

To: Mayor Mark D. Boughton and Members of the Common Council

Re: Minutes of the Common Council Committee of the Whole held on June 25, 2007

The members were recorded as:

Present- McMahon, Nagarsheth, Johnson, Calandrino, Visconti, Chianese, Saadi, Cavo, Basso, Rotello, Diggs, Techolz, Seabury, Stanley and Taborsak

Absent: Mr. Riley and Mr. Trombetta are on vacation, and Mr. Perkins is working, and Mrs. Saracino is attending another meeting

16 Present - 4 Absent - 1 Vacancy

An ordinance appropriating \$500,000 for reconstruction of the Rose Hill Avenue Bridge and authorizing the issuance of \$500,000 bonds or notes of the City to meet said appropriation and pending the issuance thereof the making of temporary borrowings for such purpose

Mrs. Teicholz moved to adopt and approve the ordinance appropriating \$500,000 for reconstruction of the Rose Hill Avenue Bridge and authorizing the issuance of \$500,000 bonds or notes of the City to meet said appropriation and pending the issuance thereof the making of temporary borrowings for such purpose. Seconded by Mr. Rotello.

Discussion followed addressing Mrs. Waller's concerns, the length of time the project will take, and the new weight limit of the bridge.

The Director of Public Works, Antonio Iadarola, answered all of these concerns. There will be temporary sidewalks for pedestrian traffic, the project should take between 12 and 16 months, and the weight limit is consistent with the standards for new bridges.

Motion passed unanimously.

Respectfully Submitted.

Jeanette Nicosia
Recording Secretary

RESOLUTION

CITY OF DANBURY, STATE OF CONNECTICUT

_____ A. D., 200_

RESOLVED by the Common Council of the City of Danbury:



Local Bridge Program

Rose Hill Avenue over Still River – Bridge No. 04175
City of Danbury

That Mark D. Boughton, Mayor of the City of Danbury, is hereby authorized to sign the agreement "PROJECT GRANT AND LOAN AGREEMENT BETWEEN THE STATE OF CONNECTICUT AND THE CITY OF DANBURY UNDER THE LOCAL BRIDGE PROGRAM for Rose Hill Avenue over Still River, Bridge No. 04175."



29²

ORDINANCE
CITY OF DANBURY, STATE OF CONNECTICUT
COMMON COUNCIL

Be it ordained by the Common Council of the City of Danbury:

AN ORDINANCE APPROPRIATING \$500,000 FOR RECONSTRUCTION OF THE ROSE HILL AVENUE BRIDGE AND AUTHORIZING THE ISSUANCE OF \$500,000 BONDS OR NOTES OF THE CITY TO MEET SAID APPROPRIATION AND PENDING THE ISSUANCE THEREOF THE MAKING OF TEMPORARY BORROWINGS FOR SUCH PURPOSE

Section 1. The sum of \$500,000 is appropriated for the reconstruction of the Rose Hill Avenue Bridge over the Still River, including road improvements, acquisition of rights of way, relocation of utilities, construction engineering and inspection, and for administrative, printing, legal and financing costs related thereto.

Section 2. To meet said appropriation \$500,000 bonds of the City are hereby authorized to be issued maturing not later than the twentieth year after their date. Said bonds may be issued in one or more series as determined by the Mayor and the Director of Finance provided that the total amount of bonds to be issued shall not be less than an amount which will provide funds sufficient with other funds available for such purpose to pay the principal of and the interest on all temporary borrowings in anticipation of the receipt of the proceeds of said bonds outstanding at the time of the issuance thereof, and to pay for the costs of issuance of such bonds. The bonds shall be in the denomination of \$1,000 or a whole multiple thereof, be issued in bearer form or in fully registered form, be executed in the name and on behalf of the City by the facsimile or manual signatures of the Mayor, and the City Treasurer, bear the City seal or a facsimile thereof, be certified by a bank or trust company, which bank or trust company may be designated the registrar and transfer agent, be payable at a bank or trust company, and be approved as to their legality by Robinson & Cole LLP, Attorneys-at-Law, of Hartford. The bonds shall be general obligations of the City and each of the bonds shall recite that every requirement of law relating to its issue has been duly complied with, that such bond is within every debt and other limit prescribed by law, and that the full faith and credit of the City are pledged to the payment of the principal thereof and interest thereon. The aggregate principal amount of the bonds of each series to be issued, the annual installments of principal, redemption provisions, if any, the certifying, registrar and transfer agent and the paying agent, the date, time of issue and sale and other terms, details and particulars of such bonds including the rate or rates of interest shall be determined by the Mayor and the Director of Finance.

