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**CITY OF DANBURY  
DEPARTMENT OF PUBLIC WORKS**



**155 DEER HILL AVENUE  
DANBURY, CONNECTICUT 06810  
(203) 797-4537 FAX (203) 796-1586**

**MAYOR  
Honorable Mark D. Boughton**

**PUBLIC WORKS DIRECTOR  
Antonio Iadarola, P.E.**

December 28, 2015

Honorable Mark D. Boughton  
City Council  
City of Danbury  
155 Deer Hill Avenue  
Danbury, CT 06810

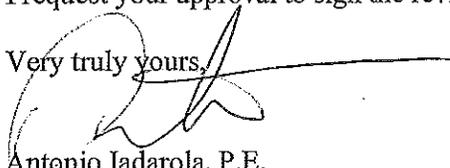
Re: Master State/Municipality Agreement for the Readjustment, Relocation and/or Removal of  
Municipal Facilities on Highway Projects

Dear Mayor Boughton and City Council Members:

The Connecticut Department of Transportation has revised the Master State/Municipality Agreement for the Readjustment, Relocation and/or Removal of Municipal Facilities on Highway Projects. The revised Agreement reflects updated procedures, practices and process, which will result in expedited reimbursement for services rendered by the Municipality. It is imperative that the revised Agreement be signed and returned promptly to avoid any delay to upcoming projects since the current Agreement will be terminated.

I request your approval to sign the revised Agreement.

Very truly yours,

  
Antonio Iadarola, P.E.  
Director of Public Works

Cc: Laszlo L. Pinter, Deputy Corporation Counsel



STATE OF CONNECTICUT  
DEPARTMENT OF TRANSPORTATION



2800 BERLIN TURNPIKE, P.O. BOX 317546  
NEWINGTON, CONNECTICUT 06131-7546

Phone:

December 21, 2015

RECEIVED

DEC 21 2015

PUBLIC WORKS DEPT.

Mr. Antonio Iadarola, P.E.  
Director of Public Works  
City of Danbury  
155 Deer Hill Avenue  
Danbury, CT 06810

Dear Mr. Iadarola:

Subject: Master State/Municipality Agreement for the Readjustment, Relocation and/or Removal of Municipal Facilities on Highway Projects

The Connecticut Department of Transportation (Department) has revised the Master State/Municipality Agreement (Agreement) for the Readjustment, Relocation and/or Removal of Municipal Facilities on Highway Projects. The revised Agreement reflects updated procedures and practices and a streamlined process, which will result in expedited reimbursement for services rendered by the Municipality. The Department intends to terminate any Agreement you currently have in place; therefore, this revised Agreement should be signed and returned promptly to avoid any delay to upcoming projects.

Please have each of the two copies of the Agreement signed, witnessed and the Utility's seal affixed in the appropriate spaces. Do not fill in the date in the first paragraph of the Agreement.

Please advise the Department in writing of any change in your entity's name, address, legal status or Federal Employer Identification Number.

Please return the two signed Agreements in the envelope provided within 21 days of the date of this letter.

Once the Department receives, in proper form, the two originally signed revised Agreements, they will be submitted to the applicable State Offices for approval signatures. Upon full execution of this revised Agreement, any Master State/Municipality Agreement previously entered into will be terminated and superseded by this revised Agreement. Please be aware that without a valid Agreement in place, the Department will be unable to reimburse your Municipality for readjustment, relocation and/or removal services provided.

11-2

Mr. Antonio Iadarola, P.E.

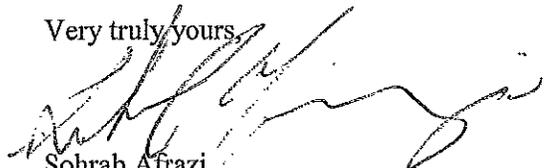
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December 21, 2015

Should you have any questions or concerns regarding the content of the revised Agreement, please contact Mr. Andrzej Mysliwiec, Transportation Supervising Engineer, at (860) 594-3397.

Thank you for your cooperation in this matter.

Very truly yours,



Sohrab Afrazi  
Transportation Principal Engineer  
Utilities Section  
Bureau of Engineering and Construction

Enclosures

113

Agreement No.

**MASTER AGREEMENT**

**BETWEEN**

**STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION**

**AND  
THE**

**CITY OF DANBURY**

**FOR READJUSTMENT, RELOCATION, AND/OR REMOVAL OF  
UTILITY FACILITIES ON HIGHWAY PROJECTS**

**THIS AGREEMENT**, concluded at Newington, Connecticut, this      day of      ,  
A.D., 201\_ , by and between the State of Connecticut, Department of Transportation, acting herein by  
the Commissioner of the Department of Transportation, hereinafter referred to as the State, and  
the City of Danbury, acting herein by      , its  
    , hereunto duly authorized, hereinafter referred to as the Utility or  
collectively referred to as the "Parties".

**WITNESSETH, THAT:**

**WHEREAS**, the State and the Utility wish to memorialize their understandings  
concerning their respective duties, rights, liabilities, and obligations whenever the Commissioner of  
Transportation determines that any Utility Facility located within, on, along, over or under any land  
comprising the right-of-way of a state highway, or any other public highway associated with a State  
highway project, must be readjusted or relocated in or removed from such right-of-way due to the  
construction or reconstruction of such highway, and

**WHEREAS**, the State, acting by its Commissioner of Transportation, is authorized to  
enter into this Agreement pursuant to Sections 4-8, 13a-98, 13a-98f, 13a-126, 13a-165, 13b-3 and

13b-23 of the Connecticut General Statutes, as revised, and

**WHEREAS**, the Utility has represented to the State that it is duly authorized to enter into this Agreement, carry out its responsibilities under this Agreement, and bind itself and its successors and assigns.

**NOW, THEREFORE**, in consideration of the mutual exchange of promises by and between the State and the Utility, evidenced within this Agreement, the State and the Utility mutually agree as follows:

**Section 1: Definitions**

The following definitions shall apply to this Agreement:

- a. "Additional Construction Work" means design, engineering or construction performed by or on behalf of the State and paid by the Utility for the incorporation of a Utility Facility in a Project which is for the requirements of the Utility and not required by any physical conflict between the Utility Facility and the Project;
- b. "Administrator" means the Transportation Engineering Administrator, Department of Transportation;
- c. "Change in Scope Letter" means a letter from the Utility to the State describing a deviation from the statement of work contained in the Project Construction Estimate;
- d. "Claims" means all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
- e. "Construction Estimate" means the estimate prepared by or on behalf of the Utility for the cost of physically readjusting, relocating and/or removing

Utility Facilities owned by the Utility for a State highway project;

f. “Deductible” means the cost of the readjusted, relocated or removed Utility Facility above the cost required to provide a Utility Facility of equal capacity, age and value showing the betterment and associated cost for which the State is not participating; (i) the value of materials salvaged from existing installations; and (ii) depreciation reserve credits as determined by the cost of the original installation,

g. “Engineer” means the District Engineer for Construction, Department of Transportation;

h. “Increased Cost Letter” means a letter from the Utility to the State describing a deviation in the cost of work contained in the Preliminary Engineering Estimate or the Project Construction Estimate;

i. “Installations and Adjustments” means the physical readjustment, relocation, and/or removal of a Utility Facility;

j. “Authorization to Order Materials Letter” means the letter from the State authorizing the Utility to acquire materials necessary for the Additional Construction Work or Installations and Adjustments;

k. “Plans” means the detailed engineering design documents prepared for the readjustment, relocation, and/or removal of the Utility Facilities necessitated by the Project;

l. “Preliminary Engineering Estimate” or “P.E. Estimate” means the estimate prepared by or on behalf of the Utility for developing the Construction Estimate, Plans and Supporting Data;

- m. "Project" means a State highway project;
- n. "Reference Documents" means "Public Service Facility Policy and Procedures for Highways in Connecticut," dated November 1, 2008, as amended from time to time, "Utility Accommodation Manual," dated February 1, 2009 as amended from time to time, "State of Connecticut Department of Transportation Standard Specifications for Road, Bridges and Incidental Construction, Form 816" (Form 816) and "Supplemental Specifications" as amended from time to time, and Title 23, Code of Federal Regulations, Part 645, Subpart A and Subpart B dated April 1, 2007, as amended from time to time;
- o. "Project Authorization Letter for P.E." means the letter from the Administrator authorizing the Utility to incur those preliminary engineering costs approved by the Administrator;
- p. "Records" means all working papers and such other information and materials as may have been accumulated by the Contractor in Performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.
- q. "Reference Documents" means "Public Service Facility Policy and Procedures for Highways in Connecticut," dated November 1, 2008, as amended from time to time, "Utility Accommodation Manual," dated February 1, 2009 as amended from time to time, "State of Connecticut Department of Transportation Standard Specifications for Road, Bridges and Incidental Construction, Form 816" (Form 816) and "Supplemental

Specifications” as amended from time to time, and Title 23, Code of Federal Regulations, Part 645, Subpart A and Subpart B dated April 1, 2007, as amended from time to time;

r. “Supporting Data” means the documentation that forms the basis of the Construction Estimate including utility relocation informational plan sheets, Utility timetables and any Utility specifications;

s. “Utility Facility” means either utility facilities or utilities as defined in Section 13a-98f of the Connecticut General Statutes or a public service facility as defined in Section 13a-126 of the Connecticut General Statutes.

t. “Utility Parties” means Utility’s members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Utility is in privity of oral or written contract and the Utility intends for such other person or entity to perform under the Agreement in any capacity.

**Section 2: Utility**

**2.01 Preparation of P.E. Estimate**

When requested by the State or its designated agents, the Utility shall prepare and submit to the State a P.E. Estimate for which the Utility may apply to the State for reimbursement under the Connecticut General Statutes. The Utility shall not incur charges for the Project until the Utility receives written authorization from the Administrator in the form of a Project Authorization Letter for P.E. Said authorization may be withheld at the sole discretion of the Administrator. Any increase in the P.E. Estimate for a particular Project will require prior written

authorization of the Administrator, which may be withheld at the Administrator's sole discretion.

2.02 Preliminary Engineering Performed by Consultant

In the event the Utility elects not to perform preliminary engineering with its own forces, or forces of the Utility's corporate affiliates, the Utility shall so advise the State in writing by requesting prior approval to employ the services of a consultant. The Utility agrees to clearly and accurately identify all consultant costs in its estimates and in its billings to the State.

2.03 Preparation of Plans, Construction Estimate and Support Data

Subsequent to the issuance of the Project Authorization Letter for P.E., the Utility shall prepare: (a) Plans, (b) the Construction Estimate, and (c) Supporting Data for the changes to its facilities to accommodate the construction or reconstruction of the Project. The Plans, Construction Estimate, and Supporting Data shall all be prepared in accordance with the Reference Documents which are hereby incorporated by reference and made a part of this Agreement.

2.04 Test Pits and Borings

(a) Whenever the State, acting through the Administrator, notifies the Utility in writing that the State requires the Utility to conduct test borings or to excavate test pits to ascertain the exact location, dimensions, or the structural condition of a Utility Facility for the purposes of a Project the cost shall be shared by the State and the Utility. The State's share shall be determined in accordance with the applicable provisions of Sections 13a-98f and 13a-126 of the Connecticut General Statutes, as revised.

(b) Whenever the State, acting through the Administrator, notifies the Utility in the Project Authorization Letter for P.E. to prepare a Plan, Construction Estimate, and Supporting Data for the relocation or adjustment of its Utility Facilities due to the requirements of the proposed Project and the Utility finds that it can comply with this request only by means of borings or test pits, the Administrator may grant permission for the borings or test pits to be done as part of the Utility's preliminary engineering design, and payment therefore shall be made under the provisions of Sections 13a-98f or 13a-126 of the Connecticut General Statutes, as revised.

