activate its EOP and encourage residents to take protective or evacuation measures if appropriate. During Tropical Storm Irene, a voluntary evacuation notice was issued for areas of the town, and many people heeded the evacuation and moved inland.

Prior to severe storm events, the Town ensures that warning/notification systems and communication equipment are working properly and prepares for the possible evacuation of impacted areas. The statewide CT "Everbridge" Reverse 9-1-1 system can be utilized to warn coastal residents of an impending evacuation. Although hurricanes that have impacted the Town have historically passed in a

day's time, power outages can last for several days following a storm. Additional shelters could be outfitted following a storm with the assistance of the American Red Cross on an as-need basis for long-term evacuees.

Summary

In general, municipal capabilities to mitigate hurricane damage have not increased significantly since the 2017 edition of the hazard mitigation plan was adopted. This is likely because the Town increased its capabilities sharply a decade ago in response to the damage from Tropical Storm Irene in 2011 and Hurricane Sandy in 2012.

3.2.3 Vulnerabilities and Risk Assessment

The entire town is vulnerable to hurricane and tropical storm wind damage and from any tornadoes (Section 3.3) accompanying the storm, as well as inland flooding (Section 5.2) and coastal flooding and storm surge (Section 4.2). Of particular concern are the blockage of roads and the damage to the electrical power supply from falling trees and tree limbs. The town is also susceptible to damage occurring in other communities cutting off the electrical supply as occurred following Tropical Storm Irene.

Direct wind damage to newer buildings from hurricane or tropical storm-level winds is rare in the town since the new buildings were constructed to meet or exceed current building codes. Many buildings in the town are greater than 50 years old and do not meet current building codes. Older buildings in the town are particularly susceptible to roof and window damage from high wind events, although this risk will be reduced with time as these buildings are remodeled or replaced with buildings that meet current codes. For example, many homes have been renovated recently and some property owners have installed shutters and other wind mitigation measures.

East Lyme has a diverse housing stock with rental properties and campgrounds. These areas are also at particular risk of damage during a hurricane or tropical storm because rental properties are not owner-occupied and therefore may not be properly maintained, and because campgrounds contain recreational vehicles that are not as structurally sound as permanent buildings. Fortunately, recreational vehicles in such campgrounds can be evacuated relatively easily given the usually long lead time prior to a hurricane or tropical storm event.

3.2.3.1 Hazard Losses

The Town of East Lyme received \$74,746 in FEMA Public Assistance (PA) funds in the wake of Hurricane Isaias. These funds are the federal share of the eligible costs associated with the hurricane, which were a total of \$83,051. Roughly half of the funds were received for public utilities, with the remainder for debris removal (Figure 3-1). Since 2012, the town has received \$2,242,023 in FEMA PA funds (including Isaias) for project costs of \$2,972,754.

In addition to PA, FEMA also provides individual assistance (IA) for private property owners and renters. In the wake of Ida, a total of 9 property owners received funding in the amount of \$52,138.

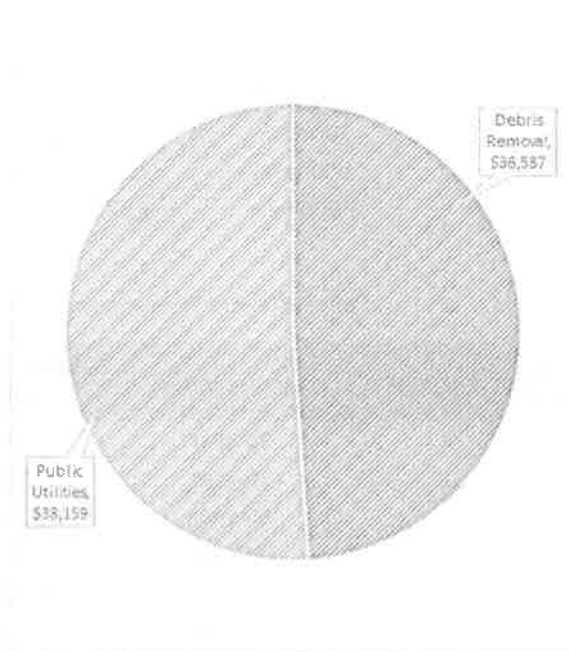


Figure 3-1 Hurricane Isaias Funding Categories

FEMA HAZUS-MH 6.0 was used to develop losses associated with seven probabilistic hurricane scenarios from the 10 year to 1,000 year return period. Losses include economic loss, building damages, debris, and sheltering needs. Table 3-1 through Table 3-3 presents hurricane related damages for the Town of East Lyme. Additional HAZUS-generated losses for the town and region can be found in the Multi-Jurisdictional document.

Downscaled tropical storm losses based on the 2019 Connecticut Natural Hazard Mitigation Plan are developed in the Multi-Jurisdictional document.

Table 3-1 HAZUS-MH Hurricane Related Economic Impacts

East Lyme	Return Period	Residential	Commercial	Industrial	Others	Total
	10-year	\$221,980	\$2,520	\$20	\$890	\$225,410
	20-year	\$4,883,650	\$112,630	\$10,830	\$34,930	\$5,042,040
	50-year	\$26,950,060	\$1,834,940	\$134,590	\$834,890	\$29,754,480
	100-year	\$66,010,750	\$6,098,790	\$624,590	\$2,750,530	\$75,484,660
	200-year	\$139,139,190	\$16,236,630	\$1,579,870	\$6,556,810	\$163,512,500
	500-year	\$275,768,900	\$33,836,520	\$3,839,530	\$13,228,110	\$326,673,060
	1,000-year	\$409,791,090	\$52,600,690	\$6,018,000	\$19,094,040	\$487,503,820

Table 3-2 HAZUS-MH Hurricane Related Building Damage

East Lyme	Return Period	Minor	Moderate	Severe	Destruction	Total
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	10-year	3	0	0	0	3
	20-year	51	2	0	0	53
	50-year	582	75	3	2	663
	100-year	1,289	248	21	14	1,572
	200-year	1,791	508	83	53	2,436
	500-year	2,371	900	207	134	3,613
	1,000-year	2,529	1,157	342	232	4,261

Table 3-3 HAZUS-MH Hurricane Related Debris and Sheltering Needs

East Lyme	Return Period	Debris Generated (Tons)	Households Displaced	Individuals Seeking Temporary Shelter
	10-year	0	0	0
	20-year	432	0	0
	50-year	4,117	3	0
	100-year	8,359	20	3
	200-year	15,001	70	11
	500-year	27,573	190	40
	1,000-year	38,555	340	85

3.3. Tornadoes and High Wind Events

3.3.1 Setting and Recent Occurrences

Similar to hurricanes and winter storms, wind damage associated with summer storms and tornadoes has the potential to affect any area of the town. Furthermore, because these types of storms and the hazards that result (flash flooding, wind, hail, and lightning) might have limited geographic extent, it is possible for a summer storm to harm one area within the town without harming another. Such storms occur in the town each year, although hail and direct lightning strikes to the town are rarer. No tornadoes have occurred in the town since the last HMP. There have however been multiple severe thunderstorms, although only one caused even moderate damage. Other recent severe storm events include:

- On September 6, 2017, a cold front triggered severe storms in the county and caused tree damage in multiple communities in the region. Nearby Colchester reported trees and wires down, and the Groton-New London Airport measured sustained winds at 44 mph and gusts of 56 mph.
- On April 13, 2020, a low pressure system resulted in high winds throughout New London County.
- On November 13, 2021, a tornado touched down in the Pawcatuck section of Stonington, and another further north in Plainfield. There were reports of uplifted trampolines, downed trees and powerlines, and an uplifted metal shed. This same storm also caused damage in other surrounding communities.

3.3.2 Existing Capabilities

Warning is the most viable and therefore the primary method of existing mitigation for tornadoes and thunderstorm-related hazards. The NOAA National Weather Service issues watches and warnings when severe weather is likely to develop or has developed, respectively. The Town can access National Weather Service forecasts via the internet as well as listen to local media outlets (television, radio) to receive information about the relative strength of the approaching storm. This information allows the Town to activate its EOP and encourage residents to take protective measures if appropriate.

Aside from warnings, several other methods of mitigation for wind damage are employed by the Town as explained in Section 3.2 within the context of hurricanes and tropical storms. In addition, the Connecticut Building Code includes guidelines for the proper grounding of buildings and electrical boxes to protect against lightning damage.

Summary

In general, municipal capabilities to mitigate thunderstorm and tornado damage have not increased significantly since the 2017 edition of the hazard mitigation plan was adopted.

3.3.3 Vulnerabilities and Risk Assessment

Summer storms are expected to occur each year and are expected to at times produce heavy winds, heavy rainfall, lightning, and hail. All areas of the town are equally likely to experience the effects of

thunderstorms. The density of damage is expected to be greater near the more densely populated sections of the town.

Most thunderstorm damage is caused by straight-line winds exceeding 100 mph. Experience has generally shown that wind in excess of 50 miles per hour (mph) will cause significant tree damage during the summer season as the effects of wind on trees is exacerbated when the trees are in full leaf. The damage to buildings and overhead utilities due to downed trees has historically been the biggest problem associated with windstorms. Heavy winds can take down trees near power lines, leading to the start and spread of fires. Such fires can be extremely dangerous during the summer months during dry and drought conditions. Fortunately, most fires are quickly extinguished due to the Town's strong fire response.

Lightning and hail are generally associated with severe thunderstorms and can produce damaging effects. All areas of the town are equally susceptible to damage from lightning and hail, although lightning damage is typically mitigated by warnings and proper grounding of buildings and equipment. Hail is primarily mitigated by warning, although vehicles and watercraft can often not be secured prior to the relatively sudden onset of a hailstorm. Lightning and hail are considered likely events each year, but typically cause limited damage in the town. Older buildings are most susceptible to lightning and hail damage since they were constructed prior to current building codes.

Although tornadoes pose a threat to all areas of Connecticut, their occurrence is least frequent in New London County as compared with the rest of the State. Thus, while the possibility of a tornado striking the town exists, it is considered to be an event with a very low probability of occurrence.

3.3.3.1 Hazard Losses

There are no reported losses for the Town of East Lyme from tornadoes and high wind events. Downscaled losses based on the 2019 Connecticut Natural Hazard Mitigation Plan are developed in the Multi-Jurisdictional document.

3.4. Severe Winter Storms

3.4.1 Setting and Recent Occurrences

Similar to hurricanes and severe thunderstorms, winter storms have the potential to affect any area of the town. However, unlike summer storms, winter storms and the hazards that result (wind, snow, and ice) have more widespread geographic extent. In general, winter storms are considered highly likely to occur each year (major storms are less frequent), and the hazards that result (nor'easter winds, snow, and blizzard conditions) can potentially have a significant effect over a large area of the town.

Within the past decade, the town endured some extremely severe winter events. The winter storms of 2010-2011 had the most significant effects in the last decade. The Town inspected and ordered many roofs cleared based on visual assessments due to excessive snow accumulations. Heavy snow from two storms impacted the region in February and March 2013. Several feet of snow fell between the two storms, taxing the town's snow removal abilities. The town received nearly \$120,000 to cover expenses related to the storms.