Section 3. The bonds of each series shall be sold by the Mayor in a competitive offering or by negotiation, in his discretion. If sold in a competitive offering, the bonds shall be sold at not less than par and accrued interest on the basis of the lowest net or true interest cost to the City. A notice of sale or a summary thereof describing the bonds and setting forth the terms and conditions of the sale shall be published at least five days in advance of the sale in a recognized publication carrying municipal bond notices and devoted primarily to financial news and the subject of state and municipal bonds.

Section 4. The City Treasurer is authorized to make temporary borrowings in anticipation of the receipt of the proceeds of said bonds. Notes evidencing such borrowings shall be signed by the Mayor and the City Treasurer, have the seal of the City affixed, be payable at a bank or trust company designated by the City Treasurer, be approved as to their legality by Robinson & Cole LLP, Attorneys-at-Law, of Hartford, and be certified by a bank or trust company designated by the City Treasurer pursuant to Section 7-373 of the General Statutes of Connecticut, as amended. They shall be issued with maturity dates which comply with the provisions of the General Statutes governing the issuance of such notes, as the same may be amended from time to time. The notes shall be general obligations of the City and each of the notes shall recite that every requirement of law relating to its issue has been duly complied with, that such note is within every debt and other limit prescribed by law, and that the full faith and credit of the City are pledged to the payment of the principal proceeds thereof, to the extent required, shall be applied forthwith to the payment of the principal of and the interest on any such notes then outstanding or shall be deposited with a bank or trust company in trust for such purpose.

Section 5. The Mayor is authorized to receive the proceeds of State grants in aid under the Local Bridge Program of the State of Connecticut and the avails thereof are hereby appropriated and may be expended for such purpose.

Section 6. To meet the portion of the appropriation in Section 1 which may be financed pursuant to a Loan Agreement between the State of Connecticut and the City under the Local Bridge Program of the State of Connecticut, a note or notes of the City are hereby authorized to be issued. Said notes shall be designated "City of Danbury General Obligation Promissory Note", be dated as of the date of issue, and shall bear interest at such time or times and at the rate then in effect for loans to municipalities under the Local Bridge Program. The Mayor is hereby authorized and empowered to execute and deliver Project Loan and/or Project Grant Agreements between the State of Connecticut and the City under the Local Bridge Program, and to execute and deliver General Obligation Promissory Notes.

Section 7. The City hereby expresses its official intent pursuant to §1.150-2 of the Federal Income Tax Regulations, Title 26 (the "Regulations"), to reimburse expenditures paid sixty days prior to and anytime after the date of passage of this ordinance in the maximum amount and for the capital projects defined in Section 1 with the proceeds of bonds, notes, or other obligations ("Bonds") authorized to be issued by the City. The Bonds shall be issued to reimburse such expenditures not later than 18 months after the later of the date of the expenditure or the substantial completion of the project, or such later date the Regulations may authorize. The City hereby certifies that the intention to reimburse as expressed herein is based upon its reasonable expectations as of this date. The Mayor or his designee is authorized to pay project expenses in accordance herewith pending the issuance of reimbursement bonds, and to amend this declaration. This declaration shall be made available in the office of the Clerk for public inspection within thirty days of its passage, and any amendment shall be made available for public inspection within thirty days of such amendment.

Section 8. The Director of Finance is hereby authorized, on behalf of the City of Danbury, to enter into agreements or otherwise covenant for the benefit of bondholders to provide information on an annual or other periodic basis to nationally recognized municipal securities information repositories or state based information repositories (the "Repositories") and to provide notices to the Repositories of material events as enumerated in Securities and Exchange Commission Exchange Act Rule 15c2-12, as amended, as may be necessary, appropriate or desirable to effect the sale of the bonds and notes authorized by this ordinance. Any agreements or representations to provide information to Repositories made prior hereto are hereby confirmed, ratified and approved.

29-4

PROJECT GRANT AND LOAN AGREEMENT
BETWEEN THE STATE OF CONNECTICUT AND THE
CITY OF DANBURY
UNDER THE LOCAL BRIDGE PROGRAM
FOR ROSE HILL AVENUE OVER STILL RIVER, BRIDGE NO. 04175

THIS AGREEMENT, concluded at Newington, Connecticut, this _____ day of _____, 2007, by and between the State of Connecticut, Department of Transportation, Ralph J. Carpenter, Commissioner, acting herein by Arthur W. Gruhn, Chief Engineer, Bureau of Engineering and Highway Operations, duly authorized, hereinafter referred to as the State, and the City of Danbury, a municipal corporation chartered under the laws of the State of Connecticut having its principal place of business at City Hall, 155 Deer Hill Avenue, Danbury, CT 06810, acting herein by Mark D. Boughton, Mayor, hereunto duly authorized, hereinafter referred to as the Municipality.

WITNESSETH, that

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

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

WHEREAS, the State has issued a commitment to fund such loan and grant dated July 3, 2002.

