

1

AGREEMENT  
BETWEEN THE STATE OF CONNECTICUT  
AND  
THE TOWN OF WINCHESTER  
FOR THE CONSTRUCTION, INSPECTION AND MAINTENANCE  
OF  
MAIN STREET STREETSACPE IMPROVEMENTS PHASE II  
UTILIZING FEDERAL FUNDS  
UNDER THE  
ENHANCEMENT COMPONENT  
THE SURFACE TRANSPORTATION PROGRAM

State Project No. 162-148

Federal-Aid Project No. PEDS(100)

THIS AGREEMENT, concluded at Newington, Connecticut, this 14<sup>th</sup> day of OCTOBER, 2011, by and between the State of Connecticut, Department of Transportation, James P. Redeker, Commissioner, acting herein by Thomas A. Harley, P.E., Bureau Chief, Bureau of Engineering and Construction, duly authorized, hereinafter referred to as the "State", and the Town of Winchester, Town Hall, 338 Main Street, Winsted, Connecticut 06098, acting herein by Dale L. Martin, Town Manager, hereunto duly authorized, hereinafter referred to as the "Municipality", or collectively referred to as the "Parties".

WITNESSETH, THAT,

WHEREAS, the required contract plans, specifications and estimates have been prepared for the construction of streetscape improvements along Main Street from Union Street west to the vicinity of High Street for a distance of approximately 1,400 feet, and from Case Avenue east to the vicinity of Chestnut Street for a distance of approximately 800 feet, and

WHEREAS, said improvements include(s), but is (are) not limited to, construction of raised medians, minor drainage improvements, the installation of decorative sidewalks, curbing, lighting, pavement markings, and landscaping, herein identified as State Project No. 162-148 and Federal-aid Project No. PEDS(100), hereinafter referred to as the "Project", and

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

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) provides funding authorization for "Federal-aid highways, highway safety programs, and transit programs, and for other purposes," and

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

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

thereof.", and

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

**NOW, THEREFORE, FOR GOOD AND OTHER VALUABLE CONSIDERATION:  
THE PARTIES HERETO AGREE AS FOLLOWS:**

**DEFINITIONS:**

The following definitions shall apply to this Agreement:

The term "Claims" as used herein is defined as 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.

The term "Municipality Parties" as used herein is defined as a Municipality's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Municipality is in privity of oral or written contract and the Municipality intends for such other person or entity to perform under the Agreement in any capacity.

The term "Project" as used herein is defined as the construction of streetscape improvements along Main Street from Union Street west to the vicinity of High Street for a distance of approximately 1,400 feet, and from Case Avenue east to the vicinity of Chestnut Street for a distance of approximately 800 feet, including but not limited to construction of raised medians, minor drainage improvements, the installation of decorative sidewalks, curbing, lighting, pavement markings, and landscaping.

The term "Records" as used herein is defined as all working papers and such other information and materials as may have been accumulated by the Municipality in performing the Agreement, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

The term "State" as used herein is defined as State of Connecticut, including the Department of Transportation ("Department"), and any office, department, board, council, commission, institution or other agency or entity of the State.

**ARTICLE I. THE MUNICIPALITY SHALL:**

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

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

Any delays resulting in charges or claims by the Municipality's Prime Contractor which are the result of the failure of any utility to readjust or relocate in or remove its facilities within the area impacted by the Project because of the failure of the Municipality to carry out its responsibility, as outlined in the first paragraph of this Article I., Paragraph (2), shall become the responsibility of the Municipality.

(3) Incorporate, if applicable, the "Special Provisions, Disadvantaged Business Enterprises"

requirements set forth in Exhibit A, Schedule 1 (attached herewith), dated February 26, 2009, as may be revised from time to time, as a material term of any contract or agreement the Municipality enters into with its Prime Contractor, and if applicable, its Inspection Consultant. The Municipality shall also include the applicable contract goal established by the State for the Project in any contract and/or agreement it enters into with its Prime Contractor, and if applicable, its Inspection Consultant.

(4) Incorporate, if applicable, the "Special Provisions, Small Business Participation Pilot Program" requirements set forth in Exhibit A, Schedule 2 (attached herewith), dated February 3, 2009, as may be revised from time to time, as a material term of any contract or agreement the Municipality enters into with its Prime Contractor, and if applicable, its Inspection Consultant. The Municipality shall also include the applicable contract goal established by the State for the Project in any contract and/or agreement it enters into with its Prime Contractor, and if applicable, its Inspection Consultant.

(5) Advertise, receive bids, award a contract or contracts, make payments to a contractor or contractors, and administer construction activities associated with the Project, upon written approvals by the State, separate from this Agreement.