Winter storms and nor'easters have affected the town since the last HMP. Some of the more recent significant events include:

- A heavy storm came through the region on February 9, 2017, bringing blizzard conditions and heavy snowfall. Colchester reported 14.5 inches of snow, and 13 inches were reported along the coast in Groton.
- A late winter storm on March 12, 2018, resulted in 23 inches of snowfall in Oakdale, with reports of one to two feet in other parts of Northern New London County. The southern part of the region experienced 10 to 18 inches of snow, and strong wind gusts. There were also reports of downed trees throughout the region as a result of this storm.
- On January 28, 2022, the region was hit by a heavy snowstorm and blizzard like conditions. Parts of the region reported up to 22 inches of snowfall, and gusts up to 65 mph. There were also several hours of less than ¼ mile visibility. Snow drifts were also reported to be a challenge, with some areas experiencing drifts up to three and a half feet deep.

3.4.2 Existing Capabilities

Existing programs applicable to winter storm winds are the same as those discussed in Sections 3.2.2 and 3.3.2. Programs that are specific to winter storms are generally those related to preparing plows and sand and salt trucks; tree trimming and maintenance to protect power lines, roads, and structures; and other associated snow removal and response preparations. In addition, the Town website seasonally includes information regarding winter safety, including shoveling tips, energy assistance information, and tips to prepare for a winter power outage.

As it is almost guaranteed that winter storms will occur annually in Connecticut, it is important to locally budget fiscal resources toward snow management. Snow is the most common natural hazard requiring additional overtime effort from Town staff, as parking lots and roadways need constant maintenance during storms. This is particularly important in Niantic where on-street parking is frequently utilized for businesses.

The Public Works Department oversees snow removal in the town. Salt and sand are stored at the Town of East Lyme Public Works facility. The Town has established plowing routes that prioritize access to and from critical facilities. Plows are diverted to address emergency service needs whenever necessary. The Connecticut Department of Transportation plows the four State roads in the town.

The Connecticut Building Code specifies that a pressure of 30 pounds per square foot be used as the base "ground snow load" for computing snow loading for roofs. The Town performed visual assessments of many buildings during the winter of 2010-2011 and cleared many town-owned roofs. Many residents also shoveled their own roofs or hired contractors to clear their roofs of excessive snow.

Summary

In general, municipal capabilities to mitigate snowstorm damage have not increased significantly since the 2017 edition of the hazard mitigation plan was adopted. This is because the Town continues to experience heavy snow each winter.

3.4.3 Vulnerabilities and Risk Assessment

Severe winter storms can produce an array of hazardous weather conditions, including heavy snow, blizzards, freezing rain and ice pellets, flooding, heavy winds, and extreme cold. Further "flood" damage could be caused by flooding from frozen water pipes. Often, tree limbs on roadways are not suited to withstand high wind and snow or ice loads.

This section focuses on those effects commonly associated with winter storms, including those from blizzards, ice storms, heavy snow, freezing rain, and extreme cold. Warning and education can prevent most injuries from winter storms. This is particularly important as the town includes many residents who are elderly and additional elderly developments are proposed. Most deaths from winter storms are indirectly related to the storm, such as from traffic accidents on icy roads and hypothermia from prolonged exposure to cold. Damage to trees and tree limbs and the resultant downing of utility cables are a common effect of these types of events. Secondary effects can include loss of power and heat.

The majority of buildings in the town are recently constructed and therefore not susceptible to damage from heavy snow. While some Town buildings could be susceptible to heavy snow loads, they will be cleared quickly if safety is a concern. Some buildings in the town have flat roofs which are more susceptible to damage from heavy snow than sloped roofs. Schools were considered particularly vulnerable to heavy snow loads during the winter of 2010-2011. A more detailed response plan is necessary to ensure that town buildings, including schools, are properly inspected and cleared if excessive snow is an issue in the future.

Icing is not a significant issue in the town. In general, there are few steep slopes such that extra sanding and salting of the roadways in necessary locations alleviates any trouble spots.

3.4.3.1 Hazard Losses

There have been no reported winter storm losses for East Lyme since 2017. In the past decade, the town has received FEMA PA funds in the amount of \$219,490 for winter storms. Downscaled losses based on the 2019 Connecticut Natural Hazard Mitigation Plan are developed in the Multi-Jurisdictional document.

4. Sea Level Rise

4.1. Climate Change Impacts

Sea levels are rising at an increased rate across the globe. These rising waters are attributed to melting glaciers and ice sheets, as well as thermal expansion from warming ocean waters. Global sea level rise takes into account the major causes of rise, and the averages of rise around the world. Local sea level rise estimates consider the global changes, in addition to what is happening more locally such as changes in currents or land subsidence.

The University of Connecticut, Connecticut Institute for Resilience and Climate Adaptation (CIRCA) has, in accordance with state statute, developed local sea level rise projections for communities to use as a planning threshold (Figure 4-1). CIRCA recommends that communities plan for 0.5 meter (1.64 feet) of sea level rise above 2001 levels by 2050. CIRCA intends to revisit this estimate and update the planning thresholds in the lifespan of this plan (2023-2028).

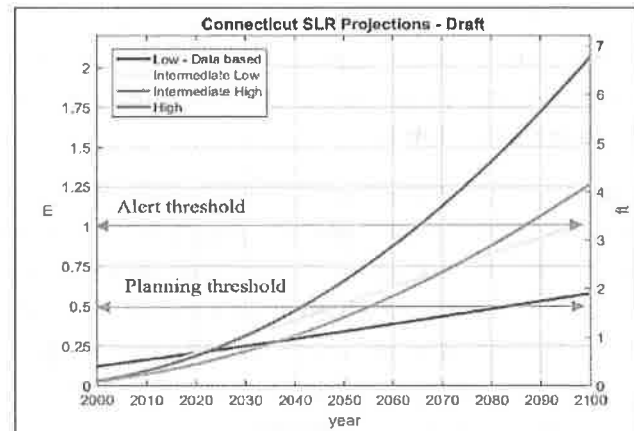


Figure 4-1 Four Localized Sea Level Rise Scenarios for

Even though sea level rise occurs over a longer time period than other hazards, coastal communities are becoming increasingly concerned with the cascading impacts. Increased sea levels can also cause a greater geographic reach for coastal flooding events, an increase in frequency or extent of “sunny day” flooding, an increase in storm surge extent, and saltwater inundation along the shoreline. All of these impacts can damage properties, deteriorate infrastructure, cause access and egress challenges, and exacerbate coastal erosion processes.

4.2. Coastal Flooding

4.2.1 Setting and Recent Occurrences

The coastal resources found in Connecticut and described by DEEP are defined in the Multi-Jurisdictional HMCAP and in DEEP resources. The shorefront of East Lyme primarily contains rocky shorefront, modified bluffs and escarpments, and beaches and dunes. Coastal bluffs and escarpments, islands, developed shorefront, and tidal wetlands are also present but are more limited in area. Developed shorefront is located only in the Niantic area along the Niantic River. Significant areas of tidal wetlands are located in Rocky Neck State Park, in the Pattagansett River estuary, along Niantic Bay, and along the Niantic River.

Nearby coastal water bodies are defined as estuarine embayments (defined as a protected coastal water body with a direct connection to Long Island Sound), near-shore waters, or offshore waters. Estuarine embayments include the Pattagansett River and areas along the Niantic River. Niantic Bay and areas south of Rocky Neck State Park are designated as nearshore waters. The mapped islands include inhabited areas such as Griswold Island (approximately 10 structures) and Brainard Island (three structures). Other smaller islands also exist but are uninhabited.

Homes, businesses, and industry are located in close proximity to the coastline along the majority of the shoreline of East Lyme. Structures and infrastructure in the southern section of the town are closer to sea level than in northern areas and are therefore more susceptible to coastal flooding. Hurricanes, tropical storms, and nor'easters have the potential to induce coastal flooding and storm surge that can impact structures, and these types of storms have caused the greatest amount of flood damage to the town in the past. Astronomical high tides can also cause coastal flooding of low-lying areas.

Roadway closures are the most common result of coastal flooding although structures are also affected during moderate events. For example, flooding during Tropical Storm Irene in late August 2011 washed out a seawall in front of houses on Atlantic Street and flooded nearby homes. Only a few structures are known to have received damage by coastal floodwaters since 2005. However, as of 2012, the Town was concerned with the potential long-term effects of sea level rise and its potential to exacerbate flooding conditions in the future.

In October 2012, Super Storm Sandy caused significant coastal flooding in East Lyme. The event occurred after the FEMA approval pending adoption (APA) of the hazard mitigation plan and therefore was not described in the document. Areas along Oak Grove Beach saw significant flooding of roads and homes. Crescent Beach was also hard hit, with part of a walking path washed out, and significant erosion occurring. East Lyme received over half a million dollars in FEMA federal aid immediately after the event in order to facilitate the cleanup. In addition, the Crescent Beach Association reportedly received three million dollars for beach restoration.

On January 17, 2022, the town experienced severe coastal flooding along Atlantic Street in the Niantic area. The floodwaters reportedly created an island and took about 10 hours to drain. Public works crews worked into the evening to remove sand and water. Residents reported floodwaters damaging siding, and waves cresting as high as rooftops. The town reportedly made a water rescue using a public works backhoe as waters were rising too rapidly for vehicular access.

Most recently, a significant coastal flood event occurred on December 23, 2022 during the final stages of the planning process for this document. The coastal water surface elevation at the New London tide gauge was reportedly the sixth highest on record. Numerous roads and structures experienced flooding in coastal southeastern Connecticut, including parts of East Lyme.

4.2.2 Existing Capabilities

The Town primarily attempts to mitigate coastal flood damage and flood hazards by controlling and restricting activities in areas of flood risk, encouraging the elevation of homes and roadways, maintaining hard structures in good condition, and providing signage and warning systems. The Town of East Lyme is a Class 8 participant in the Community Rating System (CRS). The Town has been active in the program since 1991, and this participation has helped sustain enhanced capabilities for flood risk management.

As noted in Section 2.6 and Section 5.2.2, the Town utilizes the 1% annual chance floodplains delineated by FEMA. These consist of the 1% annual chance floodplain with elevations (Zone AE), and the 1% annual chance floodplain subject to wave velocity (Zone VE) for coastal flooding areas. As noted by the

Zoning Regulations and the Subdivision Regulations, building activities in these areas are restricted and new construction or substantial redevelopment must prove that the lowest horizontal member of the new construction will be above the base flood elevation. The Town requires elevation certificates to certify such work as part of its Community Rating System efforts. The Planning Commission, Zoning Commission, Land Use Department, and the Building Official are all required to review and approve portions of applications that involve structures within FEMA Special Flood Hazard Areas.

The Town has conducted outreach to residents about flood mitigation, but most residents are not interested in acquisitions or elevations. As such, the Town has further attempted to streamline restrictions to its regulations through its recent amendments to the Zoning Regulations and by maintaining its activities with the Community Rating System.

As explained elsewhere in this HMCAP, the National Weather Service issues a flood watch or a flash flood watch for an area when conditions in or near the area are favorable for a flood or flash flood, respectively. A flash flood watch or flood watch does not necessarily mean that flooding will occur. The National Weather Service issues a flood warning or a flash flood warning for an area when parts of the area are either currently flooding, highly likely to flood, or when flooding is imminent. The Town of East Lyme utilizes these warnings and forecasts to prepare emergency responders for flooding events.