NOW THEREFORE, KNOW YE THAT:

THE STATE AND THE MUNICIPALITY MUTUALLY AGREE:

Section 1. Definitions

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

"Audit" means the audit of Project Costs provided by the Municipality in accordance with Section 6.6 of this Agreement and reviewed by the State in accordance with Section 7 of this Agreement.

"Bridge" means the bridge or culvert owned in whole or in part by the Municipality and/or which the Municipality must maintain under a legal or contractual obligation located at Rose Hill Avenue over Still River, Bridge No. 04175.

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

"Event of Default" means an event of default specified in Section 8.1 of this Agreement.

"Grant" means the grant to be made by the State to the Municipality pursuant to Section 3.1 of this Agreement to finance in part the Project.

"Loan" means the loan to be made by the State to the Municipality pursuant to Section 2.1 of this Agreement to finance in part the Project.

"Note" means the promissory note evidencing the Loan substantially in the form of Exhibit I attached to this Agreement.

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

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

"Supplemental Grant" means the grant to be made by the State to the Municipality pursuant to Section 3.2 of this Agreement to finance in part the Project.

"Supplemental Loan" means the loan to be made by the State to the Municipality pursuant to Section 2.2 of this Agreement to finance in part the Project.

"Supplemental Note" means the promissory note evidencing the Supplemental Loan substantially in the form of Exhibit I attached to this Agreement.

Section 2. The Loan

Section 2.1. The Loan Commitment. Subject to the terms and conditions of this Agreement, the State agrees to lend to the Municipality, and the Municipality agrees to borrow from the State, the aggregate principal amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) (the "Loan"). The State's obligation to make the Loan shall terminate one hundred eighty (180) days from the date of this Agreement, unless the conditions precedent to funding the Loan set forth in Section 5 of this Agreement are satisfied by that date.

Section 2.2. The Supplemental Loan Commitment. Subject to the terms and conditions of this Agreement and provided the Loan is made and Project Costs exceed Two Million Two Hundred Ninety Thousand Two Hundred Thirty-Two and 00/100 Dollars (\$2,290,232.00), the State may, upon receipt of an application from the Municipality and at the discretion of the Commissioner, provide a Supplemental Loan to the Municipality in a sum not to exceed an amount equal to 50% of the Project Costs minus the Loan. Such Supplemental Loan shall be made in accordance with Section 7.1 of this Agreement.

Section 2.3. The Note. The Loan shall be evidenced by the Note dated the date the Loan is made to the Municipality. The Municipality agrees that the aggregate principal amount of the Note outstanding in accordance with the terms of this Agreement shall constitute the amount of the Loan owing to the State pursuant to this Agreement.

Section 2.4. The Supplemental Note. The Supplemental Loan shall be evidenced by a Supplemental Note dated the date the Supplemental Loan is made to the Municipality. The Municipality agrees that the aggregate principal amount of the Supplemental Note outstanding in accordance with the terms of this Agreement shall constitute the amount of the Supplemental Loan owing to the State pursuant to this Agreement.

Section 2.5. Interest. The Municipality shall pay interest on the unpaid principal amount of the Note and the Supplemental Note quarterly in arrears on the first day of January, April, July, and October in each year commencing on the first such date next following the date of the Note, and on the date of payment in full, at a per annum rate of six percent (6%). Interest on the Note and the Supplemental Note shall be computed on the basis of a year of three hundred sixty (360) days and the number of actual days elapsed.

Section 2.6. Required Prepayment of Principal.

- (a) The Municipality shall prepay the Loan in ten (10) equal annual installments of principal of Fifty Thousand and 00/100 Dollars (\$50,000.00) each, on the anniversary date of the Note in each year, commencing one year after the date of the Note. Unless sooner paid, the unpaid principal amount of the Note shall be due and payable ten (10) years from the date of the Note.
- (b) The Municipality shall prepay the Supplemental Loan in equal annual installments, the number of which shall be the same as the number of installments of principal due on the Note remaining unpaid as of the date of the Supplemental Note. Such principal payments of the Supplemental Note shall be made on the same dates the principal payments on the Note are due. Unless sooner paid, the unpaid principal amount of the Supplemental Note shall be due and payable ten (10) years from the date of the Note.
- (c) If the Audit reveals that the Project Costs are less than Two Million Two Hundred Ninety Thousand Two Hundred Thirty-Two and 00/100 Dollars (\$2,290,232.00), the Municipality shall, as soon as practicable, but not later than ninety (90) days after the State notifies the Municipality of the results of the Audit, prepay the Loan in an amount equal to the Loan minus 50% of the Project Costs. Such mandatory prepayment shall be applied to the installments of principal due on the Supplemental Note and then on the Note in the inverse order of maturity of such payments.