(6) Obtain bids for all Project items to be supplied or constructed by the Municipality's Prime Contractor utilizing a bidding procedure, which must be in compliance with Federal requirements (Title 23, Chapter I, Part 635) and must be reviewed and approved by the State prior to advertisement of the Project. The Municipality shall comply with and include the following documents as a part of its Project bid documents and its contract for each Project:

- (a) The "State of Connecticut, Department of Transportation, Standard Specifications for Roads, Bridges, and Incidental Construction Form 816" ("Form 816"), as may be amended from time to time;
- (b) Any Supplemental Specification(s) to Form 816;
- (c) "Required Contract Provisions" (Form PR-1273), set forth in Exhibit A, Schedule 3 (attached herewith) as may be revised from time to time; and
- (d) Connecticut Required Contract Provisions, State of Connecticut and attachments thereto, as may be amended from time to time.

(7) Obtain the Bid, Performance and Payment Bonds in accordance with Form 816. The Municipality shall analyze all bids, submit a bid summary, including the non-collusion affidavit that the Municipality has received, and any other applicable bid submission requirements pursuant to the Specifications, and request in writing the State's approval to award the Project to the lowest responsible bidder. The Municipality shall receive in writing, and review to ensure that the following pre-award documents are acceptable prior to the award of the contract to the lowest responsible bidder:

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

---

After verification by the Municipality, the State shall affirm in writing that the affirmative

action and pre-award requirements (indicated in Article I., Paragraph (7), subparagraphs (a) and (c) herein) have been complied with.

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

(9) Notify the State as to the commencement of the Project's construction activities via the "CON 100M" Form in Exhibit A, Schedule 4 (attached herewith). Failure to properly file this form with the State shall jeopardize the Federal share of the funding for the Project and shall result in the Municipality being responsible for all Project costs.

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

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

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

The Municipality hereby acknowledges and agrees to comply with the guidelines set forth in Exhibit A, Schedule 5 (attached herewith), Policy No. F&A-30, dated April 12, 2006; Subject: Maximum Fees for Architects, Engineers and Consultants and the Office of Policy and Management's General Letter No. 97-1, dated November 21, 1996, set forth in Exhibit A, Schedule 6 (attached herewith).

The Municipality shall ensure that all parties to the Project contract are in compliance with the audit requirements set forth in Title 48, Section 31 of the Code of Federal Regulations (CFR) and Title 23, Section 172 CFR, as revised, when retaining consultants.

(12) Perform the functions and operations described in the "Department of Transportation, Bureau of Engineering and Construction, Construction Manual, Office of Construction, January 2011"; "Construction Engineering and Inspection Information Pamphlet for Consultants, Connecticut Department of Transportation, Office of Construction, August 2008"; "Municipality Manual-Connecticut Department of Transportation, Bureau of Engineering and Highway Operations, Office of Construction, July 2008"; "Pamphlet for Monitoring Performance and Payment Requests for Consultants, June 1994"; "Materials Testing Manual, 2004, Chapter 7, entitled "Schedule of Minimum Requirements for Sampling Materials for Test"; "Public Service Facility Policy and Procedures for Highways in Connecticut, November 2008"; "Utility Accommodation Manual, Connecticut Department of Transportation, February 2009"; "Title 23, Code of Federal Regulations, Part 645, Subpart A and Subpart B, and all revisions and supplements thereto. The performance of these functions and operations shall be in accordance with the policies and procedures of the State set forth in the documents enumerated in Article I., Paragraph (12)(c) herein, which may be amended by the State under the terms of this Agreement. Said functions and operations also include, but are not limited to:

- (a) Review and approval of all shop plans and construction drawings received from the Prime Contractor;
- (b) Maintenance and protection of all construction records at the field office for review, and use at all times. These records shall be retained by the Municipality for a period of seven (7) years after issuance of the Project's Certification of Acceptance or three (3) years after the final federal payment has been made, whichever is later, providing there is no pending litigation; and
- (c) All other operations which become necessary to properly inspect the work of the Prime Contractor to obtain compliance with the Form 816, Supplemental Specifications, as revised, Special Provisions related to the Project and all other Project contract documents and memoranda shall be the responsibility of the Municipality.

The documents named or described in this Article I., Paragraph (12) are hereby incorporated into and made a part of this Agreement by reference and, in all applicable respects, shall govern the conduct of the parties to this Agreement and any parties performing work on the Project. Where any of these documents have been written to govern contractual relations between the State and a contractor, they shall be read and applied as though written to govern the relations between the Municipality and its Prime Contractor and subcontractor(s).