The shoreline of East Lyme contains many coastal flood control structures. Small, private seawalls and bulkheads can be found in many of the residentially developed coastal neighborhoods such as on Giants Neck, Seal Rock, Black Point, Attawan Beach, Crescent Beach, and Atlantic Avenue. The seawall on Atlantic Avenue washed out during Tropical Storm Irene and the property owners are repairing it without the Town's assistance. Larger structures are associated with the breakwaters at Rocky Neck and the Amtrak-Metro North Railroad at Rocky Neck and the Pattagansett River estuary that protects landward areas from wave velocity. Groins and jetties are also common in beach areas. Most of these structures were designed to retain land as well as protect against wave action, but have the secondary effect of reducing coastal erosion.

"The Bar" that carries Route 156 and the Amtrak Railroad is also an important mitigation structure that helps to protect areas along the Niantic River. The National Railroad Passenger Corporation (Amtrak) is currently replacing the bridge leading from The Bar to Waterford. The replacement includes the construction of a protective wall, a stone scour protection system, and relocation of a beach seaward of its existing location. Approximately 2,500 feet of beach will be restored as part of the project.

Like many communities, the Town lacks existing policies and mitigation measures that are specifically designed to address sea level rise. However, important pieces are in place in the form of the codes and regulations cited in this HMCAP that have been enacted to minimize storm, erosion, and flood damage. The Town completed the process of identifying its vulnerability to this hazard, including a completed planning effort with The Nature Conservancy (TNC) in 2011-2012 and a separate planning initiative with SCCOG and TNC in 2016-2017. As of the date of the previous plan, the Town has not yet embarked on detailed coastal hazard planning to the degree that nearby communities like Waterford and Groton have done. However, East Lyme received funding from CIRCA several years ago and completed a coastal vulnerability assessment and report (<https://circa.uconn.edu/east-lyme/>) as a major step toward local resilience planning.

As explained in Section 2 of the regional part of this multi-jurisdiction hazard mitigation plan, the State Historic Preservation Office (SHPO) embarked on a resiliency planning study for historic and cultural resources beginning in 2016. During winter 2016-2017, individual meetings were held with the shoreline SCCOG communities. Reports were issued to these communities in DECEMBER 2017. The East Lyme report outlines eight strategies that can be employed to make historic and cultural resources more resilient:

- Identify Historic Resources
- Revisit Historic District Zoning Regulations
- Strengthen Recovery Planning
- Incorporate Historic Preservation into Planning Documents
- Revisit Floodplain Regulations and Ordinances
- Coordinate Regionally and with the State
- Structural Adaptation Measures
- Educate

Subsequently, a best practice guide for planning techniques to make historic resources more resilient was distributed in September 2017.

Summary

Municipal capabilities to mitigate coastal flood damage have increased significantly since the 2012 edition of the hazard mitigation plan was adopted. This is because the Town continued working with TNC on its resiliency planning, participating in the historic resources resiliency planning, and generally increased its capabilities sharply in response to the flooding associated with storms Irene and Sandy. Since the 2017 plan the Town continues to work toward strengthening regulations, protecting infrastructure, and planning for future sea level rise and climate change.

4.2.3 Vulnerabilities and Risk Assessment

This section discusses specific areas at risk to coastal flooding within the Town. This flooding can be the result of astronomical high tides, hurricanes, nor'easters, or storm surge. As shown by the historic record, coastal flooding can impact many roads and neighborhoods, potentially cause severe damage, and impede transportation in the Town. Refer to Figure 5-1 for a depiction of areas susceptible to coastal flooding, and Figure 4-3 for areas susceptible to storm surge from hurricanes.

UConn CIRCA has developed a tool to aid in understanding flood vulnerability for communities across the state. This tool, known as the Climate Change Vulnerability Index (CCVI), is comprised of dozens of factors that contribute to a community's flood sensitivity, exposure, adaptive capacity, and ultimately the overall flood vulnerability. The CCVI has been used as a tool to characterize flood vulnerability for the town. The distribution of flood vulnerability throughout the community can be seen in

Figure 4-2. The CCVI demonstrates that flood vulnerability in the town ranges from low to moderate. Most of the vulnerability score is due to the coastal areas, and the Fourmile River.

Figure 4-2 CCVI Flood Vulnerability for the Town of East Lyme

Vulnerability Analysis of Areas Along Coastal Waters

The low-lying shoreline areas of the town are subject to periodic flooding. The most severe flooding in East Lyme occurs during hurricanes or coastal storms which can occur during any season. Such storms have intense winds and rainfall that can create high tidal surges, wave runoff, and peak runoff to drainage systems where coastal outlets are submerged. Areas along Long Island Sound, Niantic Bay, and the Niantic River are at the highest risk of experiencing damage from coastal flooding, and tidally influenced flooding also occurs along the lower portion of major watercourses including the Fourmile River, Bride Brook, Pattagansett Brook, and Latimer Brook. FEMA has defined 1% annual chance and 0.2% annual chance floodplains associated with coastal flooding, as well as 1% annual chance floodplains with wave velocity for the Town.

The southern portion of the town and the lower section of the Niantic River are exposed to the wave action from Long Island Sound. An additional concern for these areas of the Town is that the primary roadways may flood due to drainage issues before structures are affected making subsequent evacuation very difficult. The Town of East Lyme has identified several important roads that could potentially flood during major storms as presented in Table 4-1. Important roads include major roadways or those that are the only mode of egress into a neighborhood.

Table 4-1 Important Roadways at Risk of Overtopping During Coastal Flooding

Roads	
<u>Boston Post Road (Route 1)</u>	<u>Old Black Point Road</u>
<u>Fairhaven Road</u>	<u>Pine Grove Road</u>
<u>Giants Neck Road</u>	<u>Shore Road</u>
<u>Main Street Route 156</u>	<u>West Main Street (Route 156)</u>

Atlantic Street is a particular area of concern as it can be overtopped by a moderate coastal flood event and the flooding both cuts off access to a small neighborhood and inundates the sanitary and storm sewer systems. When this occurs, the Town has to pump water from the systems into Niantic Bay. Other roads that provide access to coastal structures are also located in the 1% annual chance coastal floodplain as described in Section 4.3.2.

As shown on Figure 5-1, areas of storm surge are generally coincident with the areas of coastal flooding described above. In general, a Category Two Hurricane is expected to produce storm surges that are equivalent to the 1% annual chance flood event, while a Category Three Hurricane is expected to produce storm surges that approximate the 0.2% annual chance flood event. Storm surge from a Category Four Hurricane would affect additional areas, while storm surge from a Category One Hurricane is expected to affect many low-lying coastal areas to a slightly lesser extent than those from a Category Two hurricane. Areas potentially affected by storm surge from a Category One Hurricane include areas of Giants Neck, the Pattagansett River estuary, coastal areas in Black Point, the Indian Pond and Shore Road area, the marina area in Niantic, low-lying roads, and properties around Smith Cove, as well as smaller portions of other coastal areas.

Figure 4-3 Hurricane Storm Surge Areas

4.2.3.1 Hazard Losses

There are no reported losses for the Town of East Lyme related to coastal flooding. Table 4-2 presents the direct and business interruption related losses for the 100-year coastal flood event. Additional HAZUS-generated loss estimates for coastal floods and downscaled flood losses based on the 2019 Connecticut Natural Hazard Mitigation Plan are developed in the Multi-Jurisdictional document.

Table 4-2 HAZUS-MH Coastal Flood Related Economic Impacts

East Lyme	2022 Results				
	RES	COM	IND	OTHER	TOTAL
Direct					
Building	\$65,280,000	\$4,320,000	\$1,500,000	\$1,070,000	\$72,170,000
Contents	\$62,710,000	\$13,220,000	\$2,470,000	\$6,800,000	\$85,200,000
Inventory	\$0	\$2,140,000	\$350,000	\$60,000	\$2,550,000
Subtotal	\$127,990,000	\$19,680,000	\$4,320,000	\$7,930,000	\$159,920,000
Business Interruption					
Income	\$1,240,000	\$15,390,000	\$100,000	\$3,040,000	\$19,770,000
Relocation	\$23,800,000	\$4,200,000	\$110,000	\$2,480,000	\$30,590,000
Rental Income	\$9,810,000	\$3,050,000	\$10,000	\$610,000	\$13,480,000
Wage	\$2,920,000	\$15,280,000	\$180,000	\$47,350,000	\$65,730,000
Subtotal	\$37,770,000	\$37,920,000	\$400,000	\$53,480,000	\$129,570,000
TOTAL	\$165,760,000	\$57,600,000	\$4,720,000	\$61,410,000	\$289,490,000

4.3. Shoreline Change

4.3.1 Setting and Recent Occurrences

Shoreline change is primarily a natural process caused by wind, waves, and currents; however, it can also be attributed to human driven processes such as development, grading, and beach armoring or nourishment. As climate change impacts hazards such as severe storms, hurricanes and tropical storms, and sea level rise, shorelines have the potential to change at different rates than in decades past. As tidal ranges increase, and storm surge becomes higher and potentially more intense, these processes may become exacerbated. Rapidly changing shorelines can have an impact on coastal ecosystem (particularly those that provide natural buffers), erode natural shorelines resulting in encroaching seas onto developed land, and may alter those shorelines that have been hardened to protect development and infrastructure.

4.3.2 Existing Capabilities

As discussed above in Section 4.2.2, the Town has implemented regulations and codes that aid in preventing and minimizing the occurrence and impacts of erosion and shoreline change. In addition, there are structures along the shoreline that while are primarily for flood control, also prevents or reduces excessive erosion during high tide and coastal flood events.

4.3.3 Vulnerabilities and Risk Assessment

In general, it is assumed that as sea level rises, the frequency and magnitude of coastal flooding in the Town will increase with structures and roadways closest to existing sea level being affected more

quickly. In addition, tidal marsh areas located in Rocky Neck State Park, the Pattagansett River estuary, the Niantic River, and nearby Indian Pond will either migrate inland or be eroded by constant inundation. Tidal wetland islands such as Watts Island could disappear completely.

Aside from the tidal marshes, coastal erosion is generally not a serious issue in East Lyme since the majority of the shorefront is either developed (particularly along the Niantic River), rocky shorefronts consisting of stones and boulders, or modified bluffs and escarpments consisting of seawalls, bulkheads, or revetments. The beach and some tidal wetland areas are susceptible to coastal erosion but are generally protected from direct wave action by local islands, groins, jetties, and breakwaters. However, as sea level rises, the effectiveness of these structures will be undermined such that erosion will be able to occur more easily during coastal flooding events.

4.3.3.1 Hazard Losses

There are no reported losses for the Town of East Lyme related to shoreline change. Despite the record of past events, shoreline changes losses such as coastal erosion are difficult to quantify because they are not reported via the tools typically reviewed for plan updates such as the NCEI Severe Storm database and the NFIP. Shoreline change losses are not quantified in the 2019 Connecticut Natural Hazard Mitigation Plan.

For beaches, one representation of loss is the total cost of beach nourishment, even though this does not account for occasional property damage. Beach nourishment has been infrequent in East Lyme, and figures are difficult to compile.