Section 2.7. Optional Prepayment of Principal. The Municipality may, at any time, prepay the Note or the Supplemental Note in whole or in part, together with accrued interest to the date of such prepayment on the amount prepaid. Prepayments shall be applied first to the principal of the Supplemental Note and then to the principal of the Note in the inverse order of maturity of the installments of principal due thereon. Prepayments shall be in whole multiples of Five Thousand

Dollars (\$5,000.00) only, provided that if the principal amount outstanding is less than Five Thousand Dollars (\$5,000.00), then such amount.

Section 2.8. Method of Payments. All installments of principal and interest due on the Note and the Supplemental Note shall be made by the Municipality by check or draft (with Agreement No. _____ noted thereon) payable to the Treasurer, State of Connecticut, at: State of Connecticut, Department of Transportation, 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT 06131-7546, Attn.: Accounts Receivable Section, or at such other place as the State shall designate in writing to the Municipality.

Section 2.9. Disbursements of Loan Proceeds. The Proceeds of the Project Loan shall be advanced by the State to the Municipality in accordance with the terms and conditions set forth in the "Tax Exempt Proceeds Fund, Inc., Deposit and Withdrawal Provisions" attached hereto. The term "Recipient" as used in the "Tax Exempt Proceeds Fund, Inc., Deposit and Withdrawal Provisions" shall mean the Municipality. The Municipality hereby agrees to execute the "Tax Exempt Proceeds Fund, Inc., Deposit and Withdrawal Provisions" and to thereafter comply with all the terms, covenants and conditions contained within the "Tax Exempt Proceeds Fund, Inc., Deposit and Withdrawal Provisions." Any interest earned by the Municipality on the Loan Proceeds in the Tax Exempt Proceeds Fund shall be due the State.

Section 3. The Grant

Section 3.1. The Grant Commitment. Subject to the terms and conditions of this Agreement, the State agrees to grant to the Municipality Seven Hundred Thirteen Thousand One Hundred Seventy-Seven and 36/100 Dollars (\$713,177.36) (the "Grant"). The State's obligation to make the Grant shall terminate one hundred eighty (180) days from the date of this Agreement unless the conditions precedent to funding the Grant set forth in Section 5 of this Agreement are satisfied by that date.

Section 3.2. The Supplemental Grant Commitment. Subject to the terms and conditions of this Agreement and provided the Grant is made and Project Costs exceed Two Million Two Hundred Ninety Thousand Two Hundred Thirty-Two and 00/100 Dollars (\$2,290,232.00), the State may, upon receipt of an application from the Municipality and at the discretion of the Commissioner, grant to the Municipality a Supplemental Grant in a sum not to exceed an amount equal to 31.14% of the Project Costs minus the Grant. Such Supplemental Grant shall be made in accordance with Section 7.2 of this Agreement.

Section 3.3. Required Repayment of the Grant. If the Audit reveals that the Project Costs are less than exceed Two Million Two Hundred Ninety Thousand Two Hundred Thirty-Two and 00/100 Dollars (\$2,290,232.00), the Municipality shall, as soon as practicable, but not later than ninety (90) days after the State notifies the Municipality of the results of the Audit, repay the Grant in an amount equal to the Grant minus 31.14% of the Project Costs.

Section 3.4. Disbursements of Grant Proceeds. The Proceeds of the Project Grant shall be advanced by the State to the Municipality in accordance with the terms and conditions set forth in the "Tax Exempt Proceeds Fund, Inc., Deposit and Withdrawal Provisions" attached hereto. The

term "Recipient" as used in the "Tax Exempt Proceeds Fund, Inc., Deposit and Withdrawal Provisions" shall mean the Municipality. The Municipality hereby agrees to execute the "Tax Exempt Proceeds Fund, Inc., Deposit and Withdrawal Provisions" and to thereafter comply with all the terms, covenants and conditions contained within the "Tax Exempt Proceeds Fund, Inc., Deposit and Withdrawal Provisions." Any interest earned by the Municipality on the Grant Proceeds in the Tax Exempt Proceeds Fund shall be due the State.

Section 4. Warranties and Representations

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

Section 4.1. Existence and Power. The Municipality is, and, except as provided in Section 6.4 hereof, will continue to be, a body politic and corporate, validly existing under the laws of the State of Connecticut, and has the power to execute and deliver this Agreement, and, if applicable, to execute and deliver the Note and the Supplemental Note and to borrow hereunder.

Section 4.2. Authority. The execution and delivery by the Municipality of this Agreement, and, if applicable, the Note and the Supplemental Note have been duly authorized by the Municipality in conformity with all applicable laws, including its charter if any, and no proceedings or authority for the execution and delivery of this Agreement, and, if applicable, the Note or the Supplemental Note have or has been repealed, rescinded or revoked.