2.05 The Construction Estimate

The Construction Estimate shall include, but shall not be limited to, (a) costs required to provide a facility of equal capacity; (b) any costs in excess of the costs required to provide a Utility Facility of equal capacity clearly showing the betterment and associated costs for which the State is not participating; (c) the value of materials salvaged from existing installations; and (d) depreciation reserve credits as determined by the cost of the original installation, the life expectancy of the original Utility Facility, and the unexpired term of such life use. The Construction Estimate shall incorporate the deductible value of items (a) through (d) referenced herein subject to audit as set forth in Subsections 2.16, 2.18 and 3.04 of this Agreement after completion of the work and before final payment is made to the Utility. The depreciation reserve credit must be shown in the Construction Estimates for which the construction cost to the State is over Twenty Thousand Dollars (\$20,000), and the State waives the requirement that depreciation reserve credit be shown in Construction Estimates on construction costs of Twenty Thousand Dollars (\$20,000) or less.

2.06 Submission at Request of Administrator

The Utility shall submit the Plans, Construction Estimate, Supporting Data and Specifications requested by the Administrator to the State for its approval. If after review by the State the Plan, Construction Estimate and Supporting Data are acceptable, the Administrator shall provide the Utility written approval of the Plans, Construction Estimate and Supporting Data. The Project Authorization Letter for Construction shall not be construed as authorization to proceed with work in furtherance of said Installations and Adjustments.

2.07 Utility Responsibilities

The Utility shall assume full responsibility for the accuracy of all data, design, and other products of engineering work created, prepared or produced by the Utility, its agents, servants, employees, corporate affiliate or consultants, as shown on Plans, Supporting Data, Specifications or other pertinent documents relative to the Installations and Adjustments, as herein provided for under the terms of this Agreement. The Utility shall also assume full responsibility for all costs of every name and description which may be incurred by the State as a result of any errors or omissions contained in the data, design, or other products of engineering work created, prepared or produced by the Utility, its agents, servants, employees, corporate affiliate or consultants, as shown on said Plans, Supporting Data, Specifications or other pertinent documents. The Utility shall assume no responsibility for costs incurred by the State as a result of any errors or omissions contained in the data, design, or other products of engineering work created, prepared or produced by the State as shown on said Plans, Supporting Data, Specifications or other pertinent documents.

2.08 Authorization to Order Materials

Upon the Utility's receipt of the Authorization to Order Materials Letter for a Project, the Utility shall use its best efforts to promptly obtain all materials necessary for the relocation and readjustment of Utility Facilities for the Project. Within ten (10) calendar days of receiving the Authorization to Order Materials Letter, the Utility shall notify the State in writing of the date when it anticipates that the Utility will have obtained all materials necessary for the relocation and readjustment of Utility Facilities for the Project. In the event the Utility becomes aware of a change in the date that it anticipates obtaining all materials necessary for the relocation and readjustment of Utility Facilities for the Project, the Utility shall provide the State with written notification of the change. The Utility acknowledges that the State will utilize the anticipated date provided by the Utility to plan for the Project. If the Utility fails to provide the State with a written notice required by this Subsection, the Utility shall be responsible for any and all damages incurred by the State arising from the Utility's failure to provide any such notice.

2.09 Notice to Proceed

The Utility shall not proceed with work in furtherance of the Installations and Adjustments prior to the receipt of a written notice from the Engineer. The Utility shall proceed with due diligence with the Installations and Adjustments in accordance with the approved Plans, Construction Estimates, and Supporting Data.

2.10 Diligent Performance

The Utility shall diligently perform all work necessary to complete the Installations and Adjustments of its Utility Facilities, and shall comply with all requirements of the State in connection with such work. All Installations and Adjustments shall be

completed within a reasonable time. In determining the Installations and Adjustments were completed within a reasonable time, the State may consider, among other things, any schedule submitted by the Utility to the State for the Installations and Adjustments and any other information that the Utility believes the State should consider determining whether the Installations and Adjustments were completed in a reasonable time.

2.11 Reference Documents Controlling

The actual adjustments to the Utility's Facilities shall be governed by the Reference Documents. The Reference Documents are hereby incorporated by reference and made a part of this Agreement.

2.12 Performance of Work by Utility Forces or Contractor

Any Installations and Adjustments authorized by the State may be carried out by the Utility with its own forces and/or by the Utility's duly qualified and certified continuing contractors, but nothing in this paragraph shall be construed to authorize any work to be done by other contractors or any other utility company, except for certain minor contract work approved in advance by the Administrator. Written approval by the State of other than continuing contractors doing work under this Agreement may be granted by the State on the basis of a contract being awarded by the Utility to the lowest qualified bidder from a minimum of three bids submitted by entities unaffiliated with the Utility. If the Utility is unable to obtain three bids, the Utility shall write to the State and explain why it was unable to obtain three bids. The State may, upon the Utility demonstrating good cause for not obtaining three bids, waive the three bid requirement. Upon receipt of written approval from the State, the Utility may award a contract for such work. The State reserves the right to

reject any or all bids for such work at its sole discretion.

2.13 Preparation of Progress Reports

During the construction phase of Projects, the Utility shall prepare reports required for the State's review of the Utility's billing of costs. State Form CON-40, or an approved equivalent form(s), shall be used for the daily reporting of labor, inspection, supervision, or any other related on-site work, as well as equipment and materials used in the work, and shall be prepared by the Utility and certified by representatives of the State and the Utility. Material used and recovered on temporary work, as well as permanent plant items removed, shall be reported on State Form CON-41 in the same manner as the CON-40. The Utility shall submit CON-40's and CON-41's within fifteen (15) calendar days following the completion of its weekly activities.

2.14 Changes in Scope of Work

In the event that the statement of work contained in the approved Project Construction Estimate needs to be changed, the Utility shall provide the Engineer with a Change in Scope Letter. The Change in Scope Letter shall contain such information as the Engineer deems necessary for his review of the proposed changes, including but not limited to, the facts requiring such change, and the proposed impact upon the budget for Installations and Adjustments. In the event the Engineer authorizes the change, such authorization shall be in writing and effective upon receipt by the Utility.

2.15 Construction Cost Increases

When changes in construction are due solely to increases in cost of labor, materials and equipment, the Utility shall advise the State in an Increased Cost Letter with an explanation for this change. The Increased Cost Letter shall contain, but shall not be

limited to, the facts requiring such change, and a statement that payment will be made under the provisions of the "Public Service Facility Policy and Procedures for Highways in Connecticut" as amended from time to time. The Utility shall not implement any such changes in preliminary engineering or construction until those changes have been approved in writing by the State.

2.16 Form of Payment Requests

All requests for payment shall be submitted on State Form ISP, or a DOT approved equivalent form together with pertinent vouchers and cost records, and shall be subject to audit by the State and/or the Federal Highway Administration. All billing for preliminary engineering, test pits, construction and inspection activities shall be billed separately on State Form ISP and be on a project-by-project basis.

2.17 Waiver of Right to Payment

The failure of the Utility to submit the final bills within the time frames specified within this Agreement will constitute a waiver by the Utility of its right to reimbursement of the State's equitable share and may, at the election of the State, result in the loss of reimbursement to the Utility.

2.18 Review of Records

The Utility agrees to permit the State, the State Auditors of Public Accounts, the United States Department of Transportation and/or their duly authorized representatives to examine, review, audit and/or copy any records, books or other documents of the Utility relative to all charges, including charges for extra work, settlement of claims, alleged breaches of this Agreement, charges of continuing contractors of the Utility for work performed by the continuing contractor for the Utility on work other than State highway work or any other matter involving expense

to the State.

If applicable, the Utility receiving federal funds must comply with the Federal Single Audit Act of 1984, P.L. 98-502 and the Amendments of 1996, P.L. 104-156. If applicable, the Utility receiving state funds must comply with Connecticut General Statutes § 7-396a, and the State Single Audit Act, §§ 4-230 through 236 inclusive, and regulations promulgated thereunder.

2.19 Requirement for Encroachment Permit

The Utility shall obtain an encroachment permit pursuant to the provisions of Sections 13a-247 and 13b-17 of the General Statutes and Sections 13b-17-1 through 42 of the Regulations of Connecticut State Agencies prior to placing any Utility Facility within, on, along, over, or under any land compromising the right-of-way of a state highway. Any Utility Facility placed within, on, along, over, or under any land compromising the right-of-way of a state highway without an encroachment permit from the State shall not be eligible for reimbursement and nothing in this Agreement shall obligate the State to reimburse the Utility for the costs associated with the readjustment, relocation, or removal of any such facility. The Utility shall reimburse the State for the costs associated with the readjustment, relocation, or removal of any facility placed within, on, along, over, or under any land compromising the right-of-way of a state highway or any other public highway without an encroachment permit.

2.20 Requirement of Encroachment Agreement for Trunk Line or Transmission Type Facilities

The Utility shall enter into an encroachment agreement with the Commissioner pursuant to the provisions of Section 13a-126c of the General Statutes for any longitudinal use of the right-of-way of a state highway to accommodate trunk line or transmission-type facilities prior to placing any trunk line or transmission-type facility within, on, along, over, or under any land compromising the right-of-way of a

state highway. Any trunk line or transmission-type facility placed within, on, along, over, or under any land compromising the right-of-way of a state highway without an encroachment agreement shall not be eligible for reimbursement and nothing in this Agreement shall obligate the State to reimburse the Utility for the costs associated with the readjustment, relocation, or removal of any such facility. The Utility shall reimburse the State for the cost associated with the readjustment, relocation, or removal of any facility place, within, on, along, over, or under any land compromising the right-of-way of a state highway or any other public highway without an encroachment agreement.

2.21 Indemnification and Hold Harmless

(a) The Utility shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Agreement, including the acts of commission or omission (collectively, the "Acts") of the Utility or Utility Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Agreement. The Utility shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Utility's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Utility's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions,

secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance.

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

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

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

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

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

## 2.22 Sovereign and Governmental Immunity

The Utility 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

Utility, unless requested to do so by the State. If this Agreement is between the State and a Municipality, 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.

2.23 Compliance with State and Federal Administrative Requirements

The Utility shall comply with all State and Federal Administrative requirements incorporated herein by reference and attached herewith as Exhibit A, as may be amended from time to time, and all Schedules, as may be amended from time to time, attached herewith, which are also hereby made part of this Agreement.

2.24 Documents Submitted With Cost Estimates

For each Project, the following documents and any documents attached thereto shall be incorporated by reference into this Agreement:

- a. the Project Authorization Letter for P.E.;
- b. the Project Authorization Letter for Construction;
- c. the Authorization to Order Materials Letter;
- d. the Notice to Proceed;
- e. the State's response to any Change in Scope Letter;
- f. the State's response to any Increased Cost Letter; and
- g. documentation of Additional Construction Work.

2.25 Special Provisions Disadvantaged Business Enterprises

The Utility hereby acknowledges and agrees to comply with "Special Provisions, Disadvantaged Business Enterprises As Subcontractors, Any Material Suppliers Or Manufacturers For Federal Funded Projects Involving Utility Adjustment & Relocations," dated May 7, 2001, as revised, as set forth in Exhibit A, Schedule 1 (attached herewith and incorporated by reference).

**DOES NOT APPLY**

2.26 Insurance

- (a) With respect to the operations that the Utility performs or engages a Prime Contractor to perform, and also those that are performed by subcontractors of the Prime Contractor, in conjunction with the Project, the Utility shall carry, and/or shall require its Prime Contractor (i) to carry and (ii) to impose on its subcontractors the requirement to carry, for the duration of the Project, the insurance requirements set forth in the Form 816 at (i) Section 1.03.07 "Insurance," and (ii) specifically with respect to any working drawings prepared by a designer, Section 1.05.02(2)(a) "Plans, Working Drawings and Shop Drawings." With respect to Section 1.05.02(2)a), evidence of the Professional Liability Insurance Policy may be submitted on the State's Form "Certificate of Insurance DOC-001."
- (b) With respect to Design/Construction Inspection activities that the Utility Performs or engages a Designer/Inspection Consultant to perform, and also those that are performed by any subconsultants of the Designer/Inspection Consultant, in conjunction with the Project, the Utility shall carry, and/or shall require its Designer/Inspection Consultant for the Project (i) to carry and (ii) to impose on

its subconsultants the requirement to carry, for the duration of the Project, the insurance requirements set forth in the Form 816 at Section 1.03.07, Items (1), (2), (3), (5), (7), and (8) "Insurance." For the purposes of this subparagraph (b), any reference in the Standard Specifications to "Contractor" and "subcontractor" hereby refers to the Designer/Inspection Consultant and subconsultant, respectively.

