
TOWN COUNCIL MEETING

SEPTEMBER 23, 2003

6:30 P.M.

AGENDA

Blessing - Pastor Terry Frizzel, Wlfd. Church of the Nazarene

1. Pledge of Allegiance and Roll Call
2. Correspondence
3. Consent Agenda
 - a. Consider and Approve Tax Refunds (# 184-243) Totaling \$24,921.90 - Tax Collector
 - b. Approve and Accept the Minutes of the September 9, 2003 Special Town Council Meeting – 6:00 P.M.
 - c. Approve and Accept the Minutes of the September 9, 2003 Town Council Meeting - 6:30 P.M.
 - d. Consider and Approve One Appointment to the Public Celebrations Committee for a Term which Expires 2/1/04 – Mayor
 - e. SET A PUBLIC HEARING for October 14, 2003 at 7:45 P.M. to Amend Chapter 62 of the Code of the Town of Wallingford Entitled, “Alcoholic Beverages” – Stephen W. Knight, Chairman, Ordinance Committee
 - f. SET A PUBLIC HEARING for October 14, 2003 at 8:00 P.M. to Amend Chapter 139 of the Code of the Town of Wallingford Entitled, “Littering” – Stephen W. Knight, Chairman, Ordinance Committee
4. Items Removed from the Consent Agenda
5. PUBLIC QUESTION AND ANSWER PERIOD

6. Consider and Approve a Transfer of Funds in the Amount of \$75,000 from Loss on Disposition of Plant Acct. #411-7 to Depreciation Expense Acct. #403 – Electric Division
7. Consider and Approve a Budget Amendment in the Amount of \$147,000 Increasing Appropriation from Major Capital Replacement Reserve Fund and Pumping Structures and Improvements Acct. #463-9012-321 – Sewer Division
8. Consider and Approve a Resolution Authorizing the Mayor to Sign an “Agreement Between the State of CT. and the Town of Wallingford for the Construction, Inspection and Maintenance of the Quinnipiac River Linear Trail, Utilizing Federal Funds from the High Priority Projects Program” – Engineering Dept.
9. Consider and Approve an Agreement Between the Town of Wallingford and Joseph C. Richello for the Abandonment of Existing Water & Electrical Easements on a Portion of the Richello Property and for the Granting of new Multi-Utility, Construction and Maintenance Easements – Town Attorney
10. Consider and Approve Awarding Bid No. 02-000F for the Sale of Town Property Known as 15 Oak Street - Town Property
11. Executive Session Pursuant to Section 1-200(6)(B) of the CT. General Statutes to Discuss Pending Litigation in the Wallingford Associates of CT., LP v. Town of Wallingford Tax Appeal Matter – Town Attorney
12. Executive Session Pursuant to Section 1-200(6)(B) of the CT. General Statutes for the Purpose of Discussing the Purchase, Sale and/or Leasing of Property – Mayor
13. Consider and Approve the Settlement of the Wallingford Associates of CT., LP v. Town of Wallingford Tax Appeal Matter as Discussed in Executive Session – Town Attorney

TOWN COUNCIL MEETING

SEPTEMBER 23, 2003

6:30 P.M.

ADDENDUM TO AGENDA

- 3a.1 Consider and Approve Tax Refund #243.5 in the Amount of \$1,324.03 -
Assistant to the Tax Collector
 - 3a.2 Consider and Approve Tax Refund #243.75 in the Amount of \$1,177.19 –
Assistant to the Tax Collector
-

TOWN COUNCIL MEETING

SEPTEMBER 23, 2003

6:30 P.M.

A regular meeting of the Wallingford Town Council was held on Tuesday, September 23, 2003 in the Robert Earley Auditorium of the Wallingford Town Hall and was called to Order by Chairman Robert F. Parisi at 6:32 P.M. Answering present to the Roll called by Town Clerk Rosemary A. Rascati were Councilors Brodinsky, Doherty, Knight, Papale, Parisi, Rys, Toman & Vumbaco. Councilor Farrell was out of the country. Mayor William W. Dickinson, Town Attorney Janis M. Small and Comptroller Joseph Swetcky, Jr. were also present.

A blessing was bestowed upon the Council by Pastor Terry Frizzel, Wlfd. Church of the Nazarene.

The Pledge of Allegiance was given to the Flag.

ITEM #2 No items of correspondence were presented.

ITEM #3 Consent Agenda

ITEM #3a Consider and Approve Tax Refunds (# 184-243) Totaling \$24,921.90 – Assistant to the Tax Collector

ADDENDUM ITEM #3a.1 Consider and Approve Tax Refund #243.5 in the Amount of \$1,324.03 – Assistant to the Tax Collector

ADDENDUM ITEM #3a.2 Consider and Approve Tax Refund #243.75 in the Amount of \$1,177.19 – Assistant to the Tax Collector

ITEM #3b Approve and Accept the Minutes of the September 9, 2003 Special Town Council Meeting – 6:00 P.M.

ITEM #3c Approve and Accept the Minutes of the September 9, 2003 Town Council Meeting - 6:30 P.M.

ITEM #3d Consider and Approve One Appointment to the Public Celebrations Committee for a Term which Expires 2/1/04 – Mayor

ITEM #3e SET A PUBLIC HEARING for October 14, 2003 at 7:45 P.M. to Amend Chapter 62 of the Code of the Town of Wallingford Entitled, "Alcoholic Beverages" – Stephen W. Knight, Chairman, Ordinance Committee

ITEM #3f SET A PUBLIC HEARING for October 14, 2003 at 8:00 P.M. to Amend Chapter 139 of the Code of the Town of Wallingford Entitled, "Littering" – Stephen W. Knight, Chairman, Ordinance Committee

Motion was made by Mr. Knight to Approve the Consent Agenda, Items #3a, 3a.1, 3a.2 and items #3b-f, seconded by Ms. Doherty.

VOTE: Farrell was absent; all others, aye; motion duly carried.

PUBLIC QUESTION AND ANSWER PERIOD

Pasquale Melillo, 15 Haller Place, Yalesville passed along to the Town Clerk for distribution to the Town Council a newspaper article which stated "The Municipal Securities Rulemaking Board voiced concern over "increasing signs" that firms and individuals may be seeking to circumvent its rule designed to eliminate "pay-to-play" in the municipal bond market."

Wes Lube, 15 Montowese Trail stated that he rises reluctantly to comment on what he observed at the Council meeting of September 9th when the large sum of money was approved to enable the policemen's salaries to go into effect retro-actively. He stated, I thought that was very well-deserved and gracious on your part and I am glad it went through. In the process we learned that the new salary schedule upon which that sum was based was actually used in the ad to recruit for the Police Department. In private business, this is known as bait and switch by any other definition it is baiting and switching. People apply, based on the figures that they saw in that ad and they were then asked at some point, at the application or afterwards, "would you take less?" We don't know if anybody walked when asked that question but it could conceivably have happened and they may have been good people. Someone then said that it should not have been done. As you recall, our Chief (of Police) became quite angry, red-faced and felt that the people on the Council, in part, were being accusatory. Whether it was the Personnel Department, the Chief (of Police) or someone else, no one has since stood up and said, "I made that decision." No one has made that contribution. We don't know who made that decision to run that number. The Chief did say that he had proved that he had told the people the truth. All that means is that he told them they were going to get less.....

Chairman Parisi interrupted to ask, is there a question in here? Is there a question?

Mr. Lube answered, no and I don't want to ask a question.

Chairman Parisi replied, that is what this is for. It is not for a dissertation on the Chief of Police.

Mr. Lubee asked, show me in your rules where I can't speak on a.....(inaudible due to Chairman Parisi's talking over Mr. Lubee.)

Chairman Parisi stated, I am telling you that this is question and answer period and we are only too happy to try to give you all the answers we can and that's what we are doing.

Mr. Lubee stated, you see....

Chairman Parisi continued, it is not commentary; it never has been.

Mr. Lubee stated, I will phrase a question then. In the opinion of the members of the Council, were they aware of the facts that by putting that ad, that salary figure in the ad prior to the Council approving it, in effect, they were ignoring the power of the Council to approve that contract figure?

Chairman Parisi answered, I don't know that everyone felt that that was (inaudible due to Mayor Dickinson's talking over Mr. Parisi). I don't think that that was what everyone thought.

Mayor Dickinson stated, we are accepting as fact something that I do not believe has been at all determined to be fact and that is that an incorrect salary figure was given to any prospective employee. The Chief (of Police) indicated that the communication to employees was the salary that they would be paid. They were told there was also a contract under negotiation. From what I was told and what I heard, there is no evidence that people were told they were going to be paid a higher salary than what we are paying. I don't what information you are referring to, I didn't hear anything to that meeting that led me to believe that incorrect figures were given to anyone as far as what they would be paid as employees and the Chief became disturbed over being accused of giving people incorrect figures.