Another measure of shoreline change loss is the total unmet need associated with living shoreline project costs, which have only recently become well-understood over the last five years. Some areas of East Lyme have been identified as suitable for living shoreline applications. For example, the Coastal Resilience, Climate Adaptation, and Sustainability Study² has identified those grassy laws that extend seaward as suitable for native shoreline plantings, the banks of the Pattagansett River suitable for marsh enhancement, and beach enhancement along the Niantic Boardwalk area. While these specific projects have not been conceptualized, neighboring SCCC communities anticipating living shoreline applications are likely facing costs between \$1 million to \$1.5 million based on engineering opinions of probable cost.

² <https://eltownhall.com/wp-content/uploads/2019/09/FINAL-REPORT-CRCASS-2018-12-10.pdf>

5. Changing Precipitation

5.1. Climate Change Impacts

Across the United States, annual precipitation has increased in the past century, however, this change *is* dependent upon the region. Here in the northeast, precipitation totals, and intensity are believed to have increased, and are projected to continue to increase during spring and winter months. However, climate change has also been linked to a reduction in snow cover extent, and an earlier spring melt. Winter precipitation may also change from snow to a wintry mix or rainfall due to warmer temperatures; so, while precipitation may increase it may not necessarily be an increase in snow.

Changes in precipitation can also shift the frequency and severity of droughts. As the climate warms, surface soil moisture is likely to decrease as evaporation rates rise. This decrease in soil moisture, and potentially longer periods of time between intense precipitation events, could potentially mean longer and stronger droughts.

These changes in precipitation can have various types of impacts. With an increase in intense precipitation, flooding events may become more frequent, damage to crops may occur, and spring flood trends may shift with less snow and more rain. Droughts on the other hand can also cause damage to crops, stress livestock and agricultural operations, and also reduce drinking water supplies or private wells.

5.2. Riverine and Pluvial Floods

5.2.1 Setting and Recent Occurrences

Flooding is the primary hazard that impacts the town each year as documented in the previous edition of this plan. While riverine flooding along watercourses is a concern, shallow nuisance flooding and poor drainage have also caused flooding at several locations in the town. Flooding is typically caused by heavy rainstorms but can also be caused by relatively light rains falling on frozen ground. Flooding of roadways is more common than damage to structures during pluvial and riverine floods.

One of the largest inland flood events in recent history occurred in June 1982. According to the 2011 Flood Insurance Study for New London County, a heavy rainstorm produced widespread flooding and several dam failures in southern Connecticut. This flood damaged bridges and structures along the Fourmile River and Latimer Brook in East Lyme. The event is the flood of record at the USGS gaging station on the Fourmile River.

Sustained heavy rainfall in late March 2010 caused a 1% annual chance flood throughout southeastern Connecticut. This is now the flood of record for East Lyme replacing the storm of June 1982. Many roads throughout the community were closed, including the Exit 74 and Exit 75 ramps from southbound Interstate 95, and Route 161 was closed in both directions at Route 156. North Bride Brook was closed with deep flooding, Bush Hill Drive was flooded for three days, and flooding was severe enough at the intersection of Route 161 and Walnut Hill Road that water rescues were necessary. The March 2010 storms continue to be considered the event that caused the most widespread inland flooding in East Lyme since the town began participating in the multi-jurisdiction hazard mitigation plan.

At least one additional heavy rain event occurred in East Lyme in 2011. The NCDC reported that heavy rainfall produced flash flooding on North Bride Brook Road in East Lyme on June 23, 2011. The road was closed with four feet of standing water on the road. On September 10, 2015, a wave of low pressure riding along a cold front stalled just south of Long Island. It brought heavy rain and isolated flash flooding to New London County, Connecticut.

The region has experienced severe rainstorm events since the 2017 plan, with many neighboring communities having experienced serious flooding as a result.

The September 2018 rain event caused severe flooding throughout the state, with several communities in the SCCOG region receiving FEMA PA reimbursements for the event. Neighboring Norwich received 4.85 inches of rainfall and Lebanon reported 6.79 inches.

Storm Ida, which produced several inches of rain across the state, caused flooding in many SCCOG communities. Norwich Public Utilities recorded 6.34 inches of rainfall and Groton-New London Airport recorded 2.05 inches.

After the severe flashy drought of summer 2022, a severe rainstorm event on September 5-6, 2022, caused flooding throughout southeastern Connecticut. Lebanon experienced road closures and washouts, while Norwich Public Utilities observed 5.85 inches of rainfall. There were flood and flash flood warnings throughout the region and across the state. Neighboring Rhode Island reported 11 inches of rainfall in some communities.

5.2.2 Existing Capabilities

The Town attempts to mitigate inland flood damage and flood hazards by utilizing a wide range of measures including restricting activities in areas of flood risk, replacing and upsizing bridges and culverts, promoting flood insurance, acquiring floodprone structures, maintaining drainage systems, advancing education and outreach, and by utilizing warning systems. As noted earlier, the Town of East Lyme is a Class 8 participant in the CRS, and this participation has helped sustain enhanced capabilities for flood risk management.

Many mitigation measures are common to all hazards and therefore were listed in Section 2.6 and Section 2.7. No major inland flood control structural projects are in place within or upstream of East Lyme. Bridge Replacements, Drainage, and Maintenance The Department of Public Works cleans and inspects catch basins and culverts at least annually or more often if problems are noted. The Town fields phone calls related to drainage complaints. Roadway drainage complaints are directed to the Director of Public Works. When flooding occurs, the Public Works department or the Fire Department would handle complaints depending on the location. For example, Public Works would inspect bridges and culverts and erect barricades to close roads, while the Fire Department responds to calls requesting help for flooded basements.

Regulations, Codes, and Ordinances

The Town of East Lyme has planning and zoning tools in place that incorporate floodplain management. The Town's flood protection regulations are found in section 15 of its Zoning Regulations as noted in Section 2.6, and were most recently revised on October 28, 2021; this is the Town's articulation of the FEMA NFIP regulations. The Town utilizes the 1% annual chance floodplain as defined by FEMA to regulate floodplain and floodway activities, and the most recent edition of its Zoning Regulations refer

specifically to the New London Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) published by FEMA on August 5, 2013 for coastal areas and July 18, 2011 for inland areas. The Town requires 100 percent compensatory storage for any encroachment in the floodplain. The Town also requires new construction or substantial renovations to be located at an elevation greater than the base flood elevation and requires the preparation of elevation certificates to verify that a structure has been elevated or built to the proper height. The Zoning Regulations define substantial improvement cumulatively over a two-year period.

The Town's Building Official was a founding member of the Connecticut Association of Flood Managers (CAFM) and continues to participate in the organization, attending meetings and annual conferences. This ensures that the Town's Building Department is aware of the most up to-date flood regulations and policies.

The Town's Subdivision Regulations require that adequate drainage be provided to reduce exposure to flood hazards and that buildings and utilities are located to minimize the effects of flood damage. Regulations covering development in or within 100 feet of inland wetland or watercourse areas were last updated in 2011 and are enforced by the Town's Inland Wetlands and Watercourses Commission. The Town has also adopted a map prepared by the Inland Wetland and Watercourse Commission which regulates building in wetland areas.

In general, partly for the CRS program, the town is working to bolster floodplain related zoning regulations and improving stormwater management across town for MS4 compliance.

Acquisitions, Elevations, and Property Protection

The Town of East Lyme has not performed acquisitions or elevations of floodprone property. Property protection has focused instead on preventive measures and maintaining and upgrading drainage systems. The Town is not opposed to performing acquisitions, elevations, or relocations if property owners were willing and grant funding was available. For example, the Town has approached the owners of repetitive loss properties about this level of mitigation for their properties, but homeowners are either unwilling to move at this time or not willing to fund 25% of the cost for an elevation or relocation project.

Flood Watches and Warnings

The Public Safety Director and the Fire Department access weather reports through the National Weather Service and local media. Residents can also sign up for the Connecticut Alerts "Everbridge" Reverse 9-1-1 system to receive warnings when storms are imminent. The Town can telephone warnings into potentially affected areas using this system.

Community Rating System

The Town of East Lyme joined the Community Rating System in 1991 and currently has policies and procedures in place that exceed the minimum standards for an NFIP-compliant community. East Lyme is currently a Class 8 (as of April 2022) Community which qualifies flood insurance policy holders in the town a 10% discount on flood insurance. The Town performed several accomplishments to earn this rating including: providing and maintaining flood elevation certificates, conventional flood maps, and

digital flood data for public information purposes; completing a public information outreach project; preserving open space; improving stormwater management.

Summary

In general, municipal capabilities to mitigate flood damage have not increased significantly since the 2017 edition of the hazard mitigation plan was adopted. This is likely because the Town increased its capabilities in response to flooding of 2011 and 2012 associated with Tropical Storm Irene and Hurricane Sandy, which are discussed in previous chapters.

5.2.3 Vulnerabilities and Risk Assessment

This section discusses specific areas at risk to inland flooding within the Town. Overbank flooding is the most common type of flooding experienced in East Lyme, although poor drainage and nuisance flooding also occur.

Vulnerability Analysis of Areas Along Watercourses

Major inland watercourses and water bodies in East Lyme have the 1% annual chance floodplain defined by FEMA. Bride Brook, the Fourmile River, Latimer Brook, and the Pattagansett River, each have inland sections mapped as Zone AE indicating that flood elevations are available. The upper reaches of each of these streams are mapped as Zone A (except for Latimer Brook), and smaller streams such as Beaver Brook and Cranberry Meadow Brook have also had sections mapped as Zone A. Refer to Figure 5-1 for the location of the 1% annual chance floodplains related to inland flooding within East Lyme.

Based on the information in the previous HMP and that provided by Town officials, the following areas along watercourses are vulnerable to flooding damage. This flooding occurs due to insufficient culvert sizes at crossings or due to overbank flooding from heavy rainfall. Ice jams have not previously been an issue along watercourses in East Lyme.

Beaver Brook

The headwaters of Beaver Brook are located in the northwestern section of East Lyme. The FEMA DFIRM indicates that Beaver Brook could overtop Beaver Brook Road in this area during the 1% annual chance flood.

Bride Brook

Bride Brook is a repeated flooding area and typically floods at least once per year. Bride Brook is conveyed beneath North Bride Brook Road in two places and both crossings can potentially be inundated by the 1% annual chance flood event. The upstream crossing was inundated to a depth of five feet during the March 2010 floods. Flooding becomes tidally influenced downstream of Route 156 when Bride Brook enters Rocky Neck State Park.

Cranberry Meadow Brook

The lower reach of this brook is mapped as Zone A above Chesterfield Road (Route 161). The brook is mapped as Zone AE and impounded by a small dam downstream of Route 161 with the outlet stream

quickly reaching its confluence with Latimer Brook. The Route 161 crossing is a repeated flooding area that overtopped several feet during the March 2010 floods.

Fourmile River

The Fourmile River has its headwaters in western East Lyme. The headwaters of the river are mapped as Zone A downstream to the Boston Post Road (Route 1). The river could potentially overtop Stone Ranch Road in the Stone Ranch Military Reservation during a 1% annual chance flood event. Downstream of Route 1, the river is mapped as Zone AE and based on the flood profile in the FIS roads would not be overtopped by the 1% annual chance flood event.