(c) With respect to the Design/Construction Inspection activities that the Utility performs or engages a Designer/Inspection Consultant to perform, and also those that are performed by any subconsultants of the Design/Inspection Consultant, in conjunction with the Project, the Utility shall carry, and/or shall require its Design/Inspection Consultant (i) to carry and (ii) to impose on its subconsultants the requirement to carry, for the duration of the Project, a Professional Liability Insurance policy for errors and omissions in the minimum amount of Two Million Dollars (\$2,000,000), which policy may contain a maximum Two Hundred and Fifty Thousand Dollars (\$250,000) deductible clause, provided that the policy holder shall be liable to the extent of at least the deductible amount. The Professional Liability Insurance coverage shall continue for a period of three (3) years from the date of acceptance of the Project by the State, subject to the continued commercial availability of such insurance. The Professional Liability Insurance Policy must include pollution and environmental impairment coverage as part thereof, if such insurance is applicable to the work performed as part of the Design/Inspection Activities in conjunction with the Project.

(d) With respect to the operations that the Utility performs or engages a Design/Inspection Consultant to perform, and also those that are performed by

subconsultants thereof, in conjunction with the Project, the Utility shall carry, and/or shall require its Design/Inspection Consultant (i) to carry and (ii) to impose on its subconsultants, the requirement to carry, for the duration of the Project, a Valuable Papers Insurance Policy until the work has been completed and accepted by the State. Said policy will assure the State that all records, papers, maps, statistics, survey notes and other data shall be reestablished, recreated, or restored if made unavailable by fire, theft, flood, or other cause. This policy shall provide coverage in the amount of Fifty Thousand Dollars (\$50,000) regardless of the physical location of the insured items.

- (e) Said coverages must be provided by an insurance company or companies satisfactory to the State, except that, with respect to work performed directly and exclusively by the Utility, the Utility may request that the State accept coverage provided under a self insurance program. If requested by the State, the Utility must provide evidence of its status as a self-insured entity and describe its financial condition, the self-insured funding mechanism and the specific process on how to file a claim against the self insurance program. If such self-insurance coverage with respect to any insurance required herein is acceptable to the State, in its sole discretion, then the Utility shall assume any and all claims as a self-insured entity, and the respective insurance requirements stated herein will not be applicable.
- (f) The Utility shall produce, within five (5) business days, a copy or copies of all applicable insurance policies when requested by the State. In providing said policies, the Utility may redact provisions of the policy that are deemed by the insurer to be proprietary. This provision shall survive the suspension, expiration

or termination of this Agreement. The Utility shall insert this required provision into its contracts or agreements with its Prime Contractor and/or Design/Inspection Consultant, if applicable, and shall require its Prime Contractor and/or Design/Inspection Consultant to insert this required provision into its (their) contracts or agreements with its (their) subcontractors and/or subconsultants.

2.27 Maximum Fees for Architects, Engineers and Consultants (Federal Funds)

When any phase of the Project is federally funded, the Utility hereby acknowledges and agrees to comply with the guidelines stipulated in “Policy No. F&A-30, dated July 23, 2015; Subject: Maximum Fees for Architects, Engineers and Consultants”, as set forth in Exhibit A, Schedule 2 (attached herewith and incorporated by reference). Policy No. EX.O. -33, dated June 25, 2015, as set forth in Exhibit A, Schedule 3 (attached herewith and incorporated by reference) and the guidelines stipulated therein are to be utilized, when applicable, in accordance with this Policy Statement.

The Utility shall submit to the State for review and approval, any proposed Agreement between the Utility and a consultant prior to its execution. No reimbursable costs may be incurred on the consultant agreements prior to the State’s written approval.

The Utility shall ensure that all Parties are in compliance with the audit requirements set forth in Title 23, Section 172 CFR, as revised, when retaining consultants.

2.28 Policy No. EX.O. -33 (100% State Funds)

When all phases of the Project are one hundred percent (100%) state funded, the Utility hereby acknowledges and agrees to comply with the guidelines stipulated in Policy No. EX.O. -33, dated June 25, 2015, which is incorporated by reference, when architects, engineers, and/or consultants are retained.

**Section 3: State**

3.01 Payment for Increased Costs

The State's obligation to pay the cost increase shall be subject to final audit as set forth in Subsections 2.16, 2.18 and 3.04 of this Agreement.

3.02 Partial Payments

Upon the Utility's request for partial payments made on the proper form, the State may make partial payments to the Utility of ninety-seven and one half percent (97.5%) of the State's equitable share of the approved cost for all authorized actual incurred charges.

(a) The Utility's final bill to the State for the State's equitable share of all preliminary engineering costs incurred by the Utility, shall be submitted to the State within six (6) months of the date of the Administrator's written authorization to the Utility to incur charges; time being of the essence.

(b) The Utility's final bill to the State for the State's equitable share of all authorized construction costs incurred, shall be submitted to the State within a period of six (6) months after completion of the Utility's construction activities, time being of the essence.

3.03 State's Equitable Share

The State's equitable share of the cost of the Installations and Adjustments of the Utility, as herein provided and approved by the State, shall be in conformance with the provisions of the applicable Connecticut General Statutes, as revised.

3.04 No Prohibition on Additional Funding

Nothing in this Agreement shall preclude the State from requesting reimbursement from the Federal Highway Administration for a portion or all of its share of the cost of the Utility Installations and Adjustments, as provided for in this Agreement, in accordance with the provisions of Title 23, Code of Federal Regulations, Part 645; Subpart A, dated April 1, 2007, and subsequent supplements or amendments. The records and accounts of the Utility shall be made available in the Utility's office for audit, upon request, by authorized representatives of the State and/or the United States Department of Transportation. Nothing in this Agreement shall preclude the State from requesting funding from any other federal agency, municipality or any other funding source.

**Section 4: State and Utility**

4.01 Additional Construction Work Pursuant to Connecticut General Statutes Section 13a-

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- (a) Upon request of the Utility, the State may include Additional Construction Work in a Project. The Utility agrees to accept ownership of and maintain as part of its overall system, all Additional Construction Work herein provided for, immediately upon completion of the Additional Construction Work or at such time as notified by the State.

(b) Upon demand by the State, following the advertising of a Project, the Utility shall deposit with the State, a certified check, drawn on the account of the Utility, payable to the "State Treasurer, State of Connecticut," in the amount of the estimate for the Additional Construction Work for each Project. After final audit for the Project in the event the actual cost of Additional Construction Work is more than the amount of the Utility's deposit, the Utility shall pay the difference to the State. In the event the actual cost of Additional Construction Work is less than the amount of deposit, the State shall pay the difference to the Utility. No interest shall be payable or due on the difference between the amount deposited and the final audited amount. In the event the construction of a certain Project is cancelled, all monies deposited by the Utility for said Additional Construction Work shall be returned to the Utility with no interest within ninety (90) days after receipt of notice of cancellation of the Project by the Department of Transportation's Office of Financial Management and Support or its successors, unless the State notifies the Utility in writing stating otherwise.

4.02. Incorporation of Utility Installations and Adjustments into Project

When requested to do so by the Utility, required Installations and Adjustments may be included in any Project contract for highway improvements whenever the Administrator considers it to be in the best interest of the State. If it is determined that a demand deposit is required from the Utility, it shall be accomplished as in Subsection 4.01 of this Agreement.

#### 4.03 Audit

Final payment costs associated with each of the activities of preliminary engineering, test borings or test pits, and construction shall be made for actual authorized cost incurred, after final audit and after all exceptions have been resolved.

#### 4.04 Jurisdiction and Forum

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

#### 4.05 Litigation

The Utility agrees that the sole and exclusive means for the presentation of any claim against the State arising from or in connection with this Agreement shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims against the

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

4.06 Preconditions to Commence Work and Reimbursement by State

This Agreement itself is not an authorization for the Utility to provide goods or begin performance in any way. The Utility may provide goods only after receiving (a) a Project Authorization Letter for Construction; and (b) an Authorization to Order Materials Letter. The Utility may begin performance only after receiving (a) a Project Authorization Letter for Construction; (b) an Authorization to Order Materials Letter; (c) a Purchase Order issued by the State against this Agreement; and (d) a Notice to Proceed as set forth in Subsection 2.09 of this Agreement. The State shall issue a Purchase Order against this directly to the Utility and to no other person.

Any work performed in a state highway right of way shall require an encroachment permit. If the Installation and Adjustment or Additional Construction Work concerns a trunk line or transmission type facility in a state highway right of way, the Utility shall enter into an encroachment agreement with the State. A Utility providing goods or commencing work without the requisite items listed in this Subsection does so at the Utility's own risk.

4.07 No Third Party Beneficiaries

No person shall be deemed to be a third party beneficiary to this Agreement.

4.08 Term

This Agreement shall have a term of ten (10) years from the effective date of this Agreement. No amendment to this Agreement shall be valid unless mutually agreed upon by both Parties in writing and approved, as to form, by the Attorney General of the State of Connecticut.

- (a) The State and the Utility reserve the right to terminate or propose to revise this Agreement in whole or part at any time by fifteen (15) days advance notice, in writing, to the other party. The termination of this Agreement by the Utility shall not relieve the Utility from its obligation to remove a Utility Facility from a State highway upon written notice from the State that the Utility Facility conflicts with a Project.
- (b) The State, upon 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 and shall not be deemed a breach of this Agreement.
- (c) Any such suspension, postponement or termination shall be affected by delivery to the Utility of a written notice specifying the extent to which performance of work under the Agreement is being suspended or postponed or that the Agreement is being terminated, and the date upon which such action shall be effective.
- (d) If the State terminates the Agreement, the State shall reimburse the Utility for 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.
- (e) When the volume of work completed, as of the termination date, is not sufficient to reimburse the Utility under contract unit prices for its related expenses, the State may consider reimbursing the Utility for

such expenses.

- (f) Materials obtained by the Utility 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 Utility, be purchased from the contractor at actual cost as shown by receipted bills and the State shall reimburse the Utility 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.
- (g) The Utility shall make payment to the State for the original costs of materials obtained by the State or its contractor for the Project that have been purchased by the Utility less an allowable handling fee and take possession of these materials in the event the Project is cancelled or the Agreement is terminated without any fault of the Utility.
- (h) Termination of this Agreement shall not relieve the Utility or its contractor of its responsibilities for the completed work, nor shall it relieve the contractor, its surety or the Utility 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 Utility.

#### 4.09 Official Notice

Any official notice from one such party to the other such party (or parties), in order for such notice to be binding thereon, shall:

a. Be in writing (hardcopy) 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 Utility is to receive such notice:

City of Danbury  
155 Deer Hill Avenue  
Danbury, CT 06810

b. Be delivered in person with acknowledgement of receipt or be mailed by the United States Postal Service - "Certified Mail" to the address recited herein as being the address of the party(ies) 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) including any electronically produced versions provided, permitted, or required for the making or ratification of any change, revision, addition to, or deletion from, the document, contract, or agreement in which this "Official Notice" specification is contained.

Further, it is understood and agreed that nothing hereinabove contained shall preclude the Parties 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.

4.10 Agent for Service of Process

In the event that the Utility is a nonresident person, partnership or voluntary association, the Utility agrees that the Secretary of the State, (including any successor thereto) is hereby appointed by the Utility as its agent for service of process for any action arising out of or as a result of this Agreement, and such appointment shall survive the expiration or termination of this Agreement.

4.11 Sovereign Immunity

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

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 Redeker, Commissioner

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

BY: \_\_\_\_\_ (Seal)  
Thomas A. Harley, P.E.  
Bureau Chief  
Bureau of Engineering and Construction

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

Date: \_\_\_\_\_

City of Danbury

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

BY:  
Sign Name: \_\_\_\_\_ (Seal)  
Print Name:  
Print Title:

Sign: \_\_\_\_\_  
Print: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**and Schedules 1 Through 8**  
**MANDATORY STATE AND FEDERAL ADMINISTRATIVE REQUIREMENTS**

The following clause does not apply to Governmental Subdivisions:

1. **Non-discrimination**

References in this section to "contract" shall mean this Agreement and references to "contractor" shall mean the Utility.