(13) Cooperate fully with the State and permit the State and/or the Federal Highway Administration ("FHWA") to review, at any time, all work performed under the terms of this Agreement and all Project records pertaining thereto including all inspections by Federal Inspector Generals.

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

(15) (a) Deposit with the State, upon demand, the sum of Nineteen Thousand Four Hundred Dollars (\$19,400), which sum represents the Municipality's proportionate share of the estimated cost of State-provided services, as shown under Article III., Paragraph (45), Item "N", of this Agreement.

(b) Deposit with the State, upon demand, the sum of sum of Zero Dollars (\$0), for the depreciation reserve credit of the municipally-owned utility facility being replaced and the value of any materials salvaged from the existing facility, as shown under Article III, Paragraph (45), Item "O" of this Agreement.

(16) Participate in the cost of sidewalks constructed as part of the Project only as noted in the Connecticut Department of Transportation Policy Statement, Policy No. E&C-19, as may be revised.

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

(18) Agree that in the event the approved construction cost, based on low bid, exceeds the estimated construction cost indicated in Article III., Paragraph (45) of this Agreement, the Municipality shall: (1) pay for the additional amount of the increased construction cost, or (2) reduce the Project's scope in order to not exceed the estimated construction cost as indicated in Article III., Paragraph (45) of this Agreement, or (3) terminate the Project. Notification in writing by certified mail of the Municipality's decision shall be provided to the State within thirty (30) days of bid opening.

(19) Document expenses by recording all contractor's costs, consultant fees and all municipal costs including payroll hours on time sheets, material purchases (including bills), and equipment charges. Equipment rates will be based on a municipal audit, if available, acceptable to the State. In the absence of acceptable municipal rates, the rental rate(s) shall be established in accordance with Section 1.09.04(d) of the "State of Connecticut, Department of Transportation, Standard Specifications for Roads, Bridges, and Incidental Construction – Form 816," and Supplemental Specifications, as revised.

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

(21) Pay for all construction related costs, without reimbursement, in the event the Project is cancelled by the Municipality without proper justification. The Municipality may request cancellation of the Project, and if the Parties determine it is in the best interests of the State and subsequently approved in writing by the FHWA to be acceptable, Federal participation in expenditures may be provided up to the allocable percentage of acceptable work completed to the approved date of cancellation.

(22) Pay for advertising, construction contract items, administration, inspection and construction engineering services, including assistants and/or consultants or contractors, rendering professional, technical, engineering or other assistance and advice during the construction phase of the Project. Expenditures approved by the State will be reimbursed under the provisions of Article II., Paragraphs (31) and (35), and Article III., Paragraph (45) of this Agreement. Written documentation shall be provided to the State indicating procedures utilized for the employment of municipal forces and/or retention of consultants providing Administrative and Inspection services for the Project.

(23) Assume all responsibility and liability for:

- (a) The proper maintenance and operation of all the Municipality's facilities constructed as part of this Project, upon completion of the Project, to the satisfaction of the State and the FHWA, including, but not limited to, the following facilities constructed within the State highway right-of-way: landscaping, trash receptacles, benches, ornamental lighting, tree grates, decorative sidewalks and granite curbing, as well as snow and ice removal operations for areas located outside the established travelway and within the "bump out" areas .
- (b) Maintenance of traffic control signals on municipally maintained roadways (if signals are constructed as part of this Project) upon satisfactory completion of the 30-day acceptance test period.
- (c) The payment for electrical energy from such time as it is required for traffic signals and/or illumination installed on this Project, located on municipally maintained roadways, or at locations containing at least one roadway that is maintained by the Municipality.
- (d) Periodic inspection, maintenance and repairs to all railroad bridges located within the railroad right-of-way during the construction/inspection phases of the Project as well as after all work on the Project has been completed.
- (e) Any and all claims by the Prime Contractor.

(24) Notify the State, in writing, when the construction phase of the Project has been completed

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

(26) Assume all maintenance responsibilities for the facilities constructed as part of this Project upon "Acceptance" of the work by the Municipality.

- (27) (a) Indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Agreement, including the acts of commission or omission (collectively, the "Acts") of the Municipality or Municipality Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Agreement. The Municipality shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Municipality's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Municipality's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance.
- (b) The Municipality shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Municipality shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Municipality or any Municipality Parties. The State shall give the Municipality reasonable notice of any such Claims.
- (d) The Municipality's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Agreement, without being lessened or compromised in any way, even where the Municipality is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Municipality shall carry and maintain at all times during the term of the Agreement, and during the time that any provisions survive the term of the Agreement, sufficient general liability insurance to satisfy its obligations under this Agreement. The Municipality shall name the State as an additional insured on the policy. The Department shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Department or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the termination of the Agreement and shall not be limited by reason of any insurance coverage.