Section 4.3. Validity. This Agreement, and, if applicable, the Note and the Supplemental Note, upon the execution and delivery thereof, will be a legal, valid, and binding obligation of the Municipality enforceable against it in accordance with its respective terms and, if applicable, the Note and the Supplemental Note shall each constitute a general obligation of the Municipality secured by the full faith and credit of the Municipality to pay the principal thereof and the interest thereon.

Section 4.4. Litigation. No litigation of any nature is now pending or, to the best of the Municipality's knowledge, threatened which would restrain or enjoin the execution or delivery of this Agreement, and, if applicable, the Note or the Supplemental Note, the payment of interest or principal thereof, the collection of taxes to pay the same or in any manner questioning the authority or proceedings for the execution or delivery of this Agreement, and, if applicable, the Note or the Supplemental Note or affecting the validity thereof.

Section 4.5. Events of Default. No Event of Default specified in Section 8.1 hereof, and no event which with the lapse of time or the giving of notice or both would become an Event of Default, has occurred and is continuing.

Section 5. Conditions Precedent

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

Section 5.1. Conditions Precedent Established By Regulation. Prior to making the Loan and the Grant, the Municipality shall deliver to the State, if applicable:

- (a) certified copies of all bids of contractors with respect to the Project;
- (b) written justification for awarding the construction contract to any bidder other than the lowest bidder;
- (c) evidence that the Municipality and the contractor have entered into a legally binding construction contract;
- (d) evidence that the Municipality has available to it, or has made arrangements satisfactory to the Commissioner to obtain, funds to pay that portion of the Project Costs for which it is legally obligated and which are not met by the Loan and Grant;
- (e) if the Bridge is owned or maintained by more than one municipality, evidence that all municipalities are legally bound to complete their respective portions of the Project; and
- (f) evidence that the legislative body of the Municipality has held at least one public hearing on the Project in accordance with Section 13a-175t(b) of the Connecticut General Statutes, as hereinafter amended.

Section 5.2. Proof of Municipal Action. Prior to the making of the Loan and Grant, the Municipality shall deliver to the State evidence of all municipal action taken by the Municipality to authorize the execution and delivery of the Agreement, and, if applicable, the Note and the Supplemental Note and the borrowing hereunder, certified by an authorized official of the Municipality, and such other papers and documents as the State may reasonably request.

Section 5.3. Opinion of Bond Counsel. Prior to the making of the Loan and the Grant, the Municipality shall deliver to the State a written opinion from a recognized bond counsel satisfactory to the State substantially in the form of Exhibit II attached hereto, to the effect that (a) the making and performance of the Municipality of this Agreement, and, if applicable, the Note and the Supplemental Note have been duly authorized by all necessary municipal action, (b) this Agreement, and, if applicable, the Note and the Supplemental Note, upon execution and delivery, will constitute legal, valid and binding obligations of the Municipality enforceable against it in accordance with its respective terms, and (c) if applicable, the Note and the Supplemental Note, when executed and delivered, will constitute a legal, valid and binding general obligation of the Municipality for which the full faith and credit of the Municipality are pledged for the payment of the principal thereof and the interest thereon. When applicable, the Municipality's bond counsel shall also execute an opinion on both the Note and the Supplemental Note to the effect that in the opinion of said bond counsel the Note or Supplemental Note is a valid and binding obligation of the Municipality.

Section 5.4. Signature and No Litigation Certificate. Prior to the making of the Loan, the Supplemental Loan and the Grant, the State shall have received from the Municipality a Signature And No Litigation Certificate substantially in the form of Exhibit III attached hereto.

Section 5.5. No Event of Default. No Event of Default and no event which with the lapse of time or the giving of notice or both would become such an Event of Default, has occurred or is continuing.

Section 5.6. Representations and Warranties. The representations and warranties of the Municipality contained in Sections 4.1 through 4.5 hereof were on the date of this Agreement and remain on the date of the Loan, the Supplemental Loan, the Grant and the Supplemental Grant true and correct.

Section 5.7. Insurance. The Municipality has provided the State with evidence that the Municipality or its contractor has obtained builder's risk insurance, or the Municipality maintains unrestricted reserves, complying with the requirements of Section 6.3 of this Agreement.

Section 5.8. Compliance with Federal and State Requirements. The Municipality shall at all times comply with all applicable Federal and State requirements pertaining to the Project.

THE MUNICIPALITY AGREES:

Section 6. Agreements of the Municipality

Section 6.1. Construction. (a) The Municipality will commence construction of the Project within thirty (30) days after the date of receipt of the Note unless otherwise extended by the Commissioner; and (b) The Municipality will complete the Project in accordance with the final plans and specifications delivered to the State, no later than three (3) years from the date of this Agreement, unless otherwise extended by the Commissioner.