Chairman Parisi stated, I don't think there's; you've had your say; you've had your say. I want to leave it right there because this isn't anything that I feel is what the question and answer period is for. So, do you have a question?

Mr. Lubee answered, yes. The figure that was in the recruiting...(inaudible due to Chairman Parisi's comments over Mr. Lubee's)..the approved...(inaudible)...that's; the Mayor's....(inaudible)..ignoring the fact that it was the...(inaudible)...bait and switch.

Chairman Parisi stated, I am not going there. I am not going there. I am not going there. Wes, I'm not, I'm not going there. I am not going there. I am going to call you out of order. Thank you.

Pasquale Melillo, 15 Haller Place, Yalesville asked, why is it that when factoring in the economy today, with a lot of people out of work and with the poverty level increasing more and more, why is it that Wallingford can't do like Meriden is doing, giving free breakfasts for school children? A lot of parents have to rush out early in the morning and they really don't get a chance to give the children the breakfast they need. Meriden does it, why can't we do it?

Chairman Parisi replied, I think that would be better asked at the Board of Education meeting. That isn't within our purview. We can't tell them what to do with their money. That's very clear, we can't do that. I thought there was a breakfast program. I may be mistaken. I am told that there are two schools that have them. That would be better addressed at the Board of Ed, though, seriously. I am not trying to pedal anything off.

Wes Lube, 15 Montowese Trail asked, have you, personally, noticed the new Welcome to Wallingford sign on Hall Avenue by the railroad tracks?

Mayor Dickinson answered, it is in the parking lot, Bob.

Chairman Parisi replied, no, I am going to be honest with you, I hadn't noticed it, no. I'll look for it.

Mr. Lube stated, because it is on the Town's side of the fence, I would assume it is on Town land. It is a very elaborate, large sign. It probably measures six feet (6') across supported by two (2) six by six (6 X 6) posts set into a raised bed that is surrounded by what appears to be loose, masonry stone and then filled with dirt. It probably is a \$2,000 or \$3,000 very elaborate sign.

Chairman Parisi stated, I haven't seen it myself. I want to look at it. Maybe I'll go down tonight after the meeting and take a look at it.

Mr. Lube stated, it has been there for a few months now.

Chairman Parisi replied, stop it.

Mr. Lube answered, no, really. It faces the railroad tracks, is in the parking lot area so that all of the people who are passing through Wallingford on the train look out the window and see, "Welcome to Wallingford". All the people getting off the train don't see the sign.

Chairman Parisi pointed out, once the train goes, they'll see it.

Mr. Lube stated, here's my question; I was always under the impression that the Town Council had jurisdiction over the use of Town land. I couldn't figure out who had put this

sign out so I started to ask around different departments. No one even knew the sign was there, just like yourself. Finally, Caryl Ryan from Wallingford Center, Inc., acknowledged the fact that she was not in the loop. She didn't know how the sign arrived there but she apparently did some asking herself and came back to me a few days later and said that it was an eagle scout project. This is interesting because of two things; first of all, there's a lot of money involved in that sign, it isn't just labor so if it was, in fact, an eagle scout, certainly there should have been a donation, a little placard on the bottom of the sign and it's not there. More than that, I don't think that any eagle scout would say, "I want to build this sign and I am going to put it over there." I think that someone took it upon themselves to tell the scout where that person, plus the sign should go, again, in disregard of the Town Council's jurisdiction. I don't think we should be doing these things. I am not opposed to an eagle scout project; I am opposed to invading the responsibilities that belong to the Town Council, am I off base on this?

Chairman Parisi asked the Mayor if he was aware of this? He stated, I know we have had some projects come before us.

Mayor Dickinson answered, Public Works, I believe, was involved with the eagle scout and I don't have all of the background but the project was completed in either June or July, I can't remember the exact date. They have to be completed before the scout turns eighteen and I don't have all of the background. I know when it was completed because I was informed about it and was there. I could guess at the name but I am not going to make an error. Henry McCully and Public Works were involved. Usually an eagle scout comes forward, proposes a project and they have to outline what they want to do and I suspect Henry (McCully) looked at it as this was a sign, like you would put anywhere, this is Wallingford and it wasn't...planned or anything like that. It definitely was an eagle scout project.

Mr. Lube stated, I think that, had this gone before the Council, amongst the nine members, there probably would have been some suggestions for a more appropriate location, thank you.

Chairman Parisi stated, I don't know. He may have picked that location or he didn't, I don't know. Do you know if the scout picked it or the Town did?

Mayor Dickinson answered, that, I am not going to guess. Usually they come in with a specific request. We have had a number of eagle scout projects dealing with creation of trails...

Chairman Parisi pointed out, we had the canon.

Mayor Dickinson replied, the canon was in the park and that was something but where it is reconditioning of trails and things like that, we usually don't have special approvals on. The scout is improving the area for public use as is endorsed by the Recreation

Department or, in this case Public Works. It's not something that is a unique use of the property or a use that prevents someone else from being involved.

Robert Sheehan, 11 Cooper Avenue stated, in reference to the Christian Street and North Elm Street intersection, football season is approaching and I don't want to see their method of catching the point after the punt kick that they employed last year where two kids wait to catch the ball and if they don't catch it and it goes out into the street, there they run. I notice that nothing has been done in the way of a crossing guard or any other liability that we are going to incur because it is a town road.

Chairman Parisi answered, I had a meeting with Mr. Shanahan and I brought your suggestion up on the net and he made a note of it and I guess I made the assumption, which is dangerous, that perhaps he would follow that, about the football.

Mr. Sheehan stated, then we will have to wait and see.

Chairman Parisi answered, that's all I can do. The other wasn't quite as easy and we didn't reach any type of conclusion as to what the solution would be for the crossing guard at the four corners.

Mr. Sheehan stated, I was taught to look both ways before you cross the street, whether you came to an intersection or not and that doesn't work there. From what I see, I don't know if they are teachers or some adults there, they set a bad example because they just zip across.

Chairman Parisi replied, I think it is a little game over there of how long they can hold the traffic.

Mr. Sheehan stated, I think they are playing dodge ball with the cars and one of these times someone is going to lose and it is not going to be the car.

Chairman Parisi replied, I hate to say it but I agree. I agree with you. We'll pursue it but there was no immediate solution.

Pasquale Melillo, 15 Haller Place, Yalesville stated that it is his understanding that there are still problems with getting everything organized with the upcoming season. Has anything developed?

Mayor Dickinson replied, as far as I know Tom Dooley is working with the leagues assigning fields. He has developed a plan to ensure that every team will have a field to play on. Other than that, I know that he is looking to shuffle some fields around as far as who uses what field. He is working on that and it should be in place for next Spring. This Fall, I haven't heard of any problems regarding field availability.

Wes Lube, 15 Montowese Trail stated, I am going to tell you a happy story, for a change.

Chairman Parisi replied, oh no. Are you really? That's nice.

Mr. Lube explained, three or four months ago I was disturbed, as you may remember, that so many of our lights in the downtown area had burned out bulbs and I was told that we had a system in place. I wanted to learn more about that system so I attended a meeting of the PUC and I learned that the system we had in place was dependent upon customers calling in and reporting outages. I asked the Chairman of the PUC what happens if our good citizenry didn't call in? He said, they don't get a light. It was as simple as that. Well, in the area where I live, which is the lower part of Cook Hill, there were approximately twenty-six of these outages and I extrapolated that and I figured that there must be somewhere in the neighborhood of two hundred fifty to three hundred that were out throughout the town and that is very serious. The lights are there for a reason, for security, safety and for aesthetics, but most importantly for security and safety. Light tends to discourage crime. These are important and needed and that's why we spend the money to have them. When I found that out I decided I better stick my nose under the tent and I discovered that the Town of Northford that we service customarily, monthly, phones in to Peggy at the PUC a list of the things that are wrong. I went to the Community Relations Department, a Sgt. Harte, and told him that it would be awfully nice if the only town employees that are awake and working at that hour would be kind enough to begin to report the outages and he said that he remembered way back when that was done and for some reason it got stopped. It had nothing to do with any relations between the PUC and the Police Department because today's cruise is not being done by people who were even on the force at that time but he said he would see if the hierarchy in the department would go along with it. Peggy was out for some time with a physical problem and she is now back and when I called her up about ten days ago to tell her about the twenty-six outages she said, "Guess what? I have had a report from the Wallingford police. They gave me a list of eighty that were out as starters. So the system is working and I thought that was a nice story.

Chairman Parisi replied, that's nice of you to report that, thank you.

The Public Question and Answer Period was closed at this time.

ITEM #6 Consider and Approve a Transfer of Funds in the Amount of \$75,000 from Loss on Disposition of Plant Acct. #411-7 to Depreciation Expense Acct. #403 – Electric Division

Correspondence from Thomas Sullivan, Business Office Manager of the Electric Division to Raymond Smith, Director of Public Utilities explains the need for the transfer of funds; to properly record the division's accumulated depreciation on its utility plant.