Latimer Brook

Latimer Brook has its headwaters in Montville. The brook enters East Lyme just downstream of Silver Falls Road and is mapped as Zone AE throughout its reach. The Town of East Lyme performed many culvert upgrades following the 1982 flood to improve egress to neighborhoods located across the brook. Based on the flood profile in the FIS, roadways that cross Latimer Brook should not overtop during the 1% annual chance flood event. The only road at risk of overtopping is Boston Post Road just upstream of Interstate 95. The removal of a small dam located between Route 1 and Interstate 95 could alleviate this flooding issue. However, many roads adjacent to Latimer Brook could be overtopped by minor flooding from the 1% annual chance flood event, including Latimer Drive, Bob White Lane, the cul-de-sac of Brookfield Drive, Quailcrest Road, and Chesterfield Road (Route 161) near both ends of Mostoway Road. Downstream of Interstate 95, Latimer Brook becomes vulnerable to tidal flooding.

Pattagansett River

The Pattagansett River is formed at the outlet of Powers Lake located near the Yale Engineering Camp. The river is mapped as Zone AE downstream of Upper Pattagansett Road and could potentially overtop that road and Hathaway Road during a 1% annual chance flood event. The river is impounded by a significant dam downstream forming Pattagansett Lake. The section of river downstream from this lake is mapped as Zone AE. A 1% annual chance flood event would overtop the Boston Post Road (Route 1), Industrial Park Road, Roxbury Road, and Bush Hill Drive. Bush Hill Drive floods annually and was flooded for three days during March 2010. Roxbury Road would overtop during more frequent floods than the 1% annual chance flood event, and Brook Road would be close to overtopping. The Pattagansett River is tidally influenced downstream of Brook Road, but 1% annual chance inland flooding event should not overtop West Main Street (Route 156).

Figure 5-1 Town of East Lyme FEMA Special Flood Hazard Areas

Poor Drainage Flooding

Flooding due to poor drainage occurs throughout East Lyme including in coastal areas. Recently, a nuisance flooding problem has developed on Flanders Road (Route 161) near Industrial Park Road. There has been a lot of development nearby (for example, on Chapman Woods Road) and the older sections of the drainage system on Flanders Road are being overwhelmed since they are likely undersized. This section of roadway typically needs to be closed for several hours during heavy rainfall, and Town personnel have observed manholes overflowing. Drainage improvements along Route 161 may alleviate the flooding issue.

Vulnerability Analysis of Private Properties

The vast majority of at risk structures are residential, but a few commercial and industrial structures are also located within inland floodplains. In many cases, these structures are located near the edge of the mapped floodplain and therefore may actually be elevated above the floodplain. Nevertheless, the Town of East Lyme should make an effort to identify properties within the 1% annual chance floodplain and distribute information regarding floodproofing and home elevation to the owners of these properties. As of June 2022, 23 repetitive loss properties related to inland flooding damage were reported in East Lyme.

Vulnerability Analysis of Critical Facilities

As noted in Section 2.7, critical facilities in East Lyme are not located within the 1% annual chance floodplain. While the public water supply wellfields and some pump houses appear to be located within the 1% annual chance floodplain, these buildings are not designed for permanent habitation and the associated infrastructure can withstand minor flooding. Other structures, such as sewer pump stations, are not affected by inland flooding but rather by coastal flooding.

The Town of East Lyme is concerned with several roads that are the only egress into large neighborhoods that are also located within the 1% annual chance floodplain. For example, Bush Hill Road floods at the Pattagansett River, and this bridge is the only mode of egress for more than 80 properties. An emergency egress should be considered between either Bush Hill Road and Romangna Road or between Highwood Road and Whiting Farms Lane. Homes on North Bride Brook Road can also become isolated if Bride Brook overtops the road at both locations. Furthermore, if Brook Road over the Pattagansett River was washed out, residents would not be able to leave the neighborhood although they could walk to Park Place for assistance.

5.2.3.1 Hazard Losses

According to NFIP statistics, as of June 30, 2022, the Town of East Lyme has had a total of 243 flood related losses, with a total \$4,503,269 paid towards the claims.

There was one NOAA report of a flash flood event in town on September 12, 2018. The event occurred at Main Street and Pennsylvania Avenue in the Niantic Area. No damage figures were reported for this event other than the closure of the intersection.

FEMA HAZUS-MH 6.0 was used to develop losses associated with the 100-year riverine flood event. Table 5-1 presents flood related damages for the Town of East Lyme. Additional HAZUS-generated losses for the town and region can be found in the Multi-Jurisdictional document.

Table 5-1 HAZUS-MH Riverine Flood Related Economic Impacts

East Lyme	2022 Results				
	Residential	Commercial	Industrial	Other	Total
Direct					
Building	\$7,900,000	\$1,590,000	\$300,000	\$300,000	\$10,090,000
Contents	\$3,560,000	\$6,490,000	\$350,000	\$1,820,000	\$12,220,000
Inventory	\$0	\$840,000	\$60,000	\$0	\$900,000
Subtotal	\$11,460,000	\$8,920,000	\$710,000	\$2,120,000	\$23,210,000
Business Interruption					
Income	\$370,000	\$8,310,000	\$50,000	\$1,600,000	\$10,330,000
Relocation	\$4,130,000	\$2,090,000	\$50,000	\$970,000	\$7,240,000
Rental Income	\$1,600,000	\$1,440,000	\$10,000	\$120,000	\$3,170,000
Wage	\$880,000	\$11,630,000	\$90,000	\$10,550,000	\$23,150,000
Subtotal	\$6,980,000	\$23,470,000	\$200,000	\$13,240,000	\$43,890,000
Total	\$18,440,000	\$32,390,000	\$910,000	\$15,360,000	\$67,100,000

5.3. Drought

5.3.1 Setting and Recent Occurrences

A drought can occur during any season when there is a long, abnormally dry period of time. These events are naturally occurring during periods of limited precipitation. The effects of drought may vary throughout Town, with some sectors impacted more than others.

In recent years, droughts have become flashier and more frequent throughout the region. During recent events, there have been reports in the region of wells going dry on residential and farming properties. Some of the more severe and impactful events include:

- **2016** – a statewide drought that lasted almost two years and peaked in 2016, resulted in water conservation efforts throughout the southeastern part of the region, elevated fire risks in some areas, and was noted as the 11th driest spring on record.
- **2020** – From June to December, New London County experienced a moderate to severe drought, with the county being declared a Stage 3 by the Connecticut Interagency Drought Work Group.
- **2022** – During the development of this plan, the region was in an ongoing drought, with severe drought conditions in August 2022. The County was declared a Stage 3 drought emergency on August 18, 2022.

5.3.2 Existing Capabilities

The Town of East Lyme, like many other communities, does not have specific regulations that are geared toward drought mitigation. The Zoning Regulations have been developed with one purpose being to facilitate adequate provisions for water, and to provide for environmentally important lands.

In section 52.03 of the Town Code, there is a water emergency conservation ordinance. This ordinance outlines the process for which the Water and Sewer Commission monitors water supply levels, the steps taken to declare a water emergency, and what possible restrictions may be enacted during an emergency.

The town also has its own water utility which primarily serves the southern and central parts of the town. While this could be seen as a challenge in some instances, having public water in some of the more densely populated areas of town provides a higher level of drinking water resilience during a drought. The town has also noted that the system is in good working condition, and that operators are diligent about leveraging state revolving funds for improvements.

5.3.3 Vulnerabilities and Risk Assessment

The entire Town of East Lyme is vulnerable to drought, but the degree of vulnerability varies. About half of the town relies on private wells for their residential or commercial drinking water. These wells could be also impacted during a drought, limiting water supplies.

5.3.3.1 Hazard Losses

There have been no reported drought losses for the Town of East Lyme. Downscaled drought losses from the 2019 Connecticut Natural Hazard Mitigation Plan are developed in the Multi Jurisdiction document.

5.4. Dam Failure

5.4.1 Setting/Historic Record

Dam failures can be triggered suddenly with little or no warning and often in connection with natural disasters such as floods and earthquakes. Dam failures can occur during flooding when the dam breaks under the additional force of floodwaters. In addition, a dam failure can cause a chain reaction where the sudden release of floodwaters causes the next dam downstream to fail. While flooding from a dam failure generally has a limited geographic extent, the effects are potentially catastrophic depending on the downstream population. A dam failure affecting East Lyme is considered a possible event each year with potentially significant effects. No dam failures have impacted the town since the previous HMP.

5.4.2 Existing Capabilities

The dam safety statutes are codified in Section 22a-401 through 22a-411 inclusive of the Connecticut General Statutes. Sections 22a-409-1 and 22a-409-2 of the Regulations of Connecticut State Agencies have been enacted, which govern the registration, classification, and inspection of dams. Dams must be registered by the owner with the DEEP according to Connecticut Public Act 83-38. Owners of high and significant hazard dams are required to maintain EAPs for such dams.

The Connecticut DEEP administers the Dam Safety Section and designates a classification to each state-registered dam based on its potential hazard. As noted in the Multi-Jurisdictional HMP, East Lyme is

home to four Class B (significant hazard) dams, and one additional Class B (significant hazard) dam is located upstream of East Lyme whose failure could potentially lead to flooding within the town. These dams, and all others in town, are listed on Table 5-2.

Table 5-2 Dams Registered with DEEP in the Town of East Lyme

CT Dam#	Dam Name	Dam Class	Owner Type
4521	Dodge Pond	-	State Owned
4509	Ponderosa Park Dam	A	Private
4510	Fourmile Pond I	A	Private
4511	Fourmile Pond II	A	Private
4512	Fourmile Pond III	A	Private
4515	Cranberry Pond Dam	A	Private
4516	Latimer Brook Pond Dam	A	State Owned
4518	Havens Pond	A	State Owned
4519	Bride Lake Dam	A	State Owned
4520	Plants Dam	A	Municipal
4525	Real Pond	A	Private
4526	Natural Pond	A	Private
4530	Beaver Brook Dam	A	State Owned
4531	Drabik Pond Dam	A	Private
4532	Zaist Pond Dam	A	Private
4517	Clark Pond Dam	AA	Municipal
4501	Powers Lake Dam	B	State Owned
4502	Darrow Pond Dam	B	Municipal
4503	Gorton Pond Dam	B	State Owned
4505	Pataguanset Lake Dam	B	State Owned
4504	Dodson Pond Dam	BB	Private

Dams in the region whose failure could impact East Lyme are under the jurisdiction of the Connecticut DEEP. The dam safety statutes are codified in Section 22a-401 through 22a-411 inclusive of the Connecticut General Statutes. Sections 22a-409-1 and 22a-409-2 of the Regulations of Connecticut State Agencies have been enacted, which govern the registration, classification, and inspection of dams. Dams must be registered by the owner with the DEEP according to Connecticut Public Act 83-38.

Figure 5-2 Dams Registered with DEEP in East Lyme



Owners of high and significant hazard dams are required to maintain EAPs for such dams. The Town of East Lyme is part owner of Darrow Pond dam when it acquired half of the pond several years ago. Since 2017, an EAP has been developed for Darrow Pond Dam. The Connecticut DEEP maintains EAPs for the remaining dams in East Lyme, and the New London Water Department operates a dam in Montville that is in the headwaters of Latimer Brook. The Town of East Lyme does not currently possess copies of EAPs for high and significant hazard dams, aside from Darrow Pond.