Section 6.2. Maintenance of Bridge. The Municipality will operate and maintain the Bridge properly after completion of the Project and will comply with all statutes, rules and regulations applicable to the operation of the Bridge. The covenant contained in this Section 6.2 shall survive the making of the Loan, the Supplemental Loan, the Grant and Supplemental Grant and, if applicable, payment in full of the Note and the Supplemental Note, and will terminate ten (10) years from the date the Project is certified as being complete by the Municipality in accordance with Section 6.6 of this Agreement.

Section 6.3. Insurance. Until the Project is completed in accordance with Section 6.6 of this Agreement, the Municipality shall maintain or cause its contractor on the Project to maintain builder's risk insurance in an amount not less than the amount of the Loan and Grant or the Municipality shall maintain unrestricted reserves in an amount not less than the amount of the Loan and Grant. In addition, the Municipality, its contractors and subcontractors shall carry Worker's Compensation Insurance in accordance with the laws of the State of Connecticut.

Section 6.4. Maintenance of Existence. Until payment in full of the Note and the Supplemental Note, the Municipality shall maintain its existence as a body politic and corporate, validly existing under the laws of the State; provided, however, that the Municipality may merge with or into another municipality so long as the surviving entity is a body politic and corporate validly existing under the laws of the State and such surviving municipality assumes all of the Municipality's obligations under this Agreement, and, if applicable, the Note and the Supplemental Note. The covenant contained in this Section 6.4 shall survive the making of the Loan, the Supplemental Loan, the Grant and the Supplemental Grant and, if applicable, the payment in full of the Note and the Supplemental Note, and will terminate ten (10) years from the date the Project is certified as being complete in accordance with Section 6.6 of this Agreement.

Section 6.5. Use of Proceeds. The Municipality will use the proceeds of the Loan, the Supplemental Loan, the Grant and the Supplemental Grant solely for the purpose of funding the Project.

Section 6.6. Completion of Project; Audit and Maintenance of Records. Upon completion of the Project, the Municipality shall certify to the State that the Project has been completed in accordance with the final plans and specifications for the Bridge delivered to the State. The Municipality receiving State funds must comply with Connecticut General Statutes Sec. 7-396a and 396b, and the State Single Audit Act, Sec. 4-230 through 236 inclusive, and regulations promulgated thereunder. The Municipality also agrees that following completion of each full fiscal year during the term of this Agreement, it shall cause to be prepared and delivered to the State, an audit performed in accordance with the following requirements:

- a) **Federal Single Audit:** Each Municipality that expends a total amount of Federal awards: 1) equal to or in excess of \$500,000 in any fiscal year shall have either a single audit made in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" **or** a program-specific audit (i.e. an audit of one federal program); 2) less than \$500,000 shall be exempt for such fiscal year.
- b) **State Single Audit:** Each Municipality that expends a total amount of State financial assistance: 1) equal to or in excess of \$100,000 in any fiscal year shall have an audit made in accordance with the State Single Audit Act, Connecticut General Statutes (C.G.S.) Sections 4-230 to 4-236, hereinafter referred to as the State Single Audit Act **or** a program audit; 2) less than \$100,000 in any fiscal year shall be exempt for such fiscal year.

The contents of the audit report must be in accordance with government auditing standards issued by the Comptroller General of the United States.

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

The audited Municipality shall provide supplementary schedules with the following program/grant information: the program/grant number, ConnDOT project number, Federal

project number, phase and expenditures by phase. The sum of project expenditures should agree, in total, to the program/grant expenditures in the audit report. Federal and State programs/grants should be listed separately. See attached schedule entitled "Supplementary Program Information" for format.

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

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

Except for those projects advertised by the State, the audited Municipality shall retain all records for seven (7) years after issuance of the project's certification of acceptance or three (3) years after receipt of the final Federal payment, whichever is later, provided there is no pending litigation. These records shall include the contract, contractor's monthly and final estimates and invoices, construction orders, correspondence, field books, computations, contractor's payrolls, EEO/AA records/reports, and any other project related records. Such records must be made available to the State and/or Federal auditors upon request. **The audited Municipality must obtain written approval from the appropriate division within the Connecticut Department of Transportation prior to destruction of any records and/or documents** pertinent to this Agreement.

The Municipality shall require that the workpapers and reports of the independent CPA be maintained for a minimum of three (3) years from the date of the Audit Report.

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

Section 6.7. Administrative and Statutory Requirements. The Municipality shall comply with all the administrative and statutory requirements set forth in Exhibit IV attached hereto and made a part hereof and agrees to be bound by the provisions therein contained.

Section 6.8. Indemnification. The Municipality agrees to indemnify and hold the State, its officials, agents, and employees harmless from and against any and all claims, suits, actions, costs, and damages resulting from the negligent performance or non-performance by the Municipality or any of its officials, agents, or employees of the Municipality's obligations under this Agreement, as it may be amended or supplemented from time to time. It is further understood that such indemnity shall not be limited by any insurance coverage herein required.