Mr. Vumbaco requested an expanded explanation for in his mind depreciation is a non-cash item. He did not understand where the depreciation from PP&L vs. the Town's Pierce Plant comes into play.

Mr. Smith explained, what we are trying to do is make sure that expenditures for the fiscal year do not exceed the appropriations. This is a non-cash expenditure so there is no money that went out the door but yet the budgets should be aligned so that all items don't show any overages. With respect to the Pierce Plant, we had a project that we had hoped to do last year to finalize the removal of the rest of the equipment there. We took out the bulk of it through the Manaforte Brothers' contract a year or so ago but we still have internal equipment such as switch gear and batteries that had to be removed. We delayed the project and haven't done, even as of today. For bookkeeping purposes, we needed to make an adjustment to show that there was money available for the depreciation account. We took it from an account that hadn't been utilized.

Mr. Vumbaco asked, so this is just like a normal year-end adjustment that you would do if you were closing the books after the year is over?

Mr. Smith answered, that's correct. Tom (Mr. Sullivan) can detail it but the last item you typically deal with is your fixed assets. You go back and look at all of those items, you finalize your capital projects that were concluded through June 30th. He was hoping there would be sufficient funds in the original appropriation to cover that but, prior year, we received a significant contribution in aid of construction, if you will, or contribution of capital and they were the two projects; transmission lines that PP&L built turned over to us...and earlier we had an arrangement with Northeast Utilities where they would retrofit or upgrade our substation. They bought two new transformers and about \$4 million worth of improvements that went back to the original agreement, the 1995 agreement, when we signed the contract for the power supply. Before last year, those items would not have been recognized for depreciation purposes so when we put the budget together, monies or appropriation was not there for that purpose. During the course of the year, in about June of 2002, a decision was made to the Finance office that that item should be on our books, should be recognized for depreciation purposes. A full year depreciation was not in the original budget statement that we introduced in 2002.

Mr. Vumbaco stated, the money that you said that came from CL&P and PP&L is in the contribution capital account? Is that what you said it was from, the little arrangements? What would have happened to that money if you didn't need it for the depreciation expense? What was it earmarked for initially?

Mr. Smith answered, it wasn't money. They did not give us cash, although they did offer to give us the money. Let me back up, let's use PP&L as an example. They would have preferred to hand over the cash, have us build the line and operate and take ownership. We said, because of our procedure, getting the appropriation, going to our bid process, we were not sure we could meet their time line, deadline for operation. We said, "it is easier

for you to go ahead and do it, turn it over to us.” They can’t own the transmission system. That was a very important aspect of the deal. They would have preferred to handle the cash and not get involved in that but, to expedite it, we let them do it, turn it over to us. If you looked at as they gave us the cash, we appropriate it so it definitely becomes a depreciable item. Because they didn’t give us the cash but, instead gave us the equipment, in years past, and up until last year’s decision, it wouldn’t have been recognized on the books but it is a major, major asset. Those two projects totaled about \$8.1 million. If you looked on last year’s financial statement, you will notice that there was a large net income but it was not a cash net income, it was a contributed capital net income.

Mr. Vumbaco asked, and now you are depreciating that over twenty-five years.

Mr. Smith agreed.

VOTE: Farrell was absent; all others, aye; motion duly carried.

ITEM #7 Consider and Approve a Budget Amendment in the Amount of \$147,000 Increasing Appropriation form Major Capital Replacement Reserve Fund and Pumping Structures and Improvements Acct. #463-9012-321 as Requested by the Sewer Division

Correspondence from Roger Dann, General Manager to the Public Utilities Commission explains that the bids for the South Hartford Turnpike Pump Station project exceeded the budget and therefore no award was recommended. Subsequently the Sewer Division modified the scope of the project in an attempt to reduce the project costs and placed it out to bid for a second time. The results from the re-bid showed a substantial decrease in project costs, however, they are, once again, in excess of the existing budget for the project. The division does not believe that a further reduction in project scope can be made without negatively impacting the intended functionality of the pump station and therefore it is not recommended that the project be placed out to bid for a third time. Accordingly, the division is requesting a budget amendment to increase the appropriation of funds for the project consistent with a bid result from the most recent bid.

Motion was made by Mr. Knight, seconded by Mr. Rys.

Chairman Parisi asked, is the \$220,000 the current balance of the reserve account?

Mr. Dann explained, the reserve is funded annually in an amount of \$200,000 and it accumulates until such time as there’s an appropriation for a specific project. The actual balance of the reserve at the close of last fiscal year was \$919,134.00. Of that, \$696,617 had already been appropriated to the South Hartford Turnpike pump station project, therefore there was an unappropriated balance of the \$222,517., as of the close of the last fiscal year.

Chairman Parisi stated, this expenditure would bring it down to \$75,000. and I didn't know how quickly you filled it up again.

Mr. Dann answered, in the current year there would be another \$200,000. to add to it... that's the nature of it; that it will build and then be drawn down as projects come along.

Mr. Vumbaco asked, when did the second bid go out and come back?

Mr. Dann answered, the bid opening was August 28th, the date it came back. It was probably advertised three weeks to one month before that.

Mr. Vumbaco stated, it came back on August 28th of this year but this (appropriation) is for last year's budget. Is that what you are doing this for?

Mr. Dann answered, this applies to the current year's budget.

Mr. Vumbaco stated, the financials you gave us says it is for F.Y. 2002-03. I just assumed... maybe there has been an error.

Mr. Dann answered, you are correct on that but, this is this year's transfer.

Mr. Toman asked, were you surprised that these bids seemed to always have exceeded the budget for the project? Is that unusual for a project this size?

Mr. Dann answered, generally, we have done a pretty good job of project estimation. Certainly after the first bids were received and we looked at the numbers, we were surprised. We did review the bids, we did contact some of the bidders to try and find out where they had perceived significant costs to be that maybe we would not have seen when we were putting together our project estimate. Based upon that feedback, we then determined where we thought we could modify the project to get the greatest reduction in project costs.

Mr. Toman stated, the second time one of the bidders increased their bid.

Mr. Smith added, they were obviously busy. You never know in a bidding contest like that, somebody may fill in a gap, have some work they needed to do at that time so they throw in a higher bid saying, "if we get it, that's fine; if we don't, we have enough on our plate."

Mr. Toman asked, how many bidders were there?

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AT 2:30 M P AND RECORDED BY
Breemany A. Pascale TOWN CLERK

Mr. Dann answered, five or six. It was a good sampling. The interesting anomaly is the guy that was low the first time around, actually increased his bid while several of the other bidders who had bid the first time, significantly reduced theirs.

Mr. Toman asked, they are not luring us out, these bidders, are they?

Mr. Dann answered, I don't believe so. Given the number of bids that came in and having put the project out twice and looked at where they felt the significant cost was and see a corresponding reduction in the second bidding process, I think what we see indicates that's what the cost of the job truly is at this point in time. Perhaps when we put together our cost estimate there were some factors particularly relating to the shoring and protection of the excavation that were more complicated than what we expected.

VOTE: Farrell was absent; all others, aye; motion duly carried.

ITEM #8 Consider and Approve a Resolution Authorizing the Mayor to Sign an "Agreement Between the State of CT. and the Town of Wallingford for the Construction, Inspection and Maintenance of the Quinnipiac River Linear Trail, Utilizing Federal Funds from the High Priority Projects Program" – Engineering Dept.

Correspondence from Town Engineer, John Thompson explains, if Town Council endorsement to sign the agreement is sought the Town is only committing itself to paying \$79,348 Demand-Deposit to the State and to advance this project to the bidding phase. If, for any reason, including receiving bids that are too high, the Town elects not to proceed to construction we can request that Conn DOT return the Demand-Deposit and void the Agreement.

The resolution was read into the record at this time by Mr. Knight. (Appendix I)

Motion was made by Mr. Knight to Approve the Resolution, seconded by Ms. Doherty.

Lynn Hoffman & State Rep. Mary Mushinsky, Co-Chairs of the Quinnipiac River Linear Trail Advisory Committee (QRLTRAC) were present to answer any questions the Council may have on the issue.

Mr. Thompson gave a quick overview of the project. A pedestrian bridge over the Quinnipiac River and a pedestrian tunnel under the Wilbur Cross Parkway is proposed in Phase II of the project. Connecting the two is about 900' of new trail connecting into the existing trail. This has been an ongoing process for the past 2 ½ years with the D.O.T. and the D.E.P. With the anticipated approval of the authorization for the Mayor to sign this agreement the project is prepared to be advertised and bids solicited for construction. One of the benefits of taking this project to construction at this time is that the State is saying there is very little construction activity out there and if there is a good time to bid this

project, they believe that now is that time and we are going to get the most favorable construction bids, thus the request before the Town Council at this time.