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

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

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(b) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(g)(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous

places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

2 Executive Orders. This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Agreement as if they had been fully set forth in it. The Agreement may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and to Executive Order 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order No. 14 and/or Executive Order No. 49 are applicable, they are deemed to be incorporated into and are made a part of the Agreement as if they had been fully set forth in it. At the Utility's request, the Department shall provide a copy of these orders to the Utility.

3. The Utility hereby acknowledges and agrees to comply with the policies enumerated in "Connecticut Department of Transportation Policy Statement Policy No. F & A - 10 Subject: Code of Ethics Policy", June 1, 2007, as set forth in Exhibit A, Schedule 4 (attached herewith and incorporated by reference) and all state ethics laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of state ethics laws developed by the Office of State Ethics pursuant to section 1-81b of the Connecticut General Statutes is set forth in Exhibit A, Schedule 4A (attached herewith and incorporated by reference) as if the summary of state ethics laws had been fully set forth in this Agreement.

4. The Utility shall notify the State in writing when there is a change in its Certificate of Incorporation or a change in the individual(s) in actual charge of the work specified herein. This change shall not relieve the Utility of any responsibility for the accuracy and completeness of all products of the work under this Agreement, including all supplements thereto.

5. The State shall have the right to set-off against amounts otherwise due to the Utility under this Agreement or under any other agreement or arrangement that the Utility has with the State (a) any costs that the State incurs which are due to the Utility's non-compliance with this Agreement and (b) any other amounts that are due and payable from the Utility to the State. Any sum taken in set-off from the Utility shall be deemed to have been paid to the Utility for purposes of the Utility's payment obligations under Connecticut General Statutes Section 49-41c.

6. **The following clause is applicable to those contracts with an aggregate value of Five Million Dollars (\$5,000,000.00) or more.** Whistleblowing. This Agreement may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Utility takes or threatens to take any personnel action against any employee of the Utility in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Utility shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Agreement. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may

request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Utility.

7. **The following clause is applicable to those contracts with an aggregate value of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) or more.** Disclosure of Records. This Agreement may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

8. For all State contracts as defined in Conn. Gen. Stat. §9-612(f)(1) having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations", Exhibit A, Schedule 5 (attached herewith).

9. The Utility shall comply with the provisions contained in Section 1-86e of the Connecticut General Statutes, which provides as follows:

(a) No person hired by the State, as a consultant or independent contractor shall:

(1) Use the authority provided to the person under the contract, or any confidential information acquired in the performance of the contract, to obtain financial gain for the person, an employee of the person or a member of the immediate family of any such person or employee;

(2) Accept another State contract which would impair the independent judgment of the person in the performance of the existing contract; or

(3) Accept anything of value based on an understanding that the actions of the person on behalf of the State would be influenced.

(b) No person shall give anything of value to a person hired by the State as a consultant or independent contractor based on an understanding that the actions of the consultant or independent contractor on behalf of the State would be influenced.

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

(a) The signature on the Agreement by the Utility shall constitute certification that to the best of its knowledge and belief the Utility 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:

(i) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(ii) Has not, within the prescribed statutory time 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;

(iii) 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)(ii) of this certification; and

(iv) Have not, within a five-year period preceding this Agreement, had one or more public transactions (Federal, State or local) terminated for cause or default.

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

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

(i) The prospective subcontractors, sub-subcontractors participants certify, by submission of its/their proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(ii) Where the prospective subcontractors, sub-subcontractors participants are unable to certify to any of the statements in this certification, such prospective participants shall attach an explanation to this proposal.

11. That as a condition to receiving federal financial assistance under the Contract/Agreement, if any, the Utility shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d – 2000d-7), all requirements imposed by the regulations of the United States Department of Transportation (49 CFR Part 21) issued in implementation thereof, and the Title VI Contractor Assurances, as set forth in Exhibit A, Schedule 6 (attached herewith and incorporated by reference).

12. Certification for Federal-Aid Contracts (For contracts exceeding \$100,000):

The Utility certifies, by signing and submitting this Bid, Agreement, Contract, or Proposal, to the best of his/her/its knowledge and belief, that:

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

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Utility shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", as set forth in Exhibit A, Schedule 7 (attached herewith and incorporated by reference), in accordance with its instructions. If applicable, Disclosure Form-LLL shall be completed and submitted with the Bid, Agreement, Contract, and/or Proposal.

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

The Utility also agrees by submitting its Bid, Agreement, Contract, or Proposal that it shall require that the language of this Certification be included in all subcontracts, sub-subcontracts which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly. These completed Disclosure Forms-LLL, if applicable, shall be

mailed to the Connecticut Department of Transportation, P.O. Box 317546, Newington, CT 06131-7546, to the attention of the project manager.

13. This clause applies to the Utility who is or will be responsible for compliance with the terms of the Americans with Disabilities Act of 1990 ("Act") Public Law 101-336, during the term of the Agreement. The Utility represents that it is familiar with the terms of this Act and that it is in compliance with the Act. Failure of the Utility to satisfy this standard as the same applies to performance under this Agreement, either now or during the term of the Agreement as it may be amended, will render the Agreement voidable at the option of the State upon notice to the Utility. The Utility warrants that it will hold the State harmless and indemnify the State from any liability which may be imposed upon the State as a result of any failure of the Utility to be in compliance with this Act, as the same applies to performance under this Agreement.

**The following clause does not apply to governmental subdivisions:**

14. The Utility hereby acknowledges and agrees to comply with the Connecticut Required Contract/Agreement Provisions entitled "Specific Equal Employment Opportunity Responsibilities", dated March 3, 2009, as may be amended from time to time, as set forth in Exhibit A, Schedule 8 (attached herewith and incorporated by reference).

**The following clause applies to governmental subdivisions:**

15. When the Utility receives State or Federal funds it shall incorporate the "Connecticut Required Contract/Agreement Provisions, Specific Equal Employment Opportunity Responsibilities" (SEEOR), dated March 3, 2009, as may be amended from time to time, as a material term of any contracts/agreements it enters into with its contractors, consulting engineers or other vendors, and shall require the contractors, consulting engineers or other vendors to include this requirement in any of its subcontracts. The Utility shall also attach a copy of the SEEOR, as part of any contracts/agreements with contractors, consulting engineers or other vendors and require that the contractors, consulting engineers or other vendors attach the SEEOR to its subcontracts.

**The following clause does not apply to governmental subdivisions:**

16. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Utility's and Utility Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Agreement.

The Utility shall maintain, and shall require each of the Utility Parties to maintain, accurate and complete Records. The Utility shall make all of its and the Utility Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.

The State shall make all requests for any audit or inspection in writing and shall provide the Utility with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.

The Utility shall keep and preserve or cause to be kept and preserved all of its and Utility Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Utility shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.

The Utility shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Utility shall cooperate with an exit conference.

The Utility shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Utility's Parties.

May 7, 2001

**SPECIAL PROVISIONS  
FOR DISADVANTAGED BUSINESS ENTERPRISES  
AS SUBCONTRACTORS AND MATERIAL SUPPLIERS OR MANUFACTURERS  
FOR FEDERAL FUNDED PROJECTS INVOLVING  
UTILITY ADJUSTMENTS & RELOCATIONS**

**I. DEFINITIONS: 49 CFR Part 26, Subpart A, C & D**

**NOTE: Where these definitions are inconsistent with the definitions of Section 26.5 of this Part, these definitions control for purposes of Subpart D. The definitions of Section 26.5 control for all other purposes under Part 26.**

- A. "CDOT" means the Connecticut Department of Transportation.
- B. "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration ("FHWA"), the Federal Transit Administration ("FTA"), and the Federal Aviation Administration ("FAA").
- C. "Broker" means a party acting as an agent or agent in negotiating contracts, agreements, purchases, sales, etc., in return for a fee or commission.
- D. "Contract," "agreement" or "subcontract" means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For the purposes of this provision a lease for equipment or products is also considered to be a Contract.
- E. "Contractor," means a consultant, second party or any other entity doing business with CDOT or, as the context may require, with another Contractor.
- F. "Disadvantaged Business Enterprise" (DBE) means a small business concern:
1. That is at least 51 percent owned by one or more individuals who are socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock of which is owned by one or more such individuals; and
  2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- G. "DOT-assisted Contract" means any Contract between a recipient and a Utility (at any time) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees.

H. "Good Faith Efforts" means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Refer to Appendix A of Code of Federal Regulation ("CFR") Part 26 -- "Guidance Concerning Good Faith Efforts," a copy of which is attached to this provision, for guidance as to what constitutes good faith efforts.

I. "Small Business Concern" means, with respect to firms seeking to participate as DBEs in DOT-assisted Contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration ("SBA") regulations implementing it (13 CFR Part 121) that does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26, Section 26.607.

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

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

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

i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America, or other Spanish or Portuguese culture or origin, regardless of race;

iii. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

vi. Women

vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

## II. GENERAL

A. The utility shall cooperate with the Connecticut Department of Transportation (CDOT) and the Federal Government in implementing the required contract obligations which concerning Disadvantaged Business Enterprise (DBE) utilization on this contract in accordance with the Transportation Equity Act (TEA-21-June 9, 1998) (Pub. L. 105-178) and the title 49 Code of Federal Regulations (CFR) Part 26, as revised. The utility shall also cooperate with CDOT and the Federal Government in reviewing the utility's activities relating to this provision. This Special Provision is in addition to all other Equal Opportunity Employment requirements of this Agreement.

B. The utility will solicit DBE participation in all items of work it intends to subcontract.

1. Prior to selecting a subcontractor, the utility shall make contact with certified DBEs to affirmatively solicit their intent, capability and price, and shall document the results of such contacts.
2. The submission of a false documentation concerning contact and solicitation of a DBE shall be cause for termination of this Agreement by CDOT.

C. The utility shall keep such records as are necessary to determine compliance with this provision. These records and reports shall indicate the following items for the DBE and the selected contractors:

1. a. Name and address  
b. Date and type of contact made (i.e., telephone, registered letter, etc.)  
c. Name of subcontract item(s)  
d. Results of contact  
e. Explanation of above results  
f. Identification of selected subcontractor  
g. Bid price and date received
2. A detailed statement of the efforts made to select additional subcontract opportunities for work to be performed by DBEs in order to increase the likelihood of achieving the stated goal.
3. A detailed statement, including documentation of the efforts made to contact and solicit contracts with DBEs on CDOT's approved certification list including the names, addresses, dates and telephone numbers of DBEs contacted, and a description of the information provided to the DBEs regarding the plans, specifications and anticipated time schedule of items proposed to be subcontracted and nature of the response from the contacted firm.
4. For each DBE that placed a subcontract quotation, which the utility considered not to be acceptable, provide a detailed statement of the reasons for this conclusion.

5. Documents to support contacts made with CDOT requesting assistance in satisfying the goal of DBE requirements.

6. Document other special efforts undertaken by the utility to meet the goal of providing DBE participation in this project.

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

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

### III. SPECIFIC REQUIREMENTS

A. In order to increase the participation of DBEs on utility work required by this project, CDOT requires the following:

1. The utility shall assure that certified DBEs will have an equitable opportunity to compete under this Special Provision, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of DBEs.

### IV. MATERIAL SUPPLIERS OR MANUFACTURERS

A. The utility is encouraged to utilize DBEs which function as material suppliers or manufacturers of products required on this project. The Utility must provide the CDOT with:

1. An executed "Connecticut Department of Transportation DBE Supplier/Manufacturer affidavit" (sample attached), and
2. Substantiation of payments made to the supplier or manufacturer for materials used on the project.

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

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

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

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

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

VI. BROKERING

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

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

C. Firms involved in the brokering of work, whether they are DBEs or majority firms who engage in willful falsification, distortion or misrepresentation with respect to any facts related to the project shall be referred to the U.S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U.S. Code, Section 1020.

NOTE: All references to "Bidder" shall be construed as "Utility".