Summary

In general, municipal capabilities to mitigate dam failure damage have slightly increased since 2017 with the development of the municipally owned Darrow Pond Dam. changes in the State's regulation of dams have increased Statewide capabilities sharply.

5.4.3 Vulnerabilities and Risk Assessment

The potential impacts related to the failure of Class B dams within or upstream of East Lyme are described below. Where information was available, the descriptions below are based on information available at the Connecticut DEEP Dam Safety files.

- *Bogue Brook Reservoir Dam* – This dam is owned by the City of New London Water Department and impounds Bogue Brook for water supply purposes. The dam is believed to be in good condition. Neither an EOP nor a dam failure analysis was found in the Connecticut DEEP Dam Safety files. Failure of this dam would likely impact areas along Bogue Brook and Latimer Brook in Montville and cause minor to moderate flooding along Latimer Brook in East Lyme.
- *Darrow Pond Dam* – Darrow Pond dam is co-owned by a private owner and the Town of East Lyme, and the dam is believed to be in good condition. The Town does not believe that an EOP or dam failure analysis has been prepared for this dam. According to records in the Connecticut DEEP Dam Safety files, this dam overtopped during the 1982 floods causing minor damage downstream. Failure of this dam would likely washout Mostowy Road immediately downstream as well as causing damage at Route 161 and one structure downstream. Minor flooding would also likely be experienced by homes located along Latimer Brook.
- *Gorton Pond Dam* – This dam is owned and maintained by the Connecticut DEEP. Repairs to this dam were completed just prior to the previous HMP and the dam is believed to be in good condition. An EOP for this structure is on file with the DEEP. This dam originally provided water supply for Niantic Mills in the 19th century but currently impounds the Pattagansett River for recreational purposes. A 1981 inspection report prepared by the USACE included a dam failure analysis that suggested inundation would occur downstream to Route 1, that four downstream bridges would be damaged, and that four to five homes could be inundated downstream with moderate flooding. A review of the inundation mapping against current aerial photography suggests that as many as 22 homes could be flooded between the dam and Route 156.
- *Pattagansett Lake Dam* – This dam is owned and maintained by the Connecticut DEEP. An EOP for this structure is on file with the DEEP. This dam originally provided water supply for mills in the 19th century but currently impounds the Pattagansett River for recreational purposes. A 1999 EOP prepared by the USACE is on file at the Connecticut DEEP including a dam breach

analysis that suggested inundation would occur downstream at Mill Road, Route 1 (which would overtop by four feet), Pattagansett Road, Church Lane, I-95, Industrial Park Road, Flanders Road, Society Road, Roxbury Road, Romagna Road, East Pattagansett Road, Bush Hill Drive, Brook Road, Lake Avenue, Herster Drive, Route 156, Whittlesey Place, McElaney Drive, Huntley Court, and Fairhaven Road would be impacted by downstream flooding. A review of the inundation mapping against current aerial photography suggests that upwards of 100 homes, apartment complexes, schools, and businesses could be flooded if the dam failed.

- *Powers Lake Dam* – This dam is owned and maintained by the Connecticut DEEP. An EOP was not found in the Dam Safety files at Connecticut DEEP for this structure. This dam impounds the Pattagansett River for recreational purposes. A 1984 inspection report prepared by Keyes Associates included a dam failure analysis for the dam which suggested that at that time the downstream hazard was minimal. A review of the inundation mapping against current aerial photography suggests that approximately five homes on Upper Pattagansett River, Hathaway Road, and Pepperidge Lane could be flooded if the dam failed.

5.4.3.1 Hazard Losses

There are no reported losses for the Town of East Lyme related to dam failure. Downscaled losses from the 2019 Connecticut Natural Hazard Mitigation Plan are developed in the Multi-Jurisdictional document.

6. Rising Temperatures

6.1. Climate Change Impacts

On average, the annual temperature across the U.S. has increased by 1.8 degrees Fahrenheit when looking at the entire period of record (1895-2016). Accelerated warming patterns between 1979 and 2016 have been observed with satellite and surface data, and paleoclimate records show that some of the recent decades have been the warmest in the past 1,500 years.³

In general, periods of freeze and frost have decreased, therefore lengthening the period of time between the first winter freeze and spring thaw, since the early 1900's. These warming temperatures impact snowfall and accumulation, alter seasonal patterns, and can disrupt certain natural processes. In addition, warming temperatures can act as fuel for other natural hazards such as wildfires, droughts, hurricanes, and severe storms, and also play a role in changing precipitation patterns.

In addition to exacerbating some natural hazards, extreme heat waves are becoming more frequent, which can also have a serious impact on public health. In recent years, the region has experienced numerous heat waves, with several consecutive days of extremely hot temperatures and high heat indexes. Infrastructure can also be at risk during heat waves as some components, such as roadways or bridges, have not been designed to withstand ongoing, extreme temperatures.

6.2. Extreme Heat

6.2.1 Setting and Recent Occurrences

An extreme heat event can occur at any time during warmer months, and can be defined as temperatures that hover 10 degrees or more above the average high temperature for the region. These events typically last for a prolonged period of time and is accompanied by high humidity. A heat wave, typically lasts three or more days with temperatures over 90 degrees for those days.

Since 2012, 480 days over 85 degrees have been recorded at the Norwich Public Utilities weather stations, 165 of which were over 90 degrees. During the summer of 2022, there were 45 days over 85 degrees were recorded, 21 of which were at least 90 degrees. A majority of these high temperature days occurred in July and August, with some of these extreme temperatures occurring outside summer months in May and October. Table 6-1 presents the daily maximum temperatures recorded at the Groton New London Airport and Norwich Public Utilities weather stations. Those values that are bold were above 90 degrees.

Table 6-1 Daily Maximum Temperatures from May to September Since 2017

	May		June		July		August		September	
	GNL	NPU	GNL	NPU	GNL	NPU	GNL	NPU	GNL	NPU
2017	85	93	89	94	88	92	87	89	86	89
2018	80	91	87	90	89	101	91	94	90	92
2019	83	85	88	91	94	96	88	91	87	84
2020	75	81	82	91	92	96	89	92	87	87
2021	88	87	86	96	86	94	88	96	82	85
2022	93	92	85	92	91	96	91	94	94	85

³ <https://nca201758.globalchange.gov/chapter/2/>

6.2.2 Existing Capabilities

Similar to the monitoring methods used for hurricanes, severe storms, and winter storms, the Town monitors National Weather Service and local forecasts for anticipated extreme heat event, and also monitors for NWS heat warnings and advisories. The Town of East Lyme has identified the Community center as a cooling center in town. In the event of a projected heat event or heat wave, the Town is prepared to open up the community center for residents for cooling use.

6.2.3 Vulnerabilities and Risk Assessment

While the entire town is at risk of an extreme heat event, vulnerability can widely vary based on age, health, or the type of property owned in East Lyme. The elderly populations in town are more vulnerable to extreme heat events, particularly when in home cooling is not available. Also, those with certain health conditions may also be more vulnerable to the health factors associated with extreme temperatures.

UConn CIRCA has developed a tool to aid in understanding extreme heat vulnerability for communities across the state. This tool, known as the Climate Change Vulnerability Index (CCVI), is comprised of dozens of factors that contribute to a community's heat sensitivity, exposure, adaptive capacity, and ultimately the overall heat vulnerability. The CCVI has been used as a tool to characterize heat vulnerability for East Lyme. The distribution of heat vulnerability throughout the community can be seen in Figure 6-1.

Heat exposure and sensitivity are relatively low across most of East Lyme, with higher scores for both metrics along Rt 156 and in the area where Flanders Road crosses I-95 and Rt 1. There is only one cooling center serving East Lyme, but the southern part of the town has access to coastal waters. Therefore, the overall heat vulnerability for East Lyme is low to moderate depending on the location.

6.2.3.1 Hazard Losses

There are no reported losses for the Town of East Lyme related to extreme temperatures. Future editions of this plan will revisit this topic.

Figure 6-1. CCVI Heat Vulnerability for the Town of East Lyme

6.3. Wildfires

6.3.1 Setting and Recent Occurrences

Wildfires are considered to be highly destructive, uncontrollable fires. The most common causes of wildfires are arson, lightning strikes, and fires started from downed trees hitting electrical lines. Thus, wildfires have the potential to occur anywhere and at any time in both undeveloped and lightly developed areas of the town. However, the town has strong fire coverage and therefore does not typically experience major wildfires. Town personnel recall that fires occurred more often in the past than they do today. Small wildfires from one to three acres in size occur occasionally but they are quickly contained. Structural fires in higher density areas of the town are a larger concern for the Town, although these are not directly addressed herein.

6.3.2 Existing Capabilities

Monitoring of potential fire conditions is an important part of mitigation. The Connecticut DEEP Forestry Division uses the rainfall data recorded by the Automated Flood Warning system to compile forest fire probability forecasts. This allows the DEEP to monitor drier areas to be prepared for forest fire conditions. The Town can access this information over the internet. The Town also receives "Red Flag" warnings via local media outlets.

Existing mitigation for wildland fire control is typically focused on building codes, public education, Fire Department training, and maintaining an adequate supply of equipment. The Town Fire Departments have strong inter-municipal cooperation agreements with other municipalities to fight wildfires and structure fires. Fire protection water is obtained from the Town's public water system in the Niantic and Flanders areas. The Water & Sewer Department tests fire flows regularly and informs the fire departments of the pressure available.

A large area of town (primarily the north-central area) is not serviced by public water service. Fire fighters responding to these areas rely on dry hydrants, cisterns, tanker trucks, and drafting of surface water sources to provide fire protection water. New developments are required to install cisterns and/or dry hydrants to provide fire protection water, so most subdivisions have a source of firefighting water available. The Town goes to the fires as quickly as possible and has good access to most areas for fire-fighting and has gators and brush trucks to access less accessible areas.

A new water tower constructed in Montville provides additional water supply to East Lyme during dry periods and adds water pressure to East Lyme's distribution system. This has improved the Town's ability to utilize its public water supply for firefighting. The new interconnection with New London also increases East Lyme's water supply and water system redundancy.

The level of fire protection afforded by the existing public water service and other water sources in outlying areas is considered to be good for the development level of the Town. The Fire Department will continue to evaluate the level of risk and the need for additional public water system hydrants or other water sources in the future.

The Connecticut DEEP has recently changed its Open Burning Program. It now requires individuals to be nominated and designated by the Chief Executive Officer in each municipality that allows open burning and to take an online training course and exam to become certified as an "Open Burning Official."

Permit template forms were also revised that provide permit requirements so that the applicant/permittee is made aware of the requirements prior to, during, and after burn activity. The regulated activity is then overseen by the Town.

Summary

In general, municipal capabilities to mitigate wildfire damage have not significantly increased since the 2017 edition of the hazard mitigation plan was adopted due to the extensive water system improvements and redundancies created in years prior, along with changes in the State's regulation of open burning.