Mr. Toman asked, is there any reason to think that we would not get our demand-deposit back if we don't go forward with the project?

Mr. Thompson answered, absolutely none. We had a number of conversations with the Mayor's office today and with the D.O.T. and right up to the Commissioner level, we had absolute assurance that if, for any reason, the construction bids came in higher than we anticipated or we could not financially support, the demand deposit would be fully returned without any draw down on it.

Mayor Dickinson added, the Town Attorney reviewed that and her conclusion as to what it meant is the most critical feature. D.O.T. has their opinion and that's fine but people can change but I think the Town Attorney's view of what the contract meant satisfied us as to the Town being protected.

Atty. Small added, the deposit is directly related to the construction phase and that represents 50% of what the State anticipates its services to be worth during that phase. As long as you don't cancel it in the construction phase, then you'll be fine. They won't have incurred or had performed any services that cover those deposits.

Mr. Knight asked, the numbers that we see on page 13 were developed primarily by the State or did you develop these numbers?

Mr. Thompson answered, the State generated the numbers. I sat with them at length to understand what all of them meant but they are their numbers based on estimates of available federal funds and how the monies would be appropriated based on that availability.

Mr. Knight asked, of the various aspects of phase II, in other words the bridge across the Quinnipiac River and the tunnel underneath the parkway, the state will have to pass, I would think that the part under the parkway is going to be the State's most intense involvement in the project in terms of approvals and the rest of it. Or are they involved in all of it?

Mr. Thompson answered, they are involved in every single aspect of the project, however, your assessment of the State's role is exactly correct. They had extensive involvement with the Town and our engineers over the past 2 ½ years. We have had meetings right up to the commissioner level to talk about how this was going to be constructed. State Representative Mary Mushinsky and State Senator Fasano brought the State to the table and finally allowed us to work out the technical aspects of this. The tunnel under the parkway is an open cut operation. Traffic is going to be shifted from the northbound side (Wilbur Cross Parkway) to the southbound side, one lane, and then open cut the parkway,

put pre-cast box culverts in for the pedestrian tunnel, back-fill it and then restore that to traffic and that has to happen on weekends. We can begin work on Friday night at 6:00 p.m. and we have to have the road restored to full operations by 6:00 a.m. Monday morning. We will be working consecutive weekends, we believe right now, Saturday, Sunday and the two nighttime periods surrounding that. The State's involvement will be oversight at this point. It got to a situation where, because of the financial implications of the project, we wanted control over what was happening in terms of decisions about how the money was being spent. I couldn't have a D.O.T. representative not responsible to the Town making financial commitments so we are overseeing construction. D.O.T. will provide minimal oversight and this has all been worked out in terms of the contract documents that have extensive, extensive maintenance protection of traffic provisions in there. The maintenance protection of traffic is the single-most expensive aspect of this project. It is approaching \$800,000 to maintain traffic on the parkway during construction. It is a very expensive undertaking. It has taken a long time but we are there now. We have their approval and we're, with Council's authorization, we are ready to find out what it is going to cost us to do it.

Mr. Knight asked, are you comfortable with these numbers? Do they reflect the actual costs?

Mr. Thompson answered, based on the information we have, they are an accurate reflection. I would certainly like to see the overall construction cost come down from what it is but, the numbers that you see, I have gone through them and have confidence that they accurately reflect the distribution costs based on what we know right now.

Mayor Dickinson stated, you're identifying that estimated costs and, at the current time, I think we have something around \$1.4 million that has been appropriated including federal money of \$750,000. If these costs become reality, we do not have sufficient funds to move forward. There are efforts to obtain more funding but we will find out what the reality is when the bids go out but I wouldn't want anyone to think that we have appropriated all of this money, we have not. It is one of the challenges that we face along with a few other projects.

Mr. Knight replied, hence my questions regarding how much confidence we can place in the numbers, subject to change due to bidding and what not, because we don't have the money appropriated at this point, all of it.

Wes Lube, 15 Montowese Trail asked Mr. Thompson, are the plans for the bridge and tunnel finalized?

Mr. Thompson answered, 99% complete.

Mr. Lube asked, with regards to the bridge, what is the normal range of depth of the river at that point?

Mr. Thompson answered, under the bridge is probably in the 1-2' range; very shallow.

Mr. Lubee asked, so we don't have any fear of people using the bridge as a diving platform?

Chairman Parisi, it better not.

Mr. Lubee asked, is there any fencing to prevent fool-hearty jumping off of the bridge?

Mr. Thompson answered, the bridge is pre-cast structural truss and the railing system, I believe is 48" high on each side or 54" I think is the height. The railing adjacent to the walkway on the bridge is 4 1/2' high. Could someone climb over it? The answer is, people can climb over anything if they are so inclined.

Mr. Lubee stated, they have had to increase the height over the parkway. How long is the tunnel?

Mr. Thompson answered, about 110'.

Mr. Lubee asked, will there be light? How will the electricity be brought to the tunnel?

Mr. Thompson answered, yes, there will be light. The next item on the agenda is a request to approve an easement from Mr. Richello and in that easement we are going to be installing underground conduit and electrical service to the tunnel. We didn't believe that lighting was necessary on the tunnel because it is a dawn to dusk facility and, in the middle of the tunnel, we have an 8' X 8' ventilation shaft that will provide light and air to circulate into the tunnel. The State was adamant that they wanted lighting in there and we have to acquiesce to their request and it's now part of the project.

Mr. Lubee asked, is the tunnel gated?

Mr. Thompson answered, no.

Mr. Lubee asked, if it turns out to be an attractive nuisance, how can we exercise control without available gating?

Mr. Thompson answered, right now we exercise control of access to the overall trail at Community Lake Park, we have a bollard system at the end of the parking lot. I don't believe...correct me if I am wrong, we are not aware of any situations where there's been nighttime use of the trail that has created any type of problem or any type of unauthorized access.

Mr. Lubee replied, no, but there is a certain amount of privacy that is achieved in a 100' long tunnel but we will have to see how that grows.

Pasquale Melillo, 15 Haller Place, Yalesville stated that Davey Crockett would have had a fit. How can you call this a trail when you are adding bridges and tunnels? Dollars could be put to better use helping the senior citizens who are in big financial trouble. They can't buy the drugs they need or the proper foods to eat. All of this money that is going into the project that can be diverted to help the seniors. This is not something that we need, it is not practical. It is only the relative few that will be using this.

Chairman Parisi stated, you should get around and talk to the people who are using it, they are pretty happy.

Mr. Melillo answered, yes, a small minority, I know that. The vast majority are not using it. Leave the land the way it is. Make it a real linear trail with no bridges or tunnels. This is not being pragmatic nor practical. Especially when the taxpayers have to deal with a 10% tax hike. Would you mind telling me how much this is costing the Wallingford taxpayers?

Mr. Thompson answered, the total project cost is estimated at about \$2.4 million. Of that there is \$750,000 from a high priority TEA21 grant, which drops the Town's portion.

Mr. Melillo replied, that doesn't save too much money for the taxpayers.

Chairman Parisi replied, you've made the point.

Jack Agosta, 505 Church Street, Yalesville stated, I have a little comment to make about the linear trail. The ZBA and P&Z just approved a piece of land to be developed and the owners of that property donated to the Town 13 ½ acres of land of which part is to be used for the linear trail, to cross over the river. With the price of land in Wallingford, that amounts to quite a few dollars.

Chairman Parisi answered, it is a nice contribution. It is called enhancing the quality of life.

State Rep. Mushinsky stated, for the record, the Senior Center has endorsed the project and there is a connecting loop between the linear trail and the senior center. We are hoping to use their parking for weekend access to the trail and we believe and they believe that it will be preventive health for the seniors. They will be able to reduce their incidence of diabetes, heart disease, etc. by exercising on the trail. They are all supportive of it and this action tonight, combined with last night's action, will link together two pieces of trail with that missing piece. That is actually the missing piece that will connect to the island and the access wade to Yalesville so that Yalesville center and Wallingford center will be connected with tonight's action.

Chairman Parisi stated, I am sure with all the monitoring the State of CT. does in Wallingford, they will be right on top of that sugar diabetes and hypertension and give us a good report in two or three years.

VOTE: Farrell was absent; all others, aye; motion duly carried.

ITEM #9 Consider and Approve an Agreement Between the Town of Wallingford and Joseph C. Richello for the Abandonment of Existing Water & Electrical Easements on a Portion of the Richello Property and for the Granting of new Multi-Utility, Construction and Maintenance Easements – Town Attorney (Appendix II)

Correspondence from Town Attorney Janis M. Small to the Mayor states that the proposed agreements refer to easements for the linear trail.

Motion was made by Mr. Knight, seconded by Ms. Doherty.

Atty. Small explained, this agreement was developed through conversations with Mr. Thompson, Ray Smith, Roger Dann and Mr. Richello and his attorney. My letter says that it is within the existing AT&T; it's actually both existing AT&T and we have a new easement next to it. Basically, we are moving our existing easements to one location and we are going to have use of the AT&T easement.