#### APPENDIX A TO 49 CFR PART 26 -- GUIDANCE CONCERNING GOOD FAITH EFFORTS

- I. When, as a recipient, you establish a Contract goal on a DOT-assisted Contract, a Bidder/Contractor must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The Bidder/Contractor can meet this requirement in either of two ways. First, the Bidder/Contractor can meet the goal, documenting commitments for participation by DBE firms sufficient for the purpose. Second, even if it doesn't meet the goal, the Bidder/Contractor can document adequate good faith efforts. This means that the Bidder/Contractor must show that it took a necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which you have established a Contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment as to whether a Bidder/Contractor that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder/Contractor has made. The efforts employed by the Bidder/Contractor should be those that one could reasonably expect a Bidder/Contractor to take if the Bidder/Contractor were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE Contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE Contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call; meeting quantitative formulas is not required.
- III. The Department also strongly cautions you against requiring that a Bidder/Contractor meet a Contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a Contract, even though the Bidder/Contractor makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the Bidder/Contractor's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive. For example, other factors or types of efforts may be relevant in appropriate cases.
  - A. Soliciting through all reasonable and available means (e.g., oral and written at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the Contract. The Bidder/Contractor must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Bidder/Contractor must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units to facilitate DBE participation, even when the prime Contractor might otherwise prefer to perform these work items with its own forces.

providing interested DBEs with adequate information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation.

- (1) Negotiating in good faith with interested DBEs. It is the Bidder/Contractor's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (2) A Bidder/Contractor using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as Contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Bidder/Contractor's failure to meet the Contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime Contractor to perform the work of a Contract with its own organization does not relieve the Bidder/Contractor of its responsibility to make good faith efforts. Prime Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids/proposals in the Contractor's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Oct-00

- V. In determining whether a Bidder/Contractor has made good faith efforts, you may take into account the performance of other Bidder/Contractors in meeting the Contract. For example, when the apparent successful Bidder/Contractor fails to meet the Contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful Bidder/Contractor could have met the goal. If the apparent successful Bidder/Contractor fails to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidder/Contractors, you may view this, in conjunction with other factors, as evidence of the apparent successful Bidder/Contractor having made good faith efforts.

**AFFIDAVIT FOR THE UTILIZATION OF  
MATERIAL SUPPLIERS OR MANUFACTURERS**

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

State Project No. \_\_\_\_\_

Federal Aid Project No. \_\_\_\_\_

Description of Project \_\_\_\_\_

I, \_\_\_\_\_, acting in behalf of \_\_\_\_\_  
(Name of person signing Affidavit) (DBE person, firm, association or organization)  
of which I am the \_\_\_\_\_ certify and affirm that \_\_\_\_\_  
(Title of Person) (DBE person, firm, association or organization).

is a certified Connecticut Department of Transportation DBE. I further certify and affirm that I have read and understand 49 CFR, Sec. 26.53(e)(2), as the same may be revised.

I further certify and affirm that \_\_\_\_\_ will assume the actual and  
(DBE person, firm, association or organization)

contractual responsibility for the provision of the materials and/or supplies sought by \_\_\_\_\_  
(Utility Contractor)

If a manufacturer, I produce goods from raw materials or substantially alter them before resale, or if a supplier, I perform a commercially useful function in the supply process.

I understand that false statements made herein are punishable by Law (Sec. 3a-157), CGS, as revised).

\_\_\_\_\_  
(Name of Organization or Firm)

\_\_\_\_\_  
(Signature & Title of Official making the Affidavit)

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public (Commissioner of the Superior Court)

My Commission Expires \_\_\_\_\_

**CERTIFICATE OF CORPORATION**

\_\_\_\_\_, certify that I am the \_\_\_\_\_ (Official)  
of the Organization named in the foregoing instrument; that I have been duly authorized to affix the seal of the Organization to such papers as require the seal; that \_\_\_\_\_ who signed said instrument on behalf of the Organization, was then  
F said Organization; that said instrument was duly signed for and in behalf of said Organization by authority of its governing body and is within  
the scope of its organizational powers.

\_\_\_\_\_  
(Signature of Person Certifying) (Date)

General



## CONNECTICUT DEPARTMENT OF TRANSPORTATION POLICY STATEMENT

POLICY NO. F&A-30

July 23, 2015

**SUBJECT:** Maximum Fees for Architects, Engineers, and Consultants

It is Department policy that maximum fees for architects, engineers, and consultants shall be in accordance with the provisions of Chapter 11 of United States Code Title 40, Part 36 of Title 48 of the Code of Federal Regulations (CFR) and 23USC 11 2(b)2:

Under the terms of those federal regulations, the Department "shall accept indirect cost rates established in accordance with the Federal Acquisition Regulations for 1-year applicable accounting periods by a cognizant Federal or State government agency...." and "...shall apply such rates for the purpose of contract estimation, negotiation, administration, reporting and contract payment and shall not be limited by administrative or de facto ceilings of any kind."

If a project, part of a project or a new task based assignment (project) is federal funded, then the above stated requirements shall apply.

All new agreements that do not have federal funding will apply the requirements of Policy Statement No. EX.O.-33, dated June 25, 2015.

The below listed agreement and assignments which contain the reference of GL 97-1 in their language shall be completed using the maximum limits contained in OPM's GL 97-1:

- Existing agreements that are supplemented after June 25, 2015
- Existing task based agreements
- New task based assignments (projects) that have no federal funding
- Extra work claims on existing agreements

This policy also applies to those entities (i.e., towns, utilities, etc.) that receive federal funding for any phase of a project.

(This Policy Statement supersedes Policy Statement No. F&A-30 dated April 12, 2006)

A handwritten signature in cursive script, reading "James Redeker".

James Redeker  
Commissioner



CONNECTICUT DEPARTMENT OF TRANSPORTATION  
**POLICY STATEMENT**

POLICY NO. EX.O. - 99  
June 25, 2015

**SUBJECT:** Policy on Non-Federally Funded Contract Fees for Architects, Engineers and Consultants performing services for the Department

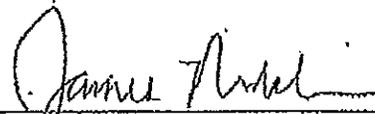
On May, 4 2015 the Office of Policy and Management (OPM) rescinded OPM General Letter No. 97-1. OPM is currently working, in consultation with DOT, to establish revised guidelines regarding the reasonableness and allow-ability of various cost factors related to engineering consultant services as required by Section 13b-20m of the Connecticut General Statutes.

In the interim, the Department will utilize the following Policy on Non-Federally Funded Contract Fees for Architects, Engineers and Consultants performing services for the Department:

All contracts for architects, engineers and consultants shall be negotiated and awarded on the following basis:

1. Burden, Fringe, Overhead and Profit – Actual but not to exceed 165% for work utilizing a Home Office rate and 190% for work utilizing a Field Office rate.
2. Travel – Maximum is established per the State Travel Regulations (Manager's Agreement).

Each such contract must contain appropriate language to clearly acknowledge the parameters of this letter.

  
James Redeker  
Commissioner



Schedule 4  
CONNECTICUT DEPARTMENT OF TRANSPORTATION  
**POLICY STATEMENT**

POLICY NO. F&A-10  
June 1, 2007

**SUBJECT: Code of Ethics Policy**

The purpose of this policy is to establish and maintain high standards of honesty, integrity, and quality of performance for all employees of the Department of Transportation ("DOT" or "Department"). Individuals in government service have positions of significant trust and responsibility that require them to adhere to the highest ethical standards. Standards that might be acceptable in other public or private organizations are not necessarily acceptable for the DOT. It is expected that all DOT employees will comply with this policy as well as the Code of Ethics for Public Officials, and strive to avoid even the appearance of impropriety in their relationships with members of the public, other agencies, private vendors, consultants, and contractors. This policy is, as is permitted by law, in some cases stricter than the Code of Ethics for Public Officials. Where that is true, employees are required to comply with the more stringent DOT policy. The Code of Ethics for Public Officials is State law and governs the conduct of all State employees and public officials regardless of the agency in which they serve. The entire Code, as well as a summary of its provisions, may be found at the Office of State Ethics' web site: [www.ct.gov/ethics/site/default.asp](http://www.ct.gov/ethics/site/default.asp). For formal and informal interpretations of the Code of Ethics, DOT employees should contact the Office of State Ethics or the DOT's Ethics Compliance Officer or her designee. All State agencies are required by law to have an ethics policy statement. Additionally, all State agencies are required by law to have an Ethics Liaison or Ethics Compliance Officer. The DOT, because of the size and scope of its procurement activities, has an Ethics Compliance Officer who is responsible for the Department's: development of ethics policies; coordination of ethics training programs; and monitoring of programs for agency compliance with its ethics policies and the Code of Ethics for Public Officials. At least annually, the Ethics Compliance Officer shall provide ethics training to agency personnel involved in contractor selection, evaluation, and supervision. A DOT employee who has a question or is unsure about the provisions of this policy, or who would like assistance contacting the Office of State Ethics, should contact the Ethics Compliance Officer or her designee.

**The DOT Ethics Compliance Officer is:**

Denise Rodosevich, Managing Attorney  
Office of Legal Services

For questions, contact the Ethics  
Compliance Officer's Designee:

Alice M. Sexton, Principal Attorney  
Office of Legal Services  
2800 Berlin Turnpike  
Newington, CT 06131-7546  
Tel. (860) 594-3045

**To contact the Office of State Ethics:**

Office of State Ethics  
20 Trinity Street, Suite 205  
Hartford, CT 06106  
Tel. (860) 566-4472  
Facs. (860) 566-3806  
Web: [www.ethics.state.ct.us](http://www.ethics.state.ct.us)

### Enforcement

The Department expects that all employees will comply with all laws and policies regarding ethical conduct. Violations of the law may subject an employee to sanctions from agencies or authorities outside the DOT. Whether or not another agency or authority imposes such sanctions, the Department retains the independent right to review and respond to any ethics violation or alleged ethics violation by its employees. Violations of this policy or ethics statutes, as construed by the DOT, may result in disciplinary action up to and including dismissal from State service.

### Prohibited Activities

1. *Gifts:* DOT employees (and in some cases their family members) are prohibited by the Code of Ethics and this Policy from accepting a gift from anyone who is: (1) doing business with, or seeking to do business with, the DOT; (2) directly regulated by the DOT; (3) prequalified as a contractor pursuant to Conn. Gen. Stat. §4a-100 by the Commissioner of the Department of Administrative Services (DAS); or (4) known to be a registered lobbyist or a lobbyist's representative. These four categories of people/entities are referred to as "restricted donors." A list of registered lobbyists can be found on the web site of the Office of State Ethics ([www.ct.gov/ethics/site/default.asp](http://www.ct.gov/ethics/site/default.asp)). A list of prequalified consultants and contractors, *i.e.*, those seeking to do business with the DOT, can be found on the DOT's Internet site under "Consultant Information" and "Doing Business with ConnDOT," respectively.

The term "gift" is defined in the Code of Ethics for Public Officials, Conn. Gen. Stat. §1-79(e), and has numerous exceptions. For example, one exception permits the acceptance of food and/or beverages valued up to \$50 per calendar year from any one donor and consumed on an occasion or occasions while the person paying or his representative is present. Therefore, such food and/or beverage is not a "gift." Another exception permits the acceptance of items having a value up to ten dollars (\$10) provided the aggregate value of all things provided by the donor to the recipient during a calendar year does not exceed fifty dollars (\$50). Therefore, such items are not a "gift." Depending on the circumstances, the "donor" may be an individual if the individual is bearing the expense, or a donor may be the individual's employer/group if the individual is passing the expense back to the employer/group he/she represents.

This policy requires DOT employees to immediately return any gift (as defined in the Code of Ethics) that any person or entity attempts to give to the employee(s). If any such gift or other item of value is received by other than personal delivery from the subject person or entity, the item shall be taken to the Office of Human Resources along with the name and address of the person or entity who gave the item. The Office of Human Resources, along with the recipient of the item of value, will arrange for the donation of the item to a local charity (e.g., Foodshare, local soup kitchens, etc.). The Office of Human Resources will then send a letter to the gift's donor advising the person of the item's donation to charity and requesting that no such gifts be given to DOT employees in the future.