6.3.3 Vulnerabilities and Risk Assessment

East Lyme has a mix of densely developed areas such as Niantic, Flanders, Giants Neck, and Black Point and rural areas in the north and central areas of the town. The most vulnerable area for a wildfire is the Nehantic State Forest in northwestern East Lyme. This area has relatively limited access for firefighting equipment and limited surface water sources to draft such that firefighting water must be transported. The Stone Ranch Military Reservation in western East Lyme also has limited access and a lack of surface water in many areas. These areas are considered to be at moderate risk for a major wildfire occurrence. Finally, Oswegatchie Hill overlooking the Niantic River is a large undeveloped area that has limited access and steep slopes which could make fire containment difficult although firefighting water is located nearby. The remaining areas of the town that are located nearby water sources are considered to be a low-risk area for wildfires. Refer to Figure 9-1 in the Multi-Jurisdictional HMP for a general depiction of wildfire risk areas within East Lyme.

6.3.3.1 Hazard Losses

There are no reported losses for the Town of East Lyme related to wildfires. Downscaled losses from the 2019 Connecticut Natural Hazard Mitigation Plan using WUI acreage are developed in the Multi-Jurisdictional document.

7. Earthquakes

7.1. Climate Change Impacts

Earthquakes are not a climate related hazard, therefore there are no expected impacts as a result of climate change. There are however secondary impacts that could be a concern and amplify the damages of an earthquake. The deterioration of infrastructure from extreme heat or salt water as a result of coastal flooding or sea level rise, may weaken certain components making them more prone to damage or collapse during an earthquake event. Flooding events can also leave some landscapes at a higher risk of landslides; an earthquake could potentially prompt a landslide in post-flooded areas.

7.2. Earthquakes

7.2.1 Setting and Recent Occurrences

An earthquake is a sudden rapid shaking of the earth caused by the breaking and shifting of rock beneath the earth's surface. Earthquakes can cause buildings and bridges to collapse; disrupt gas, electric, and telephone lines; and often cause landslides, flash floods, fires, avalanches, and tsunamis. Earthquakes can occur at any time and often without warning. Detailed descriptions of earthquakes, scales, and effects can be found in Section 3.3.5 of the Multi-Jurisdictional HMP. Despite the low probability of an earthquake occurrence, earthquake damage presents a potentially catastrophic hazard to the town. However, it is very unlikely that the town would be at the epicenter of such a damaging earthquake. No major earthquakes have affected the town since the last HMP.

7.2.2 Existing Capabilities

The Connecticut Building Codes include design criteria for buildings specific to each region as adopted by Building Officials and Code Administrators (BOCA). These include the seismic coefficients for building design in the Town of East Lyme. The Town has adopted these codes for new construction, and they are enforced by the Building Official. Due to the infrequent nature of damaging earthquakes, Town land use policies do not directly address earthquake hazards. However, the potential for an earthquake and emergency response procedures is addressed in the Town's EOP. In general, municipal capabilities to mitigate earthquake damage have not increased since the 2017 edition of the hazard mitigation plan was adopted. This is because the hazard continues to pose a low risk of damage to the Town.

7.2.3 Vulnerabilities and Risk Assessment

Surficial earth materials behave differently in response to seismic activity. Unconsolidated materials such as sand and artificial fill can amplify the shaking associated with an earthquake. As noted in Section 2.1, several areas of the town (particularly near watercourses) are underlain by stratified drift. These areas are potentially more at risk for earthquake damage than the areas of the town underlain by glacial till. The best mitigation for future development in areas of sandy material is the application of the most stringent standards in the Connecticut Building Code, exceeding the building code requirements, or, if the Town deems necessary, the possible prohibition of new construction. The areas that are not at increased risk during an earthquake due to unstable soils are the areas underlain by glacial till.

Bedrock fault lines have not been mapped in the vicinity of East Lyme. Unlike seismic activity in California, earthquakes in Connecticut are not associated with specific known active faults. However, bedrock in Connecticut and New England in general is typically formed from relatively hard

metamorphic rock that is highly capable of transmitting seismic energy over great distances. For example, the relatively strong earthquake that occurred recently in Virginia was felt in Connecticut because the energy was transmitted over a great distance through such hard bedrock.

The built environment in the town primarily includes some more recent construction that is seismically designed. However, most buildings were built before the 1980's and therefore are not built to current building codes. Thus, it is believed that most buildings would be at least moderately damaged by a significant earthquake. Those residents who live or work in older, non-reinforced masonry buildings are at the highest risk for experiencing earthquake damage.

Areas of steep slopes can collapse during an earthquake, creating landslides. The town has numerous areas with steep slopes greater than 15% located throughout the town and these areas have already prevented significant development. While landslides are not a particular concern in the town, areas beneath steep slopes could be vulnerable to landslide damage during a major earthquake.

Seismic activity can also break utility lines such as water mains, gas mains, electric and telephone lines, and stormwater management systems. Damage to utility lines can lead to fires, especially in electric and gas mains. Dam failure can also pose a significant threat to developed areas during an earthquake. For this HMP, dam failure has been addressed separately in Section 10.0. As noted previously, most utility infrastructure in the town is located above ground. A quick and coordinated response with Connecticut Light & Power and other utilities will be necessary to inspect damaged utilities following an earthquake, to isolate damaged areas, and to bring backup systems online. This is covered in the EOPs for these entities.

7.2.3.1 Hazard Losses

There are no reported losses for the Town of East Lyme related to earthquakes. Downscaled losses from the 2019 Connecticut Natural Hazard Mitigation Plan are developed in the Multi-Jurisdictional document. In addition, a HAZUS-MH analysis of the potential economic and societal impacts to the SCCOG region from earthquake damage is detailed in the Multi-Jurisdictional HMCAP. The analysis addresses a range of potential impacts from any earthquake scenario, estimated damage to buildings by building type, potential damage to utilities and infrastructure, predicted sheltering requirements, estimated casualties, and total estimated losses and direct economic impact that may result from various earthquake scenarios. Potential economic impacts can be seen in Table 7-1 , with additional information developed in the Multi-Jurisdictional document.

Table 7-1 HAZUS-MH Earthquake Related Economic Impacts

East Lyme	Residential	Commercial	Industrial	Others	Total
	\$363,310,000	\$316,940,000	\$52,580,000	\$160,340,000	893,170,000

8. Mitigation Strategies and Actions

8.1. Status of Mitigation Strategies and Actions

A total of 24 hazard mitigation actions were developed in the previous edition of this plan. The status of each is listed below.

Table 8-1 Status of 2016 to 2021 Hazard Mitigation Actions

#	Mitigation Actions and Strategies for East Lyme 2016 - 2021	Status	Status Details
1	Develop a checklist for land development applicants that cross-references the specific regulations and codes related to disaster resilience	Remove	For the CRS program, the Town is bolstering the floodplain management aspect of the zoning regulations; and for MS4 compliance, the Town is improving stormwater management across all land uses. The intent of this action has been met. Should confirm this with the Zoning Official and floodplain manager
2	Integrate elements of this HMP into the Plan of Conservation and Development during the next update	Compete	The latest POCD was approved a year ago, and reportedly included a number of HMP-related actions.
3	Work with State and Federal agencies to ensure that flood protection regulations reflect current standards regarding sea level rise	Complete	Regulations were revised and voted on by Zoning Board. This reportedly included an increase of freeboard, and specific language to combat rising flood waters. This is in addition to what is already being done at the state level (PA 18-82). This is likely complete but should confirm with Zoning Official and floodplain manager.
4	Compile a list of addresses of structures within the 1% annual chance floodplain and storm surge areas, and track repair costs	Remove	This is covered under the CRS program. The town tracks SI and damages.
5	Pursue elevation of properties that suffer flood damage, prioritizing repetitive loss properties in the Niantic Bay area	Capability	This is covered under CRS activities. The town maintains and updates a log of property owners who have called for advice. The town also sends letters to realtors and insurance agents, advertising mitigation options at least twice each year.
6	Apply freeboard standards of one foot or more when requiring elevations for renovations or new construction in coastal flood zones	Complete	This was included in zoning regulation revisions. Confirm with Zoning Official and floodplain manager.
7	Pursue mutual aid agreements with non-profits to provide volunteer labor for response activities	Complete	The town has a mutual aid agreement in place with the American Red Cross to help staff the multijurisdictional shelter at the East Lyme Middle School.
8	Include structures within the 1% annual chance floodplain and storm surge areas within the Reverse 9-1-1 contact database	Complete	The town uses Everbridge. The entire community can enroll, not only floodplain residents. The Town periodically tries to boost enrollment. Towns using Everbridge can program specific warnings as needed.
9	Consider establishing a second mode of egress for the Bush Hill Drive neighborhood	Carry Forward	This has been designed but not yet built, as the project is waiting on funding. The town does

		with Revisions	own the right-of-way to develop. This action should be revised to encourage construction.
10	Investigate funding sources and the feasibility of elevating locally owned roads with an emphasis on those needed for evacuation	Carry Forward with Revisions	The town has identified a few candidate areas where roads might be able to be elevated; execution of projects depends mostly on time and funds. Revise this action to specify the roads in question (and separate them into separate actions).
11	Upgrade storm water collection and discharge systems to keep up with rising sea level, particularly in Niantic	Carry Forward with Revisions	Keep this action; this is still an interest, and not only restricted to the Niantic area.
12	Consider removing a small dam downstream of Route 1 to reduce flooding of Route 1 by Latimer Brook	Remove	The town has met with DOT about this issue several times to investigate. There is no history of flooding in this immediate area, so the dam removal is unlikely unless the Town pursues, which will be a challenge since the Town does not own it.
13	Complete mapping and vulnerability analysis of wastewater pumping stations	Complete	The mapping and vulnerability analysis is believed to be done (confirm with utility engineer), and some resilience improvements are being incorporated including resilience upgrades to pump stations. Alex will check. A new action may be needed to advance these efforts.
14	Relocate the wastewater pumping station in the Black Point area so that it is outside of the flood risk area, or pursue other flood mitigation alternatives.	Carry Forward with Revisions	This action is merged into a broad action about sewer system infrastructure.
15	Develop formalized methodology for culvert and bridge construction and replacement that requires utilization of the most up-to-date extreme rainfall data from http://precip.eas.cornell.edu .	Remove	The town mostly uses the NOAA atlas data but is aware of the Cornell data. The intent of this action is standard practice.
16	In accordance with the recommendations of the historic and cultural resources resiliency planning effort in 2016-2017, determine if any at-risk structures that are not yet eligible for historic designation will be eligible in the future. This may take the form of a historic resources survey.	Carry Forward	Progress was not made, and this has been carried forward.
17	Identify a location for a brush-disposal operation for dealing with debris following wind storms and determine potential reuse	Complete	The Transfer Station is used.
18	Consider surveying all Town-owned buildings to determine their ability to withstand wind loading	Carry Forward with Revisions	Status unknown. The Public Safety building, which is relatively new, had to be built to withstand wind loading per the current code. There is still an interest in this action, although no urgency is seen. Carry forward and revise to focus on critical facilities.