Mr. Thompson explained, the easement area we are talking about is right off of the easterly side of this project area (referring to map – Appendix III). The 8 ½" X 11" copy of our map that you have is the so-called Richello property. On that right now is an electric easement and a water easement on the southerly side of the property. What we are planning on doing as part of this overall easement is creating a new 30' wide general utility easement which encompasses an existing sanitary sewer easement that currently runs across the Richello property. We are also taking advantage of an existing AT&T easement which is highlighted in gray on this map. AT&T currently has a line that runs across the Richello property and over that line is a gravel road that is currently used by AT&T and is used by the Water & Sewer Division to get to a siphon at the westerly side of the Shell property. It goes under the Quinnipiac River in proximity to the proposed bridge. The necessity for this easement was the requirement the State imposed on the Town. DOT was concerned about the need for emergency vehicles getting to the north side of the Quinnipiac River or potentially to the west side of the Wilbur Cross Parkway should someone fall ill, fall down or need medical services. The bridge that we are talking about was being designed for pedestrian loads. If we had to accommodate emergency service vehicles coming from the southerly portion of the existing trail at Community Lake, we would have had to increase the structural design of the pedestrian bridge which would have added several thousand dollars of additional cost to that bridge. In working with our emergency response providers, the Fire Department, Police Department, Hunter's Ambulance, they told us what we needed to have in terms of loading to get the emergency

Chairman Parisi stated, I am sure with all the monitoring the State of CT. does in Wallingford, they will be right on top of that sugar diabetes and hypertension and give us a good report in two or three years.

VOTE: Farrell was absent; all others, aye; motion duly carried.

ITEM #9 Consider and Approve an Agreement Between the Town of Wallingford and Joseph C. Richello for the Abandonment of Existing Water & Electrical Easements on a Portion of the Richello Property and for the Granting of new Multi-Utility, Construction and Maintenance Easements – Town Attorney (Appendix II)

Correspondence from Town Attorney Janis M. Small to the Mayor states that the proposed agreements refer to easements for the linear trail (Appendix III).

Motion was made by Mr. Knight, seconded by Ms. Doherty.

Atty. Small explained, this agreement was developed through conversations with Mr. Thompson, Ray Smith, Roger Dann and Mr. Richello and his attorney. My letter says that it is within the existing AT&T; it's actually both existing AT&T and we have a new easement next to it. Basically, we are moving our existing easements to one location and we are going to have use of the AT&T easement.

Mr. Thompson explained, the easement area we are talking about is right off of the easterly side of this project area (referring to map – Appendix IV). The 8 ½" X 11" copy of our map that you have is the so-called Richello property. On that right now is an electric easement and a water easement on the southerly side of the property. What we are planning on doing as part of this overall easement is creating a new 30' wide general utility easement which encompasses an existing sanitary sewer easement that currently runs across the Richello property. We are also taking advantage of an existing AT&T easement which is highlighted in gray on this map. AT&T currently has a line that runs across the Richello property and over that line is a gravel road that is currently used by AT&T and is used by the Water & Sewer Division to get to a siphon at the westerly side of the Shell property. It goes under the Quinnipiac River in proximity to the proposed bridge. The necessity for this easement was the requirement the State imposed on the Town. DOT was concerned about the need for emergency vehicles getting to the north side of the Quinnipiac River or potentially to the west side of the Wilbur Cross Parkway should someone fall ill, fall down or need medical services. The bridge that we are talking about was being designed for pedestrian loads. If we had to accommodate emergency service vehicles coming from the southerly portion of the existing trail at Community Lake, we would have had to increase the structural design of the pedestrian bridge which would have added several thousand dollars of additional cost to that bridge. In working with our emergency response providers, the Fire Department, Police Department, Hunter's Ambulance, they told us what we needed to have in terms of loading to get the emergency

vehicles across. The State said, design the bridge for those loadings or provide some other alternative for getting to the northerly side of the river and the westerly side of the parkway. In looking at the adjacent properties and the land that was available, the Richello property came up as a potential candidate. As Atty. Small indicated, over the past several months or a year we have been talking to Mr. Richello about how to best go about getting this easement and there appeared to be a finalization of agreement that abandoning the two existing easements on the southerly side and consolidating them in a single easement on the northerly side, using the AT&T easement for our purposes was a win/win situation for everybody and, at this point, the finalization of an agreement on the terms that's why we are here before the Council tonight asking for your approval to execute that agreement.

VOTE: Farrell was absent; all others, aye; motion duly carried.

ITEM #10 Consider and Approve Awarding Bid No 02-000F for the Sale of Town Property Known as 15 Oak Street – Town Attorney

Motion was made by Mr. Knight, seconded by Mr. Rys.

Atty. Small stated, we put this out to bid, required a minimum bid of \$7,000. The property owner bid \$7,000 but then stated a possible exception. They have since withdrawn the exception and are prepared to go forward and pay the \$7,000. In our prior discussions there was an issue as to where boundary lines were, historically. I have had that title searched and we were satisfied that everything is in order. At one point in time this piece was part of a much larger piece and the previous owner had it divided.

Chairman Parisi asked, so everybody is happy now? I mean, there's a meeting of the minds.

Atty. Small answered, I don't know that happy is the right word. The other half of the minds are you (Council). If you agree, then you've met. I will say that it needs, if you are inclined to approve awarding the bid, I need to get P&Z's approval which will be on Monday night's agenda so it would have to be contingent upon that and otherwise it is all set, if you are so inclined to sell the property.

Mr. Brodinsky asked, what boundaries were in dispute and how was the dispute resolved?

Atty. Small answered, you may recall that, in my conversations with the property owner, when I went out to visit the site, he indicated that someone told him that he may own behind his property into what is Pragemann Park. When we last discussed this, we talked about getting a title search. I had the title search done and the title searcher indicates that, in fact at one point in time that piece was part of a larger piece, but through the chain of title we are satisfied, short of doing a survey that, in fact, there is no claim to any portion of that.

Mr. Brodinsky asked, does the property owner agree with that position?

Atty. Small replied, I have indicated that to them and they haven't; they didn't have any information to begin with. It was a comment that was made to me in passing. They had no actual information about it which is way I thought we should look into it, just to make sure. I did pass that information on that we have done the title search and we are satisfied and they did not state any objection to that.

Mr. Brodinsky replied, I think that what you are saying is, there are no grounds for a reasonable dispute as to the boundary, based on the search?

Atty. Small answered, based on the title search, that's correct.

VOTE: Farrell was absent; all others, aye; motion duly carried.

ITEM #11 Executive Session Pursuant to Section 1-200(6)(B) of the CT. General Statutes to Discuss Pending Litigation in the Wallingford Associates of CT. LP v. Town of Wallingford Tax Appeal Matter – Mayor

ITEM #12 Executive Session Pursuant to Section 1-200(6)(D) of the CT. General Statutes for the Purpose of Discussing the Purchase, Sale and/or Leasing of Property – Mayor

Motion was made by Mr. Knight to Enter Into Executive Session, seconded by Mr. Rys.

VOTE: Farrell was absent; all others, aye; motion duly carried.

The Council entered executive session at 7:55 P.M.

Present in Executive Session for items #11 & 12 were all councilors (with the exception of Mr. Farrell), Mayor Dickinson and Atty. Small.

Motion was made by Mr. Knight to Exit the Executive Session, seconded by Mr. Toman.

VOTE: Farrell was absent; all others, aye; motion duly carried.

The Council exited the executive session at 8:03 P.M.

ITEM #13 Consider and Approve the Settlement of the Wallingford Associates of CT., LP v. Town of Wallingford Tax Appeal Matter as Discussed in Executive Session – Town Attorney

Motion was made by Mr. Knight, seconded Mr. Toman.

VOTE: Farrell was absent; all others, aye; motion duly carried.

Motion was made by Ms. Doherty, seconded by Mr. Toman.

VOTE: Farrell was absent; all others, aye; motion duly carried.

There being no further business the meeting adjourned at 8:05 P.M.

Meeting recorded by Town Clerk, Rosemary A. Rascati.

Meeting transcribed by:

Kathryn F. Zandri
Kathryn F. Zandri
Town Council Secretary

Approved by:

Robert F. Parisi (by RR)
Robert F. Parisi, Chairman

10-14-03
Date

Rosemary A. Rascati
Rosemary A. Rascati, Town Clerk

10-14-03
Date

RECEIVED FOR RECORD 9-30-03
AT 4 00 M P AND RECORDED BY
Rosemary A. Rascati TOWN CLERK

State Project No.: 148-191

Federal Aid Project No.: HPP-H037(1)

Description: Agreement between the State of Connecticut and the Town of Wallingford for the construction, inspection and maintenance of the Quinnipiac River Linear Trail, utilizing Federal funds from the High Priority Projects Program.