2. *Contracting for Goods or Services for Personal Use With Department Contractors, Consultants, or Vendors:* Executive Order 7C provides that: "Appointed officials and state employees in the Executive Branch are prohibited from contracting for goods and services, for personal use, with any person doing business with or seeking business with his or her agency, unless the goods or services are readily available to the general public for the price which the official or state employee paid or would pay."

3. *Gift Exchanges Between Subordinates and Supervisors/Senior Staff:* A recent change in the Code of Ethics prohibits exchanges of gifts valued at \$100 or more between (*i.e.*, to and from) supervisors and employees under their supervision. The Citizen's Ethics Advisory Board has advised that: (1) the monetary limit imposed by this provision is a per-gift amount; (2) gifts given between supervisors and subordinates (or vice versa) in celebration of a "major life event," as defined in the Code of Ethics, need not comply with the \$100 limit; and (3) the limitations imposed by this provision apply to a direct supervisor and subordinate and to any individual up or down the chain of command. The Citizen's Ethics Advisory Board has also advised that supervisors or subordinates may not pool their money to give a collective or group gift valued at \$100 or more, even though each of the individual contributions is less than \$100.
4. *Acceptance of Gifts to the State:* A recent change to the Code of Ethics for Public Officials modified the definition of the term "gift" to limit the application of the so-called "gift to the State" exception. In general, "gifts to the State" are goods or services given to a State agency for use on State property or to support an event and which facilitate State action or functions. Before accepting any benefit as a "gift to the State," DOT employees should contact the Ethics Compliance Officer.
5. *Charitable Organizations and Events:* No DOT employee shall knowingly accept any gift, discount, or other item of monetary value for the benefit of a charitable organization from any person or entity seeking official action from, doing or seeking business with, or conducting activities regulated by, the Department.
6. *Use of Office/Position for Financial Gain:* DOT employees shall not use their public office, position, or influence from holding their State office/position, nor any information gained in the course of their State duties, for private financial gain (or the prevention of financial loss) for themselves, any family member, any member of their household, nor any "business with which they are associated." In general, a business with which one is associated includes any entity of which a DOT employee or his/her immediate family member is a director, owner, limited or general partner, beneficiary of a trust, holder of 5 percent or more stock, or an officer (president, treasurer, or executive or senior vice president). DOT employees shall not use or distribute State information (except as permitted by the Freedom of Information Act), nor use State time, personnel, equipment, or materials, for other than State business purposes.
7. *Other Employment:* DOT employees shall not engage in, nor accept, other employment that will either impair their independence of judgment with regard to their State duties or require or induce them to disclose confidential information gained through their State duties.

Any DOT employee who engages in or accepts other employment (including as an independent contractor), or has direct ownership in an outside business or sole proprietorship, shall complete an Employment/Outside Business Disclosure Form (see attached) and submit it to the Department's Human Resources Administrator. Disclosure of other employment to the DOT Human Resources Administrator shall not constitute approval of the other employment for purposes of the Code of Ethics for Public Officials.

Inquiries concerning the propriety of a DOT employee's other employment shall be directed to the Office of State Ethics to assure compliance with the Code of Ethics for Public Officials. Employees anticipating accepting other employment as described above should give ample time (at least one month) to the Office of State Ethics to respond to such outside employment inquiries. No employee of the DOT shall allow any private obligation of employment or enterprise to take precedence over his/her responsibility to the Department.

8. *Outside Business Interests:* Any DOT employee who holds, directly or indirectly, a financial interest in any business, firm, or enterprise shall complete an Employment/Outside Business Disclosure Form (see attached) and submit it to the Department's Human Resources Administrator. An indirect financial interest includes situations where a DOT employee's spouse has a financial interest in a business, firm, or enterprise. A financial interest means that the employee or his spouse is an owner, member, partner, or shareholder in a non-publicly traded entity. Disclosure of such outside business interests to the DOT Human Resources Administrator shall not constitute approval of the outside business interest under this Policy or the Code of Ethics for Public Officials. DOT employees shall not have a financial interest in any business, firm, or enterprise which will either impair their independence of judgment with regard to their State duties or require or induce them to disclose confidential information gained through their State duties. Inquiries concerning the propriety of a DOT employee's outside business interests shall be directed to the Office of State Ethics to assure compliance with the Code of Ethics for Public Officials.
9. *Contracts With the State:* DOT employees, their immediate family members, and/or a business with which a DOT employee is associated, may not enter into a contract with the State, other than pursuant to a court appointment, valued at \$100 or more unless the contract has been awarded through an open and public process.
10. *Sanctioning Another Person's Ethics Violation:* No DOT official or employee shall counsel, authorize, or otherwise sanction action that violates any provision of the Code of Ethics.
11. *Certain Persons Have an Obligation to Report Ethics Violations:* If the DOT Commissioner, Deputy Commissioner, or "person in charge of State agency procurement" and contracting has reasonable cause to believe that a person has violated the Code of Ethics or any law or regulation concerning ethics in State contracting, he/she must report such belief to the Office of State Ethics. All DOT employees are encouraged to disclose waste, fraud, abuse, and corruption about which they become aware to the appropriate authority (see also Policy Statement EX.O.-23 dated March 31, 2004), including, but not limited to, their immediate supervisor or a superior of their immediate supervisor, the DOT Office of Management Services, the Ethics Compliance Officer, the Auditors of Public Accounts, the Office of the Attorney General, or the Office of the Chief State's Attorney.
12. *Post-State Employment Restrictions:* In addition to the above-stated policies of the Department, DOT employees are advised that the Code of Ethics for Public Officials bars certain conduct by State employees *after they leave State service. Upon leaving State service:*
  - *Confidential Information:* DOT employees must never disclose or use confidential information gained in State service for the financial benefit of any person.
  - *Prohibited Representation:* DOT employees must never represent anyone (other than the State) concerning any "particular matter" in which they participated personally and substantially while in State service and in which the State has a substantial interest.

DOT employees also must not, for one year after leaving State service, represent anyone other than the State for compensation before the DOT concerning a matter in which the State has a substantial interest. In this context, the term "represent" has been very broadly defined. Therefore, any former DOT employee contemplating post-State employment work that might involve interaction with any bureau of DOT (or any Board or Commission administratively under the DOT) within their first year after leaving State employment should contact the DOT Ethics Compliance Officer and/or the Office of State Ethics.

- *Employment With State Vendors:* DOT employees who participated substantially in, or supervised, the negotiation or award of a State contract valued at \$50,000 or more must not accept employment with a party to the contract (other than the State) for a period of one year after resigning from State service, if the resignation occurs within one year after the contract was signed.

13. *Ethical Considerations Concerning Bidding and State Contracts:* DOT employees also should be aware of various provisions of Part IV of the Code of Ethics that affect any person or firm who: (1) is, or is seeking to be, prequalified by DAS under Conn. Gen. Stat. §4a-100; (2) is a party to a large State construction or procurement contract, or seeking to enter into such a contract, with a State agency; or (3) is a party to a consultant services contract, or seeking to enter into such a contract, with a State agency. These persons or firms shall not:

- With the intent to obtain a competitive advantage over other bidders, solicit any information from an employee or official that the contractor knows is not and will not be available to other bidders for a large State construction or procurement contract that the contractor is seeking;
- Intentionally, willfully, or with reckless disregard for the truth, charge a State agency for work not performed or goods not provided, including submitting meritless change orders in bad faith with the sole intention of increasing the contract price, as well as falsifying invoices or bills or charging unreasonable and unsubstantiated rates for services or goods to a State agency; and
- Intentionally or willfully violate or attempt to circumvent State competitive bidding and ethics laws.

Firms or persons that violate the above provisions may be deemed a nonresponsible bidder by the DOT.

In addition, no person with whom a State agency has contracted to provide consulting services to plan specifications for any contract, and no business with which such person is associated, may serve as a consultant to any person seeking to obtain such contract, serve as a contractor for such contract, or serve as a subcontractor or consultant to the person awarded such contract.

DOT employees who believe that a contractor or consultant may be in violation of any of these provisions should bring it to the attention of their manager.

#### Training for DOT Employees

A copy of this policy will be posted throughout the Department, and provided to each employee either in hard copy or by e-mail. As set forth above, State law requires that certain employees involved in contractor/consultant/vendor selection, evaluation, or supervision must undergo annual ethics training coordinated or provided by the Ethics Compliance Officer. If you believe your duties meet these criteria, you should notify your Bureau Chief to facilitate compilation of a training schedule. In addition, the DOT Ethics Compliance Officer can arrange for periodic ethics training provided by the Office of State Ethics. Finally, the Department will make available, on its web site or otherwise, a copy of this policy to all vendors, contractors, and other business entities doing business with the Department.

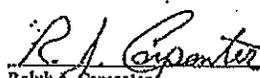
#### Important Ethics Reference Materials

It is strongly recommended that every DOT employee read and review the following:

- Code of Ethics for Public Officials, Chapter 10, Part 1, Conn. General Statutes Sections 1-79 through 1-89a found at: [www.ct.gov/ethics/site/default.asp](http://www.ct.gov/ethics/site/default.asp)

- Ethics Regulations Sections 1-81-14 through 1-81-38, found at:  
[www.ct.gov/ethics/site/default.asp](http://www.ct.gov/ethics/site/default.asp)
- The Office of State Ethics web site includes summaries and the full text of formal ethics advisory opinions interpreting the Code of Ethics, as well as summaries of previous enforcement actions:  
[www.ct.gov/ethics/site/default.asp](http://www.ct.gov/ethics/site/default.asp). DOT employees are strongly encouraged to contact the Department's Ethics Compliance Officer or her designee, or the Office of State Ethics with any questions or concerns they may have.

(This Policy Statement supersedes Policy Statement No. F&A-10 dated January 6, 2006)

  
Ralph G. Carpenter  
COMMISSIONER

Attachment

List 1 and List 3

(Managers and supervisors are requested to distribute a copy of this Policy Statement to all employees under their supervision.)

cc: Office of the Governor, Department of Administrative Services, Office of State Ethics

Schedule 4A

OPM Ethics Form 6

Rev. 04-06-09



STATE OF CONNECTICUT  
AFFIRMATION OF RECEIPT OF STATE ETHICS LAWS SUMMARY

*Affirmation to accompany a large State construction or procurement contract, having a cost of more than \$500,000, pursuant to Connecticut General Statutes §§ 1-101mm and 1-101qq*

**INSTRUCTIONS:**

Complete all sections of the form. Submit completed form to the awarding State agency or contractor, as directed below.

**CHECK ONE:**

- I am a person seeking a large State construction or procurement contract. I am submitting this affirmation to the awarding State agency with my bid or proposal. [Check this box if the contract will be awarded through a competitive process.]
- I am a contractor who has been awarded a large State construction or procurement contract. I am submitting this affirmation to the awarding State agency at the time of contract execution. [Check this box if the contract was a sole source award.]
- I am a subcontractor or consultant of a contractor who has been awarded a large State construction or procurement contract. I am submitting this affirmation to the contractor.

**IMPORTANT NOTE:**

Contractors shall submit the affirmations of their subcontractors and consultants to the awarding State agency. Failure to submit such affirmations in a timely manner shall be cause for termination of the large State construction or procurement contract.

**AFFIRMATION:**

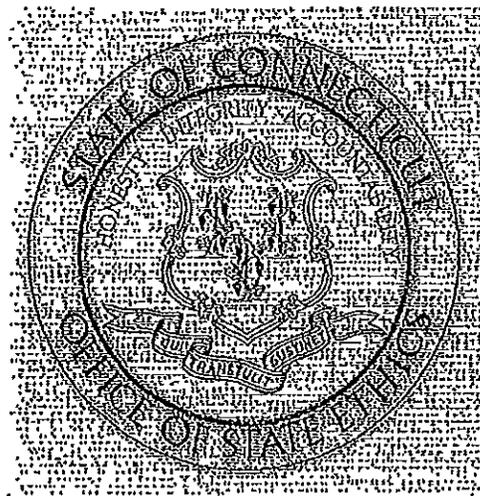
I, the undersigned person, contractor, subcontractor, consultant, or the duly authorized representative thereof, affirm (1) receipt of the summary of State ethics laws\* developed by the Office of State Ethics pursuant to Connecticut General Statutes § 1-81b and (2) that key employees of such person, contractor, subcontractor, or consultant have read and understand the summary and agree to comply with its provisions.