19	Develop agreements with landowners and companies to chop/chip to ensure backup plans are in place for debris removal	Complete	Landowners during a storm are authorized to bring debris to the collection point at Transfer Station.
20	Consider an annual "Wind Fair" to familiarize the public with wind hazards and potential mitigation measures	Complete	The Public Works Department had a Hazardous Household Waste Pickup event, at which the Emergency Management Department shared brochures about wind and tornado hazards, mitigation, and preparation. This was the most-attended HHW pick-up in eastern Connecticut. The town has also distributed wind information to seniors. All of this was well-received by the public.
21	Visit schools and educate children about the risks of wind events and how to prepare for them	Remove	This has not happened (COVID has prevented most school activities) but see above note about wind education efforts.
22	Consider conducting a study to identify buildings vulnerable to roof damage or collapse from heavy snow in the town	Remove	This can be retired/merged with #23 below.
23	Consider drafting a written plan for inspecting and prioritizing the removal of snow from Town-owned structures	Carry Forward with Revisions	Merge this with other concerns related to assessing town-owned buildings so that there is only one line item related to assessing vulnerability of these structures.
24	Prepare an EOP and dam failure analysis for the Darrow Pond Dam	Complete	This dam has its own EAP.

During the planning process, CIRCA and consultant staff facilitated a discussion with the Town staff to identify the greatest climate change concerns and challenges. The previous actions were re-evaluated in this context. Elements of five prior actions have been carried forward into the new hazard mitigation and climate adaptation actions.

8.2. Prioritization of Specific Actions

The proposed actions for the Town of East Lyme to undertake from 2023 through 2028 are listed in Table 8-1 on the next page. The full list of actions for the region with buildups for the PERSISTS and STAPLEE scores are available in the multi-jurisdiction document.

The actions with the highest PERSISTS score and the highest STAPLEE score are different, which is consistent with the intent of the two scores. PERSISTS scores tend to be higher for actions that maximize public safety while advancing climate science and being transferable to other communities, whereas STAPLEE scores tend to be higher for actions that are highly cost effective and technically feasible for reducing losses from hazards. The actions with the highest combined scores are:

- Execute one additional sewer pumping station resiliency project (floodproofing or standby power).
- Conduct a study and develop a policy and procedure for upgrading stormwater collection and discharge systems to keep up with sea level rise, storm frequency and intensity, and aging infrastructure. This procedure will specify when and how system components should be upgraded or retrofitted, and how this could be integrated into capital improvement, and identify other possible resilient stormwater management infrastructure funding opportunities.

The Town intends to focus on the above actions, along with the sole action about cooling centers:

- Evaluate the feasibility of designating a new cooling center in the northern part of East Lyme; and secure reliable transportation options for people to access cooling centers.

This is consistent with the State's emphasis on cooling center resilience.

Table 8-2 Town of East Lyme Actions and STAPLEE and PERSISTS Scores

Number	Hazard Mitigation and Climate Adaptation Actions	Hazard Mitigation and Climate Adaptation Goal	Type of Action	Responsible Department	Approx. Cost Range	Potential Funding Sources	Timeframe	Priority	PERSISTS Score	STAPLEE Score	PERSISTS x STAPLEE =
EL1	Research and pursue mitigation strategies and funding to promote the resiliency of Town-owned critical facilities including assessment of flood, wind, and snow loading; backup power, etc. Determine recommendations for subsequent consideration.	Ensure that critical facilities are resilient, with special attention to shelters and cooling centers.	Preparedness & Emergency Response	Building Official	\$25,000 - \$50,000	FEMA HMA; Other preparedness grants; STEAP	7/2023 - 6/2025	Medium	21	6	126
EL2	Acquire and install new communications tower at Public Safety Building.	Ensure that critical facilities are resilient, with special attention to shelters and cooling centers.	Preparedness & Emergency Response	Emergency Management	\$100,000 - \$500,000	Preparedness grants	7/2023 - 6/2025	High	13	3	39
EL3	Distribute hazard mitigation and preparation materials at Town-sponsored events and coordinate with activities needed for CRS maintenance.	More than one goal	Education & Awareness	Emergency Management	\$0 - \$10,000	Municipal Operating Budget	7/2023 - 12/2023	Low	13	5	65
EL4	Evaluate the feasibility of designating a new cooling center in the northern part of East Lyme; and secure reliable transportation options for people to access cooling centers.	Ensure that critical facilities are resilient, with special attention to shelters and cooling centers.	Preparedness & Emergency Response	Office of the Chief Elected Official	\$25,000 - \$50,000	FEMA HMA; Other preparedness grants; STEAP	7/2023 - 6/2025	Low	16	5	80
EL5	Identify any possible hazard mitigation techniques and funding sources for water and sewer infrastructure, particularly water wells, booster pump station and wastewater pump stations. Employ these funds to dry floodproof or	More than one goal	Water & Wastewater Utility Projects	Water & Sewer	\$500,000 - \$1M	CWSRF; DWSRF; FEMA HMA; STEAP	7/2024 - 6/2026	High	21	7	147

Number	Hazard Mitigation and Climate Adaptation Actions	Hazard Mitigation and Climate Adaptation Goal	Type of Action	Responsible Department	Approx. Cost Range	Potential Funding Sources	Timeframe	Priority	PERISTS Score	STAPLEE Score	PERISTS x STAPLEE =
	relocate facilities located in hazardous coastal areas or other areas prone to flooding to mitigate water and sewer service disruption and environmental releases during disaster events.										
EL6	Execute one additional sewer pumping station resiliency project (floodproofing or standby power).	More than one goal	Water & Wastewater Utility Projects	Water & Sewer	\$100,000 - \$500,000	FEMA HMA; CWSRA; STEAP	7/2024 - 6/2026	High	20	9	180
EL7	Enhance resiliency of Water and Sewer Communication Infrastructure, including standby power generation at communication hubs (water towers, relay stations). Primary communication systems should be provided with secondary backup communication systems, preferably using different technologies and/or locations to mitigate outages during disaster events or vandalism.	More than one goal	Water & Wastewater Utility Projects	Water & Sewer	\$500,000 - \$1M	CWSRF; DWSRF; FEMA HMA; STEAP	7/2024 - 6/2026	High	14	7	98
EL8	Increase site security at all water and wastewater facilities by providing video surveillance outside and in some cases inside critical facilities to monitor locations in the event that personnel cannot safely access facilities during a disaster event or to ensure site security is not compromised. Sites should also be evaluated for the integrity of existing barriers such as gates and	More than one goal	Water & Wastewater Utility Projects	Water & Sewer	\$500,000 - \$1M	CWSRF; DWSRF; STEAP; IJJA SLCGP	7/2024 - 6/2026	High	14	3	42

Number	Hazard Mitigation and Climate Adaptation Actions	Hazard Mitigation and Climate Adaptation Goal	Type of Action	Responsible Department	Approx. Cost Range	Potential Funding Sources	Timeframe	Priority	PERSISTS Score	STAPLEE Score	PERSISTS x STAPLEE =
	fencing and make improvements where necessary.										
EL9	In accordance with the recommendations of the historic and cultural resources resiliency planning effort in 2016-2017, determine if any at-risk structures that are not yet eligible for historic designation may be eligible in the future. Determine possible risks to historic properties and identify possible mitigation efforts.	Reduce flood and erosion risks by reducing vulnerabilities and consequences, even as climate change increases frequency and severity of floods.	Property Protection	Land Use Staff	\$10,000 - \$25,000	SHPO	7/2025 - 6/2026	Low	15	7	105
EL10	Conduct a study and develop a policy and procedure for upgrading stormwater collection and discharge systems to keep up with sea level rise, storm frequency and intensity, and aging infrastructure. This procedure will specify when and how system components should be upgraded or retrofitted, and how this could be integrated into capital improvement, and identify other possible resilient stormwater management infrastructure funding opportunities.	Reduce flood and erosion risks by reducing vulnerabilities and consequences, even as climate change increases frequency and severity of floods.	Structural Projects	Public Works	\$50,000 - \$100,000	Municipal Operating Budget	7/2024 - 6/2026	Medium	22	9	198
EL11	Fund and construct secondary egress for the Bush Hill Drive neighborhood along the town-owned right-of-way.	Invest in resilient corridors to ensure that people and services are accessible during floods and that	Structural Projects	Public Works	\$500,000 - \$1M	Municipal CIP Budget	7/2023 - 6/2025	Medium	14	2	28

Number	Hazard Mitigation and Climate Adaptation Actions	Hazard Mitigation and Climate Adaptation Goal	Type of Action	Responsible Department	Approx. Cost Range	Potential Funding Sources	Timeframe	Priority	PERISTS Score	STAPLEE Score	PERISTS x STAPLEE =
		development along corridors is resilient over the long term.									
EL12	Conduct feasibility study to elevate at-risk sections of Atlantic Street.	Invest in resilient corridors to ensure that people and services are accessible during floods and that development along corridors is resilient over the long term.	Structural Projects	Public Works	\$10,000 - \$25,000	DEEP Climate Resilience Fund; LOTCIP; Municipal CIP Budget	7/2024 - 6/2025	High	17	5	85
EL13	Conduct feasibility study to elevate at-risk sections of Bush Hill Road.	Invest in resilient corridors to ensure that people and services are accessible during floods and that development along corridors is resilient over the long term.	Structural Projects	Public Works	\$10,000 - \$25,000	DEEP Climate Resilience Fund; LOTCIP; Municipal CIP Budget	7/2025 - 6/2026	High	17	5	85
EL14	Conduct feasibility study to elevate at-risk sections of Brook Road.	Invest in resilient corridors to ensure that people and services are accessible during floods and that development	Structural Projects	Public Works	\$10,000 - \$25,000	DEEP Climate Resilience Fund; LOTCIP; Municipal CIP Budget	7/2026 - 6/2027	High	17	5	85

Number	Hazard Mitigation and Climate Adaptation Actions	Hazard Mitigation and Climate Adaptation Goal	Type of Action	Responsible Department	Approx. Cost Range	Potential Funding Sources	Timeframe	Priority	PERISTS Score	STAPLEE Score	PERSISTIS x STAPLEE =
		along corridors is resilient over the long term.									
EL15	Work with CT DEEP to update the list of repetitive loss properties and ensure that errors and updates are incorporated by FEMA.	Reduce flood and erosion risks by reducing vulnerabilities and consequences, even as climate change increases frequency and severity of floods.	Property Protection	Floodplain Manager	\$0 - \$10,000	Municipal Operating Budget	7/2023 - 12/2023	High	12	6	72
EL16	Conduct direct outreach to property owners in repetitive loss areas with information about how to mitigate flood losses, and coordinate with CRS activities.	Reduce flood and erosion risks by reducing vulnerabilities and consequences, even as climate change increases frequency and severity of floods.	Property Protection	Floodplain Manager	\$0 - \$10,000	Municipal Operating Budget	1/2024 and annually during January	High	13	4	52
EL17	Require floodplain manager and land use staff to take free training at https://portal.ct.gov/DEEP/P2/Chemical-Management-and-Climate-Resilience/Chemical-Management-and-Climate-Resilience to reduce risks of spills from businesses during floods.	Reduce flood and erosion risks by reducing vulnerabilities and consequences, even as climate change increases frequency and severity of floods.	Education & Awareness	Land Use Staff	\$0 - \$10,000	Municipal Operating Budget	7/2023 - 12/2023	Low	14	6	84