RESOLUTION

RESOLVED, that William W. Dickinson, Jr., Mayor, be, and hereby is, authorized to sign the agreement entitled "Agreement Between the State of Connecticut and the Town of Wallingford for the Construction, Inspection and Maintenance of the Quinnipiac River Linear Trail , Utilizing Federal Funds from the High Priority Projects Program."

ADOPTED BY THE _____ of the Town of Wallingford, Connecticut, this _____ Day of _____ 200_.

Clerk (Seal)

Date

Agreement No. 8.28-04(03)

AGREEMENT
BETWEEN THE STATE OF CONNECTICUT
AND
THE TOWN OF WALLINGFORD
FOR THE CONSTRUCTION, INSPECTION AND MAINTENANCE
OF THE
QUINNIPIAC RIVER LINEAR TRAIL
UTILIZING FEDERAL FUNDS
FROM THE HIGH PRIORITY PROJECTS PROGRAM

State Project No. 148-191

Federal-Aid Project No. HPP-H037(1)

THIS AGREEMENT, concluded at Newington, Connecticut, this _____ day of _____, 200____, by and between the State of Connecticut, Department of Transportation, James F. Byrnes, Jr., Commissioner, acting herein by Arthur W. Gruhn, P.E., Chief Engineer, Bureau of Engineering and Highway Operations, duly authorized, hereinafter referred to as the State, and the Town of Wallingford, Town Hall, 45 South Main Street, Wallingford, Connecticut 06492, acting herein by William W. Dickinson, Jr., Mayor, hereunto duly authorized, hereinafter referred to as the Municipality.

WITNESSETH, THAT,

WHEREAS, the required contract plans, specifications and estimates have been prepared for the construction of the Quinnipiac River Linear Trail, and

WHEREAS, said bicycle/pedestrian trail construction includes, but is not limited to, construction of a multi-use trail along the Quinnipiac River from the current terminus to the west side of the Wilbur Cross Parkway (Route 15), herein identified as State Project No. 148-191 and Federal-Aid Project No. HPP-H037(1), hereinafter referred to as the Project, and

WHEREAS, the Municipality shall be responsible for the construction phase of the Project, which includes, but is not limited to, administration, inspection, and construction engineering services in conjunction therewith, and

WHEREAS, the Transportation Equity Act for the 21st Century of 1998 provides funding authorization for "Federal-aid highways, highway safety programs, and transit programs, and for other purposes," and

WHEREAS, Title 23, United States Code, Chapter 1, Section 117, authorizes the Secretary of Transportation to establish a High Priority Projects Program (HPPP), and

WHEREAS, the Project is eligible for funding under the High Priority Projects Program (HPPP) as defined in Title I, Section 1601 of the Act, and

WHEREAS, the Project is listed and briefly described in Title I, Section 1602 of the Act, and

WHEREAS, the State shall administer said federal funding received in conjunction with the Project and reimburse the Municipality for expenses incurred, upon approval of same, and

WHEREAS, the State is exempt from any liability in conjunction with the subject Project pursuant to Section 13a-153 of the Connecticut General Statutes, as revised, and

WHEREAS, Section 13a-165 of the Connecticut General Statutes, as revised, provides that the Commissioner of Transportation is authorized... "(b) to apply for and to obtain moneys, grants or other benefits from the United States or any agency thereof in connection with roads, bridges or highways and (c) to approve all programs, conclude all agreements, accept all deeds, make all claims for payment, certify all matters and do any and all other acts and things necessary or desirable to meet the requirements of and obtain such moneys, grants or benefits from the United States or other agency thereof.", and

WHEREAS, the Municipality has requested that federal funding be obligated so that Project-related construction activities can be authorized.

NOW, THEREFORE, KNOW YE THAT:
THE PARTIES HERETO AGREE AS FOLLOWS:
THE MUNICIPALITY SHALL:

(1) Designate an individual to act as liaison with the State to provide for the proper interchange of information during the construction phase of the Project and all activities related thereto.

(2) Issue an appropriate order to any utility to readjust or relocate in or remove its utility facility located within the municipal right-of-way and shall take all necessary legal action provided under Section 7-148 of the Connecticut General Statutes, as revised, to enforce compliance with the issuance of such order.

Any delays resulting in charges or claims by the Municipality's contractor which are the result of the failure of any utility to readjust or relocate in or remove its facilities within the area impacted by the Project because of the failure of the Municipality to carry out its responsibility, as outlined in the first paragraph of this Article, shall become the responsibility of the Municipality.

(3) Acknowledge and agree to comply with "Agreements with Goals, Special Provisions, Disadvantaged Business Enterprises as Subcontractors and Material Suppliers or Manufacturers for Federal Funded Projects," revised October 16, 2000, insofar as inspection work is concerned, a copy of which is attached hereto and made part of this Agreement.

(4) Acknowledge and agree to comply with "Special Provisions, Disadvantaged Business Enterprises as Subcontractors and Material Suppliers or Manufacturers for Federal Funded Projects," revised October 23, 2000, insofar as construction work is concerned, a copy of which shall be made a part of the construction contract documents.

(5) Upon written approvals by the State, separate from this Agreement, advertise, receive bids, award a contract(s), make payments to contractor(s), and administer construction activities associated with the Project.

(6) Obtain bids for all Project items to be supplied or constructed by the Municipality's contractor(s) utilizing a bidding procedure acceptable to the State for a Federal-aid project. Thereafter, analyze all bids, submit a bid summary, and request the State's approval to award the Project.

(7) Assure that the following pre-award requirements are met by the apparent low bidder:

- (a) Disadvantaged Business Enterprises documentation is in order;
- (b) A schedule of progress or time chart for the Project has been developed; and
- (c) A complete statement of the origin and manufacturer of any manufactured materials to be used in the construction phase of the Project has been furnished. In conjunction therewith, the "Anticipated Source of Material - CON 83" form will be provided by the State.

(8) Upon verification by the State that all affirmative action and pre-award requirements (indicated in Article (7) herein) have been complied with, award the contract to the lowest responsible bidder.

(9) Make no change which will increase the cost of the Project or alter the termini, character or scope of work without prior written State approval. In addition, the Municipality shall not grant any contract time extensions without advance State approval.

(10) Notify the State as to the commencement of the Project's construction activities via the attached CON 82 form. Failure to properly file this form with the State shall jeopardize the Federal proportionate share of the funding for this Project.

(11) Provide administration, inspection, field density testing and construction engineering services during the construction phase of the Project. The construction engineering services may include, but not be limited to, consultation, advice, visits to the work site and such design services as may be required. The Municipality shall also submit to the State for review and approval, the name(s) and qualifications of the individual(s) responsible for the administration and inspection of the Project prior to advertising the Project.

(12) Prepare and submit to the State for review, any proposed agreements or contracts in conjunction with this Project between the Municipality and consultants and/or contractors to affirm compliance with State and Federal requirements as well as to obtain written approval as to form and content of said documents prior to the Municipality's execution thereof. In addition, all extra work claims submitted by consultants and/or contractors to the Municipality must be approved, in writing, by the State prior to the Municipality granting said consultants and/or contractors authorization to proceed.

No reimbursable costs may be incurred by the Municipality in conjunction with consultant agreements or supplements to consultant agreements prior to the State's written approval of same.

The Municipality shall also insure that the burden, fringe, overhead and profit on any consultant agreement shall not exceed One Hundred Fifty Percent (150% - for Home Office), One Hundred Twenty-five Percent (125% - for Field Office), and One Hundred Sixty-five Percent (165% - Environmental) of salary costs. Also, the maximum hourly rate for principals in any consultant agreement shall not exceed Thirty-five Dollars (\$35.00) per hour including burden, fringe, overhead, and profit. Travel (mileage) costs shall be reimbursed in accordance with the latest State Travel Regulations-State Managers limiting amounts. These maximum allowable costs as well as other parameters established for consultant agreements which must be complied with, when applicable, are contained in Office of Policy and Management's General Letter No. 97-1, dated November 21, 1996, which is incorporated herein by reference hereto.