THE STATE AGREES:

Section 7. Agreements of The State

Section 7.1. Audit and Supplemental Loan. Upon receipt of the audit provided for in Section 6.6, the State will review such audit and notify the Municipality of the amount by which the Loan exceeds or is less than 50% of the Project Costs. In case the Loan is less than 50% of the Project Costs and the Commissioner in accordance with Section 2.2 has agreed to make a Supplemental Loan, then the State shall as soon as practicable after making such determination, make the Supplemental Loan, subject to the conditions precedent set forth in Sections 5.5, 5.6 and 5.8 of this Agreement. Upon completion of the audit, without notice to the Municipality, the Commissioner may take any and all actions necessary and proper to close out the "Tax Exempt Proceeds Fund, Inc., Deposit and Withdrawal Provisions."

Section 7.2. Audit and Supplemental Grant. Upon receipt of the audit provided for in Section 6.6, the State will review the audit and notify the Municipality of the amount by which the Grant exceeds or is less than 31.14% of the Project Costs. In case the Grant is less than 31.14% of the Project Costs, and the Commissioner in accordance with Section 3.2 has agreed to make a Supplemental Grant, then the State shall as soon as practicable after making such determination, make the Supplemental Grant, subject to the conditions precedent set forth in Sections 5.5, 5.6 and 5.8 of this Agreement. Upon completion of the audit, without notice to the Municipality, the Commissioner may take any and all actions necessary and proper to close out the "Tax Exempt Proceeds Fund, Inc., Deposit and Withdrawal Provisions."

THE STATE AND MUNICIPALITY FURTHER MUTUALLY AGREE:

Section 8. Defaults

Section 8.1. Events of Default. An Event of Default shall be deemed to exist under this Agreement, the Note and the Supplemental Note upon the occurrence of any of the following events or conditions:

- (a) Default in the payment of the principal of or interest on the Note or the Supplemental Note when the same shall be due and payable; or
- (b) Failure by the Municipality to observe or perform any covenant contained in Sections 6.2, 6.3, 6.4, 6.5, 6.7, and 6.8 of this Agreement; or
- (c) Failure by the Municipality to observe or perform any covenant contained in Section 6.1 or 6.6 of this Agreement and the continuance thereof for a period of thirty (30) days unless the Municipality notifies the State in writing within such thirty (30) day period that for some reason beyond its control it is unable to commence or complete the Project, certify the Project as being complete or complete the Audit within the times provided in Sections 6.1 and 6.6, as the case may be, in which case no Event of Default shall occur if the Municipality is proceeding in good faith and with due diligence to commence or complete construction of the Project, provide certification of completion of the Project, or

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complete the Audit, as the case may be, but shall occur at the time the Municipality fails to so proceed; or

- (d) Any representation or warranty made by the Municipality herein, or any statement, certificate or other data furnished by the Municipality or any of its agents in connection with the Project proves to be incorrect in any material respect as of the making or furnishing thereof; or
- (e) The Municipality shall (1) apply for or consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of any of its assets; (2) be unable, or admit in writing its inability to pay debts as they mature; (3) file or permit the filing of any petition, arrangement, reorganization, or the like under any insolvency or bankruptcy law, or the adjudication as a bankrupt, or the making of an assignment for the benefit of creditors, or the consenting to any form of arrangement for the satisfaction, settlement or delay of debt, or the appointment of a receiver for all or any part of its properties; or (4) take any action for the purposes of effecting any of the foregoing; or
- (f) The Municipality shall commence any proceeding to dissolve or be dissolved or cease to legally exist.

Section 8.2. Remedies.

- (a) If an Event of Default shall occur and be continuing, then the State may declare the principal of and interest accrued on the Note and the Supplemental Note to be forthwith due and payable automatically without notice or demand of any kind, whereupon the same shall become forthwith due and payable.
- (b) If the Municipality fails to comply with its agreements contained in Sections 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8, the State may declare that the Grant and Supplemental Grant are to be refunded by the Municipality to the State in which case the amount of the Grant and the Supplemental Grant shall be due and payable automatically without notice or demand of any kind, whereupon the same shall become forthwith due and payable.
- (c) In addition to the remedies provided in subsections (a) and (b) of this Section 8.2, the State shall be entitled to injunctive relief upon the occurrence and continuance of a breach by the Municipality of any agreement contained in Section 6.2 of this Agreement, the parties recognizing that such breach shall result in irreparable injury to the State which does not have an adequate remedy at law.