\* The summary of State ethics laws is available on the State of Connecticut's Office of State Ethics website at [http://www.ct.gov/ethics/lib/ethics/guides/contractors\\_gulde\\_09\\_final.pdf](http://www.ct.gov/ethics/lib/ethics/guides/contractors_gulde_09_final.pdf)

_____ Signature	_____ Date
_____ Printed Name	_____ Title
_____ Firm or Corporation (if applicable)	
_____ Street Address	_____ City
	_____ State
	_____ Zip

\_\_\_\_\_  
Awarding State Agency

**Guide to the Code of Ethics  
For Current or Potential  
State Contractors**



**2009**

## **Guide for Current or Potential State Contractors**

### **INTRODUCTION**

The Connecticut Office of State Ethics (OSE) is an independent regulatory agency for the state of Connecticut, charged with administering and enforcing Connecticut General Statutes, Chapter 10, Part I and Part II; with limited jurisdiction over Part IV.

The Ethics Codes under the OSE's jurisdiction are comprised of:

- The Code of Ethics for Public Officials (Part I);
- The Code of Ethics for Lobbyists (Part II); and
- Limited Jurisdiction over Ethical Considerations Concerning Bidding and State Contracts (Part IV).

This guide provides general information only. The descriptions of the law and the OSE are not intended to be exhaustive. Please contact the OSE with any questions regarding interpretation of the law.

For more information on the subjects discussed in this guide, call, write or visit:

Connecticut Office of State Ethics  
18-20 Trinity Street  
Suite 205  
Hartford, CT 06106

860/263-2400  
[www.ct.gov/ethics](http://www.ct.gov/ethics)



#### *Citizen's Ethics Advisory Board:*

Robert Worgaffik, Chairperson (through September 2009)  
Sister Sally J. Tolles, Vice Chairperson (through September 2009)  
Ernest Abate (through September 2011)  
G. Kenneth Bernhard (through September 2011)  
Kathleen F. Bornhorst (through September 2012)  
Thomas E. Dooley (through September 2009)  
Rebecca M. Doty (through September 2011)  
Dennis Riley (through September 2010)  
Shawn T. Wooden (through September 2013)

## **Guide for Current or Potential State Contractors**

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## **Guide for Current or Potential State Contractors**

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### **THE OFFICE OF STATE ETHICS (OSE)**

The Connecticut Office of State Ethics (OSE) was officially created on July 1, 2005, by Public Act 05-183. The governing body of the OSE is the Citizen's Ethics Advisory Board (CEAB), nine members appointed by the Governor and legislative leadership. The CEAB holds monthly meetings that are open to the public and that are often covered by CT-N. A schedule of CEAB meeting dates, times and locations is available on the OSE's Web site, [www.ct.gov/ethics](http://www.ct.gov/ethics).

The OSE is an independent watchdog agency for the state of Connecticut that administers Connecticut General Statutes, Chapter 10, Parts I and II, with limited jurisdiction over Part IV.

Simply put, the OSE educates all those covered by the law (the "regulated community"); provides information to the public; interprets and applies the codes of ethics; and investigates potential violations, and otherwise enforces the codes.

The OSE is made up of the following components:

- Citizen's Ethics Advisory Board
- Executive Director
- Legal Division
- Enforcement Division

### **THE BIG PICTURE**

All state officials and employees (except judges) are covered by Part I of the Code of Ethics for Public Officials (henceforth, Part I, or the Code). It is important to remember that certain provisions of the Code also apply to public officials and state employees after they leave state service.

As you read through this guide, be aware that these laws were enacted to prevent individuals from using their public position or authority for personal, financial benefit.

Each state agency also has its own ethics policy, which in many cases may be more restrictive than what follows. Be sure to obtain a copy of the agency's policy before you attempt to provide any benefit to an agency official or employee.

## Guide for Current or Potential State Contractors

### GIVING BENEFITS TO STATE PERSONNEL



#### Gifts

As a current or potential state contractor, you are presumably doing business with or seeking to do business with a state agency, and are therefore considered to be a restricted donor. In general, public officials, state employees and candidates for public office may not accept gifts from restricted donors.

#### Restricted Donors

Restricted donors include:

- Registered lobbyists (a list is available on the OSB's Web site) or a lobbyist's representative;
- Individuals or groups doing business with a state department or agency;
- Individuals or groups seeking to do business with a state department or agency;
- Individuals or groups engaged in activities regulated by a state department or agency; or
- Contractors pre-qualified by the Connecticut Department of Administrative Services (Conn. Gen. Stat. § 4a-100).

A gift is defined as anything of value that is directly and personally received by a public official or state employee (or sometimes family members of those two categories) *unless* consideration of equal or greater value is provided. Conn. Gen. Stat. § 1-79 (e).

#### Gift Exceptions

There are, however, certain exceptions to this definition of gift. Not all exceptions are covered below; see Conn. Gen. Stat. § 1-79 (e) (1)–(17) for the complete list.

- *Token Items*—Restricted donors such as current or potential state contractors may provide any item of value that is not more than \$10 (such as a pen, mug, or inexpensive baseball cap) to a public official or state employee, provided that the annual aggregate of such items from a single source is \$50 or less. Conn. Gen. Stat. § 1-79 (e) (16).
- *Food and Beverage*—Restricted donors may also provide less than \$50 worth of food and beverage in a calendar year to a public official or state employee, provided that the restricted donor or his/her representative is in attendance when the food and/or beverage is being consumed. Conn. Gen. Stat. § 1-79 (e) (9).
- *Training*—Vendors may provide public officials and state employees with training for a product purchased by a state or quasi-public agency provided such training is offered to all customers of that vendor. Conn. Gen. Stat. § 1-79 (e) (17).

## Guide for Current or Potential State Contractors

- *Gifts to the State* – Restricted donors may provide what are typically referred to as “gifts to the state.” These gifts are goods and services provided to a state agency or quasi-public agency for use on state or quasi-public agency property or that support an event, and which facilitate state or quasi-public action or functions. Conn. Gen. Stat. § 1-79 (e) (5).
- *Other Exceptions* – There are a total of 17 separate gift exceptions in the Code. Also exempt from the definition of gift are items such as informational materials germane to state action, ceremonial plaques or awards costing less than \$100, or promotional items, rebates or discounts also available to the general public. See Conn. Gen. Stat. § 1-79 (e) (1) – (17).

Note: The popularly-cited exception for major life events does not apply to those who are regulated by, doing business with or seeking to do business with a state agency. The only restricted donor that can make use of this very narrow exception is a registered lobbyist.

### Gift Provisions

*Example: You are in the process of submitting a contracting bid to a state agency. You provide the agency head with a gift certificate for \$45 to a popular West Hartford eatery for her to use on her own. You have not previously given anything of value to this individual.*

*Even though you are under the permissible \$50 food and beverage limit, this gift is not allowed because you or your representative will not be in attendance while the food and beverage is being consumed.*

### Reporting Requirements

Should you or your representative give anything of value to a public official or state employee, you must, within 10 days, give the gift recipient and the head of that individual's department or agency a written report stating:

- Name of the donor;
- Description of item(s) given;
- Value of such item(s); and
- Total cumulative value of all items to date given to that recipient during the calendar year.



This helps both you and the state employee keep track of the gift exceptions noted above, so that permissible limits are not exceeded. Conn. Gen. Stat. § 1-84 (a).

## Guide for Current or Potential State Contractors

### Necessary Expenses

You may provide necessary expenses to a public official or state employee *only* if the official or employee, in his/her official capacity, is actively participating in an event by giving a speech or presentation, running a workshop, or having some other active involvement.

Necessary expenses are limited to:

- Travel (not first class);
- Lodging (standard cost of room for the nights before, of, and immediately following the event);
- Meals; and
- Related conference expenses.

Conn. Gen. Stat. § 1-79 (9).

Entertainment costs (tickets to sporting events, golf outings, night clubs, etc.) are *not* necessary expenses. Necessary expense payments also *do not* include payment of expenses for family members or other guests.

### Fees/Honorariums

Public officials and state employees may *not* accept fees or honorariums for an article, appearance, speech or participation at an event in their official capacity.

Fees or honorariums for such activities, if offered based solely on expertise and without any regard to official capacity, may be acceptable. Contact the OSE before offering such payment to an official or employee. Conn. Gen. Stat. § 1-84 (k).

#### Necessary Expenses, Fees and Honorariums

*Example: You invite a state employee to travel to New York City to give a speech to your managers on issues surrounding contracting with a state agency. You provide Amtrak fare for the employee as well as his spouse, who will spend the day in the city. The evening of the speech, you will treat the employee and his spouse with complimentary tickets to a Broadway show in lieu of a speaking fee.*

*You may provide non-first class travel expenses only to the state employee who is actively participating in an event. In this case, you may only provide Amtrak fare for the employee giving the speech, not his spouse. Entertainment costs, such as tickets to a show, are not considered necessary expenses and may not be provided. Additionally, state employees may not accept fees or honorariums for a speech given in their official capacity.*

## Guide for Current or Potential State Contractors

### HIRING STATE PERSONNEL

#### Post-state Employment (Revolving Door)

If you are considering hiring a former state employee, you should be aware of the Code's post-state employment, or revolving door, provisions.

#### Lifetime Bans

- Former state employees may never disclose any confidential information they learned during the course of their state service for anyone's financial gain. Conn. Gen. Stat. § 1-84a.
- A former state official or employee may never represent anyone other than the state regarding a particular matter in which he or she was personally or substantially involved while in state service and in which the state has a substantial interest. This prevents side-switching. Conn. Gen. Stat. § 1-84b (a).

#### One-year Bans

- If you hire or otherwise engage the services of a former state official or employee, he or she may not represent you before his or her former agency for a period of one year after leaving state service. Conn. Gen. Stat. § 1-84b (b). (See Advisory Opinion 2003-3, which provides a limited exception to this provision if the employee is providing purely technical expertise, for example, to help implement a previously-awarded contract. This exception applies to extremely limited circumstances; contact the OSE for guidance.)
- You are prohibited from hiring a former state official or employee for a period of one year after he or she leaves state service if that individual was substantially involved in, or supervised, the negotiation or award of a contract (that you or your business was a party to) valued at \$50,000 or more, and the contract was signed within his or her last year of state service. Conn. Gen. Stat. § 1-84b (f).
- Employees who held certain specifically-designated positions (with significant decision-making or supervisory responsibility) at certain state regulatory agencies are prohibited from seeking or accepting employment with any business subject to regulation by the individual's agency within one year of leaving the agency. Note that there is an exception for *ex-officio* board or commission members. Conn. Gen. Stat. § 1-84b (c).

#### Post-state Employment

*Example: You run a hospital regulated by the Office of Health Care Access (OHCA). You would like to offer a job to the former Commissioner of OHCA, who has been out of state service for 5 months.*

*Because the hospital is regulated by a state agency whose Commissioner is specifically designated in 1-84b (c), the former head of such agency would not be permitted to accept employment with you for one full year after leaving state service. See Advisory Opinion 2003-19.*

## Guide for Current or Potential State Contractors

### **Outside Employment for Current Public Officials and State Employees**

If you are considering hiring a *current* state employee, especially from a state agency with which you do business or by which you are regulated, you should be aware of the following rules regarding the employment of current state employees.

- A current state employee may not accept outside employment that impairs his or her independence of judgment regarding his or her state duties, or that encourages him or her to disclose confidential information learned in his or her state job. Conn. Gen. Stat. § 1-84 (b).
- A current state employee may not use his or her state position for his or her own financial gain or the gain of his or her family (spouse, child, child's spouse, parent, brother or sister) or an associated business, however inadvertent that use may be. Conn. Gen. Stat. § 1-84 (c).

### Other Considerations

Business entities engaged in Indian gaming activities in the state should be aware of specific provisions that apply to present or former Gaming Policy Board or Division of Special Revenue public officials or employees. See Conn. Gen. Stat. §§ 1-84b (d) and (e).