(13) Perform the functions and operations described in the "Department of Transportation, Bureau of Engineering and Highway Operations, Construction Manual, Office of Construction, 1998"; "Information Pamphlet for Consulting Engineers Performing Construction Engineering and Inspection, January 2000"; "Municipality Manual-Guidelines for Contracts Administered by the Municipality, 2003"; "Pamphlet for Monitoring Performance and Payment Requests for Consultants, June 1994"; "Schedule of Minimum Requirements for Sampling Materials for Test, September 1999"; "Public Service Facility Policy and Procedures for Highways in Connecticut, June 1, 1987"; "A Policy on the Accommodations of Utilities on Highway Rights-of-Way, April 1, 1977"; "Title 23, Code of Federal Regulations, Part 645, Subpart A and Subpart B, April 1, 1996," and all revisions and supplements thereto. The performance of these functions and operations shall be in accordance with the policies and procedures of the State set forth in the documents enumerated in paragraph (13)(c) herein, which may be amended by the State under the terms of this Agreement. Said functions and operations also include, but are not limited to:

- (a) Review and approval of all shop plans and construction drawings received from the construction contractor;
- (b) Maintenance and protection of all construction records at the field office for review, use, and approval at all times. These records shall be retained by the Municipality for a period of seven (7) years after issuance of the Project's Certification of Acceptance or three (3) years after the final federal payment has been made, whichever is later, providing there is no pending litigation; and
- (c) All other operations which become necessary to properly inspect the work of the construction contractor to obtain compliance with the "State of Connecticut, Department of Transportation, Standard Specifications for Roads, Bridges, and Incidental Construction – Form 815," Supplemental Specifications, as revised, Special Provisions and all other contract documents and memorandums.

The documents named or described in this Article are hereby incorporated by and made a part of this Agreement and, in all applicable respects, shall govern the conduct of the parties to this Agreement and any parties performing work on the Project. Where any of these documents has been written to govern contractual relations between the State and a contractor, they shall be read and applied as though written to govern the relations between the State and the Municipality.

(14) Cooperate fully with the State and permit the State and/or the Federal Highway Administration to review, at any time, all work performed under the terms of this Agreement.

(15) Agree that if at any time during the construction phase of the Project, the State determines that the administration of the Project by the Municipality is not adequate, the State may take over or supplement said administration of the Project. The additional costs associated with this action will be considered part of the Project costs and will be funded in accordance with the terms of this Agreement.

(16) (a) Deposit with the State, upon demand, the sum of Seventy-nine Thousand Three Hundred Forty-eight Dollars (\$79,348), which sum represents the Municipality's proportionate share of the estimated cost of State-provided services, as shown in Article (42) of this Agreement.

(b) Deposit with the State, upon demand, the sum of Zero Dollars (\$-0-) for the depreciation reserve credit of the municipally-owned utility facility being replaced and the value of any materials salvaged from the existing facility.

(17) Obtain for the contractor(s), the right to enter into and pass over and utilize the right-of-way owned by the Municipality, as may be required for the construction phase of the Project.

(18) Document expenses by recording all contractor's costs, consultant fees and all municipal costs including payroll hours on time sheets, material purchases (including bills), and equipment

charges. Equipment rates will be based on a municipal audit, if available, acceptable to the State. In the absence of acceptable municipal rates, the rental rate shall be established in accordance with Section 1.09.04(d) of the "State of Connecticut, Department of Transportation, Standard Specifications for Roads, Bridges, and Incidental Construction - Form 815, and Supplemental Specifications, as revised.

(19) Pay one hundred percent (100%) of all construction costs which are the result of errors and/or omissions, solely of the Municipality or its consultant, in the contract plans, specifications and estimates or due to inadequate administration, inspection and/or construction engineering services. The percentage(s) derived from the ratio of the total cost of all State-provided services to the total construction cost, as determined by a post-construction audit, will be used to determine the cost of State-provided services incurred due to said errors and/or omissions.

(20) Pay for all construction related costs, without reimbursement, in the event the Project is canceled by the Municipality without "good cause." However, the Municipality may request cancellation of the Project, and if determined by the State and the Federal Highway Administration to be justifiable and with "good cause," Federal participation in expenditures will be provided up to the percentage of acceptable work completed to the approved date of cancellation. A shift in municipal priorities, or lack of municipal funding, is considered to be within the control of the Municipality and will not be considered as "good cause."

(21) Pay for advertising, construction contract items, administration, inspection and construction engineering services, including assistants and/or consultants or contractors, rendering professional, technical, engineering or other assistance and advice during the construction phase of the Project. Expenditures approved by the State will be reimbursed under the provisions of Articles (29), (40), and (42) of this Agreement. Written documentation shall be provided to the State indicating procedures utilized for the employment of municipal forces and/or retention of consultants providing construction services for the Project.

(22) Pay for all costs associated with the construction phase of the Project, as reimbursement for the Federal share of such costs cannot be made until Federal funds are made available to the State. Although funding for the High Priority Projects Program has been appropriated under Title I, Section 1101(a)(13) of the Transportation Equity Act for the 21st Century (TEA-21), the funding shall be distributed to the State annually over the six (6) year life of TEA-21 in accordance with the percentages stipulated in Article (29) hereof. In addition, any Project costs that exceed the maximum limit (amount) designated for this Project, pursuant to Title I, Section 1602 of the Act shall be the responsibility of the Municipality.

(23) Reimburse the State for one hundred percent (100%) of all costs associated with the future maintenance of the structural integrity of the tunnel constructed under the Wilbur Cross Parkway (Route 15) as part of this Project. The maintenance of the structural integrity of the tunnel will be performed by the State as stated in Article (31) of this Agreement.

(24) Assume all responsibility and liability for:

- (a) The proper maintenance and operation of all the Municipality's facilities (with the exception of the tunnel as indicated in Article (23) hereof) constructed as part of this Project, upon completion of the Project, to the satisfaction of the State and the Federal Highway Administration, including, but not limited to the following facilities constructed within the State highway right-of-way:

Bituminous Trail	Bridge
Fences	Landscaping
Drainage Structures and Swales	Tunnel Lighting and Appurtenances
Tunnel (General Maintenance)	Tunnel Air Shaft
Timber Benches	Emergency Access Road

- (b) Maintenance of traffic control signals on municipally maintained roadways (if signals are constructed as part of this Project) upon satisfactory completion of the 30-day acceptance test period.
- (c) The payment for electrical energy from such time as it is required for traffic signals and/or illumination installed on this Project, located on municipally maintained roadways, or at locations containing at least one roadway that is maintained by the Municipality.
- (d) Any and all claims by the construction contractor(s).

(25) Notify the State, in writing, of the completion of construction activities for the Project and provide the State, if requested in writing, reproducible copies of the "as built" plans for the Project.

(26) Maintain and enforce all traffic regulations, during and upon completion of the Project, to conform to State and municipal traffic laws, ordinances and regulations.

(27) Agree that the State, on written notice, may, in its sole discretion, suspend, postpone, or terminate this Agreement, and such action shall in no event be deemed a breach of contract. Any such action may be taken by the State for its own convenience.

Any such suspension, postponement or termination shall be affected by delivery to the Municipality of a written notice specifying the extent to which performance of work under the Agreement is being suspended, postponed or terminated, and the date upon which such action shall be effective.

If the State terminates the Agreement, the State shall reimburse the Municipality at the contract unit prices for the actual number of units or items or work completed prior to the effective

date of termination, or as may be agreed by the parties for items of work partially completed. No claim for loss of overhead or anticipated profits shall be allowed.

When the volume of work completed, as of the termination date, is not sufficient to reimburse the Municipality under contract unit prices for its related expenses, the State may consider reimbursing the Municipality for such expenses.

Materials obtained by the Municipality or its contractor for the Project, that have been inspected, tested as required, and accepted by the State, and that have not been incorporated into the physical Project, shall, at the option of the Municipality, be purchased from the contractor at actual cost as shown by receipted bills; and the State shall reimburse the Municipality for same. To this cost shall be added all actual costs for delivery at such points of delivery as may be designated by the State, as shown by actual cost records.

Termination of the Agreement shall not relieve the Municipality or its contractor of its responsibilities for the completed work, nor shall it relieve the contractor, its surety or the Municipality of its obligations concerning any claims arising out of the work performed or any obligations existing under bonds or insurance required by the Connecticut General Statutes or by this or any other agreement with the State or the Municipality.

(28) Comply with the provisions contained in Exhibit A entitled "Administrative and Statutory Requirements," dated June 4, 2003, a copy of which is attached hereto and hereby made part of this Agreement.

THE STATE SHALL:

(29) Use apportionments made available to the State under the provisions of Title I, Sections 1101(a)(13), 1601 and 1602 of TEA-21 to reimburse the Municipality for the Federal share of participating Project costs over the six (6) year life of the Act in accordance with the following percentages: 11% in (federal) fiscal year 1998; 15% in (federal) fiscal year 1999; 18% in (federal) fiscal year 2000; 18% in (federal) fiscal year 2001; 19% in (federal) fiscal year 2002; and 19% in (federal) fiscal year 2003; subject to an obligational ceiling limitation to be established each year for the High Priority Projects Program through an appropriations bill to be passed by Congress. The Federal share of the certified amount expended by the Municipality and approved by the State as participating Project costs under the terms of this Agreement shall be eighty percent (80%), more or less, based on said obligational ceiling limitation established each year by Congress.

(30) Provide services including, but not limited to, material testing, periodic construction inspection, administrative oversight, and liaison with other governmental agencies to ensure satisfactory adherence to State and Federal requirements.