(28) Not use the defense of Sovereign Immunity in the adjustment of claims or in the defense of any suit, unless requested to do so by the State. The Municipality agrees that in the event of an adjustment of claims or in the defense of any suit between the State and the Municipality, the Municipality shall not use the defense of Governmental Immunity.

(29) Obtain insurance for the Project as follows:

- (a) With respect to the operations that the Municipality 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 Municipality 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 forms acceptable to the State.
- (b) With respect to the Construction Inspection activities that the Municipality performs or engages an Inspection Consultant to perform, and also those that are performed by any subconsultant of the Inspection Consultant, in conjunction with the Project, the Municipality shall carry and/or shall require its 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 Form 816 at Section 1.03.07 Items (1), (2), (3), (5), (7), (8) "Insurance." For the purposes of this subparagraph (b), any reference in the Standard Specifications to "Contractor" and "subcontractor" hereby refers to the Inspection Consultant and subconsultant, respectively.
- (c) With respect to the Construction Inspection activities that the Municipality performs or engages a Inspection Consultant to perform, and also those that are performed by any subconsultant of the Inspection Consultant, in conjunction with the Project, the Municipality shall carry, and/or shall require its 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 Inspection Activities in conjunction with the Project.
- (d) With respect to the operations that the Municipality performs or engages an Inspection Consultant to perform, and also those that are performed by subconsultants thereof, in conjunction with the Project, the Municipality shall carry, and/or shall require its Inspection Consultant (i) to carry and (ii) to impose on its subconsultants, respectively, 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.

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 Municipality, the Municipality may request that the State accept coverage provided under a municipal self insurance program. If requested by the State, the Municipality 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 Municipality shall assume any and all claims as a self-insured entity, and the respective insurance requirements stated herein will not be applicable.

The Municipality 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 Municipality may redact provisions of the policy that are proprietary. This provision shall survive the suspension, expiration or termination of this Agreement. The Municipality shall insert this required provision into its contracts or agreements with its Prime Contractor and/or Inspection Consultant, if applicable, and shall require its Prime Contractor and/or Inspection Consultant to insert this required provision into its contracts or agreements with its subcontractors and/or subconsultants.

(30) Comply with all the State and Federal Statutory and Administrative Requirements incorporated herein by reference and set forth in Exhibit A attached hereto, and all Schedules attached hereto which are also hereby made a part of this Agreement.

#### ARTICLE II. THE STATE SHALL:

(31) Use apportionments made available to the State under the Enhancement component of the Federal Surface Transportation Program to reimburse the Municipality for the Federal eighty percent (80%) share of participating Project costs. Eighty percent (80%) of the certified amount expended by the Municipality and approved by the State as participating Project costs under the terms of this Agreement will be reimbursed by the State.

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

(33) Assume maintenance responsibility for those State facilities constructed as part of this Project excluding those responsibilities identified under Article I, Paragraph (23)(d) hereof.

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

(35) Reimburse the Municipality for approved advertising, participating contract items and contingencies, design services during construction, inspection and administrative costs in accordance with the percentages depicted in Article II., Paragraph (31) and Article III., Paragraph (45) of this Agreement. Reimbursement will be made in the following manner:

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

(b) Upon review and approval of the voucher by the State, payment of the reimbursement portion of said costs and expenses will be made to the Municipality.

#### ARTICLE III. THE STATE AND MUNICIPALITY MUTUALLY AGREE:

(36) Upon written notice, the State in its sole discretion may, suspend, postpone, or terminate

this Agreement, and such action shall in no event be deemed a breach of contract. Any such action may be taken by the State for its own convenience. Any such suspension, postponement or termination shall be effected by delivery to the Municipality of a written notice specifying the extent to which performance of work under the Agreement is being suspended, postponed or terminated, and the date upon which such action shall be effective.

If the State terminates this Agreement, the State shall reimburse the Municipality at the contract unit prices for the actual number of units or items of work completed prior to the effective date of termination, or as may be agreed by the parties for items of work partially completed. No claim for loss of overhead or anticipated profits shall be allowed.

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

Materials obtained by the Municipality or its Prime 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 be purchased from the Prime Contractor at actual cost as shown by receipted bills; to this cost shall be added all actual costs for delivery at such points of delivery as may be designated by the State, as shown by actual cost records. The Municipality shall be reimbursed by the State for such costs of the material, and the State at its discretion, will determine which material will become the property of the State.