#### **Outside Employment**

*Example: Your small business occasionally receives grants or contracts from Agency X. You know that a particular contract manager with Agency X has the skills you need to help you grow your business. This employee has expressed interest in earning a little extra money for himself, while helping you with your business in the evenings and on weekends.*

*It would constitute an impermissible impairment of judgment for the employee of Agency X, who has contract management responsibilities, to accept outside employment with your business — a business that receives grants or contracts from Agency X.*

## **Guide for Current or Potential State Contractors**

### **OTHER PROVISIONS**

#### **Prohibited Activities for Consultants or Independent Contractors**

If you are hired by the state as a consultant or independent contractor, you are prohibited from the following:

- Using your authority under the contract or any confidential information acquired during the course of the contract for your financial gain or the financial gain of your immediate family;
- Accepting another state contract that would impair your independence of judgment or your performance in your existing state contract; and
- Accepting anything of value based on the understanding that your actions on behalf of the state would be influenced.

Conn. Gen. Stat. § 1-86e (1) -- (3); see also Conn. Gen. Stat. § 1-101nn.

#### **Gift and/or Campaign Contribution Certifications**

Contractors seeking large state contracts must provide certifications regarding gifts and/or campaign contributions made to certain state employees or public officials in the two-year period prior to the submission of a bid or proposal. Copies of these certifications and other updated information regarding state contractors can be found on the Web sites of the Department of Administrative Services ([www.das.state.ct.us](http://www.das.state.ct.us)) and the Office of Policy and Management ([www.opm.state.ct.us](http://www.opm.state.ct.us)).



#### **Investment Services and the Office of the Treasurer**

If you or your business provides investment services, as defined in the Code, and you make a political contribution to the State Treasurer's campaign, you may be prohibited from contracting with the Office of the Treasurer. See Conn. Gen. Stat. § 1-84 (n).

#### **Registering as a Lobbyist**

If you or your business spends or receives over \$2,000 in a calendar year for activities that constitute lobbying under Part II of the Code of Ethics (whether to affect legislation or the actions of an administrative state agency), you/your business may have to register as a lobbyist with the Office of State Ethics. Lobbyist registration information is available at [www.ct.gov/ethics](http://www.ct.gov/ethics).



#### **Contribution Ban for Communicator Lobbyists (Conn. Gen. Stat. § 9-610 (g) and (h).)**

Registered communicator lobbyists, their affiliated political action committees (PACs), as well as members of their immediate families are banned from soliciting or donating political campaign contributions. Please contact the State Elections Enforcement Commission at 860-566-1776 for more information.

## **Guide for Current or Potential State Contractors**

### **Sessional Contribution Ban for Client Lobbyists (Conn. Gen. Stat. § 9-610 (e).)**

Registered lobbyists and their affiliated political action committees (PACs) are banned from soliciting or donating political campaign contributions. Specifically, there is a temporary ban while the General Assembly is in session that applies to all registered client lobbyists and their affiliated PACs. Please contact the State Elections Enforcement Commission at 860-566-1776 for more information.

### **Public Act 05-287**

Public Act 05-287 prohibits anyone who is a party (or seeking to become a party) to a large state construction, procurement, or consultant services contract over \$500,000 from:

- Soliciting information from a public official or state employee that is not available to other bidders for that contract, with the intent to obtain a competitive advantage;
- Intentionally or recklessly charging a state agency for work not performed or goods or services not provided;
- Falsifying invoices or bills; or
- Intentionally violating or circumventing state competitive bidding and ethics laws.

This Act also requires any prospective state contractor to affirm in writing that he or she has received a summary of the state's ethics laws and that his or her key employees have read and understood the summary and agree to comply with the applicable provisions. Conn. Gen. Stat. § 1-101qq.

An affirmation form is available through the Connecticut Office of Policy and Management.

### **Executive Orders**

#### **Executive Order 3**

Under this Order, the Department of Administrative Services established and maintains on its Web site the State Contracting Portal for purposes of posting all contracting opportunities with state agencies and providing information on contracting processes and procedures.

#### **Executive Order 7C**

This Order covers the State Contracting Standards Board, established to conduct a comprehensive review of existing procurement and contracting laws and prepare a uniform code to govern all aspects of procurement and contracting.

The full text of these Executive Orders can be found on the Governor's Web site, [www.ct.gov/governoroll/site/default.asp](http://www.ct.gov/governoroll/site/default.asp).

## **Guide for Current or Potential State Contractors**

### **FOR MORE INFORMATION**

This guide provides general information only. The descriptions of the law and the OSE are not intended to be exhaustive. For more information regarding the Code of Ethics as it pertains to current or potential state contractors, please contact the Office of State Ethics, Monday – Friday, 8:30 a.m. to 5:00 p.m.

Office of State Ethics  
18-20 Trinity Street  
Hartford, CT 06106-1660



T: 860/263-2400  
F: 860/263-2402  
[www.ct.gov/ethics](http://www.ct.gov/ethics)



### **Specific Contacts:**

Questions or advice regarding the Ethics Codes: [Ethics.Code@ct.gov](mailto:Ethics.Code@ct.gov)  
Lobbyist filing/reporting questions: [lobbyist.OSE@ct.gov](mailto:lobbyist.OSE@ct.gov)  
Public official filing/reporting questions: [SFI.OSE@ct.gov](mailto:SFI.OSE@ct.gov)  
Enforcement questions: [Ethics.Enforcement@ct.gov](mailto:Ethics.Enforcement@ct.gov)  
All other inquiries: [ose@ct.gov](mailto:ose@ct.gov)



April 2009



## Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations

This notice is provided under the authority of Connecticut General Statutes §9-612(g)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italized words are defined on the reverse side of this page).

### CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall knowingly *solicit* contributions from the state contractor's or prospective state contractor's employees or from a subcontractor or principals of the subcontractor on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

### DUTY TO INFORM

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

### PENALTIES FOR VIOLATIONS

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

**Civil penalties**—Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

**Criminal penalties**—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

### CONTRACT CONSEQUENCES

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State shall not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information may be found on the website of the State Elections Enforcement Commission, [www.ct.gov/seec](http://www.ct.gov/seec). Click on the link to "Lobbyist/Contractor Limitations."



## DEFINITIONS

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

"Dependent child" means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

"Subcontractor" means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor's state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates. "Subcontractor" does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a subcontractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has *managerial or discretionary responsibilities with respect to a subcontract with a state contractor*, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.

## Schedule 6

### TITLE VI CONTRACTOR ASSURANCES

For this document Contractor means Consultant, Consulting Engineer, Second Party, or other entity doing business with the State and Contract shall mean the same as Agreement.

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

1. **Compliance with Regulations:** The Contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the United States Department of Transportation (hereinafter, "USDOT"), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Subsection 5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Connecticut Department of Transportation (ConnDOT) or the Funding Agency (FHWA, FTA and FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to ConnDOT or the Funding Agency, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the ConnDOT shall impose such sanctions as it or the Funding Agency may determine to be appropriate, including, but not limited to:

- A. Withholding contract payments until the Contractor is in-compliance; and/or
- B. Cancellation, termination, or suspension of the Contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the ConnDOT or the Funding Agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the ConnDOT to enter into such litigation to protect the interests of the Funding Agency, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Schedule 7

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

Approved by OMB  
0348-0048

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prima <input type="checkbox"/> Subawardee For _____, if known:  Congressional District, if known: _____	<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known: _____	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</b>	<b>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</b>  (attach Continuation Sheet(s) SF-LLL, if necessary)	
<b>11. Amount of Payment (check all that apply):</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment (check all that apply):</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
<b>12. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____	<b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b>  (attach Continuation Sheet(s) SF-LLL, if necessary)	
<b>15. Continuation Sheet(s) SF-LLL attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>16. Information requested through this form is authorized by the 31 U.S.C. section 1352. This disclosure of lobbying activities is a truthful representation of fact reported to the public pursuant to the law. This information is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress and will be available for public inspection. Any person who fails to file the required disclosure may be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Public Law 101-508 Authorized for Local Reproduction Standard Form 111 (Rev. 7-97)		

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL Continuation Sheet for additional information. If the space on the form is inadequate, complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been covered to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawardees include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal Monitoring number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; invitation for bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-00-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payments made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0048. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0048), Washington, DC 20503.

**CONNECTICUT REQUIRED CONTRACT/AGREEMENT PROVISIONS  
SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES**

1. General:

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

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

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

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

d) The Company and all his/her subcontractors or subconsultants holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in volume 6, Chapter 4, Section 1, subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The company will include these requirements in every subcontract of \$10,000 or more with such modification of language as necessary to make them binding on the subcontractor or subconsultant.

2. Equal Employment Opportunity Policy:

The Company will develop, accept and adopt as its operating policy an Affirmative Action Plan utilizing the ConnDOT Affirmative Action Plan Guideline. This Plan shall be designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive continuation program.

3. Equal Employment Opportunity Officer:

The Company will designate and make known to ConnDOT contracting officers an Equal Employment Opportunity Officer (hereinafter referred to as the EEO Officer) who will have the responsibility for, and must be capable of effectively administering and promoting an active equal employment opportunity program and who must be assigned adequate authority and responsibility to do so.

4. Dissemination of Policy:

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

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the Company's equal employment opportunity policy and its implementation will be reviewed and explained. The meeting will be conducted by the BEO Officer or other knowledgeable company official.

(2) All new supervisor or personnel office employees will be given a thorough indoctrination by the BEO Officer or other knowledgeable company official, covering all major aspects of the Company's equal employment opportunity obligations within thirty days following their reporting for duty with the Company.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the BEO Officer or appropriate company official in the Company's procedures for locating and hiring minority group employees.

b. In order to make the Company's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Company will place their equal employment opportunity policy in areas readily accessible to employees, applicants for employment and potential employees. The Company will bring the equal opportunity policy to the attention of employees through meetings, employee handbooks, or other appropriate means.

5. Recruitment:

a. When advertising for employees, the Company will include in all advertisements the notation: "An Equal Opportunity Employer". All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project workforce would normally be derived. The Company shall comply with this provision and the recruitment requirements outlined in their ConnDOT approved Affirmative Action Plan.

b. The Company will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the Company will, through his/her BEO Officer, identify sources of potential minority group employees, and establish with such identified sources, procedures whereby minority group employees, and applicants may be referred to the Company for employment consideration.

In the event that the Company has a valid bargaining agreement providing for exclusive hiring hall referrals, he/she is expected to observe the provisions of that agreement to the extent that the system permits the Company's compliance with equal employment opportunity

contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Company to do the same, such implementation violates Executive Order 11246, as amended.)

c. The Company will encourage his/her present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. Personnel Actions

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoffs, and termination, shall be taken without regard to race, color, religion, sex, or national origin, etc. The company's personnel actions shall comply with this provision and the requirements outlined in their ConnDOT approved Affirmative Action Plan.

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

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

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

d. The general contract provision entitled A(76) Affirmative Action Requirements is made part of this document by reference.

7. Training and Promotion

a. The Company will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the Company's work force requirements and as permissible under Federal and State regulations, the Company shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded.

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

d. The Company will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8.

Unions:

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

a. The Company will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The Company will use best efforts to incorporate an Equal Opportunity clause into each union agreement to the extent that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex or national origin.

c. The Company is to obtain information as to the referral practices and policies of the labor union except to the extent that such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Company, the Company shall so certify to the Connecticut Department of Transportation (ConnDOT) and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the Company with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Company will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin; making full efforts to obtain qualified and/or qualified minority group persons and women. (The United States Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the Company from meeting the obligations under Executive Order 11246 as amended, and these special provisions, such Company shall immediately notify ConnDOT.

9. Subcontracting:

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

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

10. Records and Reports:

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

1. The number of minority and non-minority group members and women employed in each classification on the project;

2. The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women; (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
4. The progress and efforts being made in securing the services of minority group subcontractors, or subcontractors with meaningful minority and female representation among their employees.

b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of ConnDOT and the Federal Highway Administration.

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

11. Affirmative Action Plan

Companies with contracts, agreements or purchase orders valued at \$10,000 or more will submit a ConnDOT Affirmative Action Plan.