Section 9. Miscellaneous

Section 9.1. Waivers. (a) The Municipality hereby waives diligence, presentment, demand, protest and notice of dishonor. (b) The State shall not be deemed to have waived any of its rights under this Agreement, the Note or the Supplemental Note unless such waiver is in writing and signed by the State. No delay or omission on the part of the State in exercising any right under this Agreement, the Note or the Supplemental Note shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any

future occasion. The State may revoke a waiver previously granted to the Municipality and such revocation shall be effective whether given orally or in writing. All rights and remedies of the State under this Agreement, the Note or the Supplemental Note shall be cumulative and may be exercised singularly or concurrently.

Section 9.2. Notices. It is mutually understood and agreed by the parties hereto that any official notice from one such party to the other such party, in order for such notice to be binding thereon, shall:

(a) be in writing addressed to:

(i) when the State is to receive such notice:

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

(ii) when the Municipality is to receive such notice:

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

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

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

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

Section 9.3. Suspension or Debarment. Suspended or debarred Municipalities, suppliers, materialmen, lessors or other vendors may not submit proposals for a State contract or subcontract during the period of suspension or debarment regardless of their anticipated status at the time of contract award or commencement of work.

- (a) The signature on the Agreement by the Municipality shall constitute certification that to the best of its knowledge and belief the Municipality or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor or any position involving the administration of Federal or State funds:
 - 1. Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - 2. Has not within a three-year period preceding this Agreement been convicted of or had a civil judgement rendered against him/her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 3. Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)2. of this certification;
 - 4. Has not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

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

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

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

Section 9.4. Expenses. The Municipality will pay all reasonable expenses of the State arising out of the enforcement of this Agreement, the Note and the Supplemental Note (including, without limitation, reasonable counsel fees).

Section 9.5. Jurisdiction and Forum. The Municipality agrees that the sole and exclusive means for the presentation of any claim against the State arising from or in connection with this Agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes

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(Claims against the State) and the Municipality further agrees not to initiate legal proceedings in any State or Federal Court in addition to, or in lieu of, said Chapter 53 proceedings.

This Agreement and the rights and obligations of the parties hereunder shall be governed by, interpreted and construed under and in accordance with the laws of the State of Connecticut, whether or not its conflict of laws principles would dictate otherwise. This Agreement shall be deemed to have been made in Hartford, Connecticut.

The Municipality irrevocably consents with respect to any claims or remedies at law or in equity, arising out of or in connection with this Agreement to the jurisdiction of the Connecticut Superior Court (except as otherwise required by law or this Agreement), and, with respect to any claim between the Parties, to venue in Judicial District of Hartford-New Britain at Hartford or the United States Federal Court, District of Connecticut, and irrevocably waives any objections that it may have to such jurisdiction on the grounds of lack of personal jurisdiction of such court or the laying of venue of such court or on the basis of forum non conveniens or otherwise. Nothing herein shall be construed to waive any of the State's immunities.

Section 9.6. Survival of Representations, Warranties and Covenants. Except as otherwise provided herein, all representations, warranties, covenants and agreements contained in this Agreement, the Note and the Supplemental Note or made in writing in connection with this Agreement, shall survive the execution and delivery of this Agreement, the Note and the Supplemental Note, and shall continue in full force and effect until all amounts payable on account of the Note, the Supplemental Note and this Agreement shall have been paid in full and this Agreement shall have terminated.

Section 9.7. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Municipality, the State and their respective successors. Except as otherwise provided herein, the rights and obligations hereunder may not be assigned to any other party by either the State or the Municipality.

Section 9.8. Waiver of Governmental Immunity. It is agreed by the parties hereto that the Municipality shall not use the defense of Sovereign Immunity in the adjustment of claims or in the defense of any suit, including any suit between the State and the Municipality, unless requested to do so by the State. The Municipality agrees that in the event of an adjustment of claims or in the defense of any suit between the State and the Municipality, the Municipality shall not use the defense of Governmental Immunity.

Section 9.9. Incorporation of Other Documents. The Municipality's Preliminary Application and Supplemental Application filed with the Commissioner in connection with the Project are incorporated herein and made a part hereof as if they were fully set forth herein.

Section 9.10. Connecticut Sales and Use Tax Exemption. The Municipality shall utilize the "Contractor's Exempt Purchase Certificate" where appropriate for materials, supplies and services related to work performed under the terms of this Agreement. A copy of said "Contractor's Exempt Purchase Certificate" is hereby made a part hereof.

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

Witnesses:

STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
Ralph J. Carpenter, Commissioner

Name:

By _____ (Seal)
Arthur W. Gruhn
Chief Engineer
Bureau of Engineering and Highway
Operations

Name:

Date: _____

Witnesses:

MUNICIPALITY
City of Danbury, Connecticut

Name:

By _____ (Seal)
Mark D. Boughton
Mayor

Name:

Date: _____

Approved as to Form:

Attorney General
State of Connecticut

Date: _____