(31) Assume maintenance responsibility for those State facilities and the structural integrity of the tunnel under the Wilbur Cross Parkway (Route 15) constructed as part of this Project. The costs incurred in conjunction with said maintenance of the structural integrity of the tunnel will be reimbursed by the Municipality in accordance with Article (23) of this Agreement.

(32) Reserve the right to inspect all construction activities for the Project.

THE STATE AND MUNICIPALITY MUTUALLY AGREE:

(33) That the Municipality shall be responsible for one hundred percent (100%) of the total cost of all Federal-aid non-participating contract item(s), including incidentals to construction costs, which have been specifically requested by the Municipality that are considered by the State to not conform with the intent of Sections 1601 and 1602 of the Act. The percentage derived from the ratio of the total incidentals to construction cost to the total contract items, as determined by a post-construction audit, will be used to determine the incidentals to construction cost for the Federal-aid non-participating items.

(34) That the final payment by the Municipality to the State or by the State to the Municipality shall be based upon the actual participating construction costs as determined by a post-construction audit, using percentages and funding procedures established in this Agreement. The Municipality is also required to perform an audit in accordance with Article (12) of Exhibit A.

(35) That before completion of the construction phase of the Project, the Municipality, in concert with the State, shall perform semi-final and final inspections of the Project. The State will be notified of such inspections, in writing, by the Municipality.

(36) That the State is hereby authorized to provide written notice to the Federal Highway Administration of the acceptance of the Project by both the Municipality and the State. It is further understood that this acceptance shall not be given prior to the final inspection of the Project.

(37) That with respect to the operations the Municipality performs or engages a prime contractor to perform under the terms of this Agreement, and also those performed for the Municipality by subcontractors of the prime contractor, the Municipality will be required to carry, and shall ensure that its prime contractor and any subcontractor(s) performing work in conjunction with the Project shall carry, for the duration of this Agreement and any supplements thereto, with the State being named as an additional insured party for paragraphs (a) and (b) below, the following minimum liability insurance coverages at no direct cost to the State. In the event the Municipality secures excess/umbrella liability insurance to meet the minimum requirements specified in paragraphs (a) and/or (b) below, the State shall be named as an additional insured. Said coverages to be provided by an insurance company or companies satisfactory to the State; except that, with respect

to work performed directly and exclusively by the Municipality, the Municipality may request the State to accept coverage provided under a municipal self insurance program. Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages, even if groundless.

- (a) The Municipality shall carry Commercial General Liability Insurance, including Contractual Liability Insurance, providing for a total limit of One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all damages arising out of injury to or destruction of property in any one accident or occurrence, and, subject to that limit per accident, a total (or aggregate) limit of Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of all persons in all accidents or occurrences and out of injury to or destruction of property during the policy period, and
- (b) The operation of all motor vehicles, including those hired or borrowed, used in connection with this Agreement shall be covered by Automobile Liability Insurance providing for a total limit of One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all damages arising out of injury to or destruction of property in any one accident or occurrence. In cases where an insurance policy shows an aggregate limit as part of the automobile liability coverage, the aggregate limit must be at least Two Million Dollars (\$2,000,000).

(38) That when the Agreement requires work on, over or under the right of way of any railroad company, the Municipality shall provide, with respect to the operations that it or its subcontractor(s) perform(s) under the Agreement, Railroad Protective Liability Insurance for and on behalf of the railroad company as named insured, and the State named as additional insured, providing for coverage limits of (1) not less than Two Million Dollars (\$2,000,000) for all damages arising out of any one accident or occurrence, in connection with bodily injury or death and/or injury to or destruction of property; and (2) subject to this limit per accident, a total (or aggregate) limit of Six Million Dollars (\$6,000,000) for all injuries to persons or property during the policy period. If such Insurance is required, the Municipality shall obtain and submit the minimum coverage indicated above to the State prior to the commencement of rail-related work and/or activities and shall maintain coverage until the work and/or activities is/are accepted by the State.

(39) 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 -

Mayor
Town Hall
45 South Main Street
Wallingford, Connecticut 06492;

- (b) Be delivered in person or be mailed by the 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(ies) as well as any document(s) provided, permitted, or required for the making or ratification of any change, revision, addition to, or deletion from, the document, contract, or agreement in which this "official notice" specification is contained.

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

(40) That the State shall reimburse the Municipality for approved advertising, participating contract items and contingencies, construction engineering services, inspection and administrative costs in accordance with the percentages depicted in Articles (29) and (42) of this Agreement. Reimbursement will be made in the following manner:

- (a) The Municipality, on a monthly basis, during active construction periods, shall submit to the State on an appropriate State voucher form (CLA-3) with supporting data, the cost of services rendered and expenses incurred for the billing period. Municipal costs shall be limited to the actual payroll for the Project, fringe benefits associated with payroll and approved direct cost charges for the Project.

- (b) Upon review and approval of the voucher by the State, payment of the reimbursement portion of said costs and expenses shall be made to the Municipality subject to the pre-determined percentages depicted herein for each year of the six (6) year life of TEA-21 and the obligational ceiling limitation established for the High Priority Projects Program through an appropriations bill to be passed by Congress each year TEA-21 is in effect.

(41) Upon final inspection by the Municipality and the State, the Municipality shall submit to the State, within one hundred twenty (120) calendar days, those materials described in the "Municipality Manual – Guidelines for Contracts Administered by the Municipality, 2003," as revised, under the "Project Finals Check List." Upon receipt and approval of those materials, which include signed "CON 58" and "CON 13" forms, the State will release all retainage and reimburse the Municipality the amount indicated on any outstanding invoices.

If the Municipality fails to fulfill its responsibility in regard to the submission of materials referred to above, the State may exercise its option to take over or supplement the administration of the Project, as previously described under Article.(15) of this Agreement.

(42) That the total estimated cost for the construction phase of the Project is Two Million Four Hundred Eighteen Thousand Four Hundred Six Dollars (\$2,418,406), which includes anticipated expenditures of Two Hundred Thousand Five Hundred Dollars (\$200,500) for services to be provided by the Municipality and One Hundred Sixteen Thousand Seven Hundred Forty Dollars (\$116,740) for services to be provided by the State.

The estimated amount of reimbursement to the Municipality under the terms of this Agreement is Six Hundred Sixty-six Thousand Two Hundred Thirty-seven Dollars (\$666,237).

ESTIMATED CONSTRUCTION COSTS

State Project No. 148-191

Federal-aid Project No. HPP-H037(1)

PARTICIPATING (FEDERAL, MUNICIPAL)

A.	Contract Items and Contingencies	\$832,796
B.	Incidentals to Construction- Municipal Services	\$-0-
C.	Incidentals to Construction- State (Material Testing).....	\$15,580
D.	Incidentals to Construction - State (Oversight).....	\$31,160
E.	Total Construction Cost (A+B+C+D).....	\$879,536

NON-PARTICIPATING (MUNICIPALITY)

F.	Contract Items and Contingencies	\$1,268,370
G.	Incidentals to Construction - Municipal.....	\$200,500
H.	Incidentals to Construction - State (Material Testing)	\$22,800
I.	Incidentals to Construction - State (Oversight)	\$47,200
J.	Total Construction Cost (F+G+H+I)	\$1,538,870

SUMMARY

K.	Total Construction Cost of Project (E+J)	\$2,418,406
L.	Estimated Federal Proportionate Share of the Total Construction Cost (80% of E)	\$703,629
M.	Estimated Municipal Proportionate Share of the Total Construction Cost (20% of E+100% of J).....	\$1,714,777
N.	Maximum Amount of Reimbursement to the Municipality (80% of [A+B]).....	\$666,237
O.	Amount to be deposited by the Municipality in accordance with Article (16)(a) of this Agreement (20% of [C+D] + 100% of [H+I]).....	\$79,348
P.	Demand deposit required from the Municipality for depreciation reserve credit in accordance with Article (16)(b) of this Agreement.....	\$-0-
Q.	Total Demand Deposit (O+P)	\$79,348

(43) That if the Municipality fails to fulfill its responsibility in regard to Articles (24) and (26) of this Agreement, such failure will disqualify the Municipality from Federal-aid participation on future projects for which the Municipality has maintenance responsibility.

(44) That the State assumes no liability for payment under the terms of this Agreement until the Municipality is notified, in writing, by the State that said Agreement has been approved by the Attorney General of the State of Connecticut.

Agreement No. 8.28-04(03)

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

WITNESSES:

STATE OF CONNECTICUT
Department of Transportation
James F. Byrnes, Jr., Commissioner

Name:

By: _____ (Seal)

Arthur W. Gruhn, P.E.
Chief Engineer
Bureau of Engineering and
Highway Operations

Name:

Date: _____

TOWN OF WALLINGFORD

Name:

By: _____ (Seal)

William W. Dickinson, Jr.
Mayor

Name:

Date: _____

APPROVED AS TO FORM:

Attorney General
State of Connecticut

Date: _____