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

(37) That if the Municipality fails to fulfill its responsibility in regard to Article I., Paragraphs (23) and (25) of this Agreement, such failure will disqualify the Municipality from Federal-aid participation on future projects for which the Municipality has maintenance responsibility.

- (38) (a) That if the extra work requested, in writing, by the Municipality results in an accumulative cost less than the amount identified under Item D of Article (45) hereof, said cost shall be funded under the terms of this Agreement; if the State granted written approval of said cost increases.
- (b) If the extra work requested, in writing, by the Municipality results in an accumulative cost greater than the amount identified under Item D of Article (45) hereof, the State and Municipality shall enter into a supplemental agreement; if STP funding is available and the State granted written approval of said cost increases.
- (c) If the actual expenditures incurred by the State result in an accumulative cost less than the amount identified under Item H of Article (45) hereof, said expenditures shall be funded under the terms of this Agreement.
- (d) If the actual expenditures incurred by the State result in an accumulative cost greater than the amount identified under Item H of Article (45) hereof, the State and Municipality shall enter into a supplemental agreement, if STP funding is available.

(39) That the Municipality shall be responsible for one hundred percent (100%) of the total cost of all Federal-aid non-participating contract item(s), including any incidentals to construction cost, which have been specifically requested by the Municipality that are considered by the State to be nonessential for the Project. However, if the cost of the total non-participating contract items is less than ten percent (10%) of the cost of the total project contract items, the cost of the associated incidentals to construction may be considered participating. The percentage derived from the ratio of the total incidentals to construction cost to the total contract items, as determined by a post-construction audit, will be used to determine the incidentals to construction cost for the Federal-aid non-participating items. The final audit governs final billing to the Municipality for Non-participating Items.

(40) That the final payment by the Municipality to the State or by the State to the Municipality shall be based upon the actual participating construction costs as determined by a post-construction audit performed by the State, using percentages and funding procedures established in this Agreement. The Municipality is also required to perform an audit in accordance with Exhibit A, Paragraph (5).

(41) That before completion of the construction phase of the Project, the Municipality shall notify the State in writing of the semi-final and final inspection dates. Subsequent to the State's acceptance of such dates, the Municipality, in concert with the State, shall perform the semi-final and final inspections of the Project.

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

(43) That any Official Notice from one such party to the other such party, in order for such notice to be binding thereon, shall:

(a) Be in writing (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 Municipality is to receive such Notice -

Town Manager  
Town of Winchester  
338 Main Street  
Winsted, Connecticut 06098;

(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 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.

(44) That upon final inspection by the Municipality and the State, the Municipality shall submit to the State, within one hundred twenty (120) calendar days, those materials described in the "Municipality Manual – Connecticut Department of Transportation, Bureau of Engineering and Highway Operations, Office of Construction, 2007," as revised, under the "Project Finals Check List." Upon receipt and approval of those materials, which include signed "CON 100M", "CON 500M" and "CON 501M" forms, the State will release retainage in accordance with the terms in the Construction Engineering and Inspection Agreement between the Inspection Consultant and the Municipality and the Connecticut Department of Transportation Municipality Manual concerning retainage for the Municipality's Prime Contractor.

If the Municipality fails to fulfill its responsibilities in regard to the submission of materials referred to above, the State may exercise its option to take over or supplement the administration of the Project, as previously described under Article I., Paragraph (14) of this Agreement.

(45) That the total estimated cost for the construction phase of the Project is set forth below:

The maximum amount of reimbursement to the Municipality under the terms of this Agreement is Eight Hundred Forty Thousand Seven Hundred Twenty Dollars (\$840,720).

**ESTIMATED CONSTRUCTION COSTS**

State Project No. 162-148	Federal-aid Project No. PEDS(100)
A. Contract Items and Contingencies .....	\$ 913,700
B. Incidentals to Construction-Municipal Services .....	\$ 107,000
C. Incidentals to Construction-Construction Engineering Services.....	\$ 18,200
D. Extra Work Allowance - Municipal .....	\$ 12,000
E. Total Municipal Cost (A+B+C+D).....	\$1,050,900
F. Incidentals to Construction-State Administrative Oversight & Audits.....	\$ 70,500
G. Incidentals to Construction-State Material Testing.....	\$ 26,500
H. Extra Work Allowance by State Forces.....	\$ 0
I. Total Incidentals to Construction-State (F+G+H).....	\$ 97,000
J. Total Construction Cost (E+I).....	\$1,147,900
K. Federal Proportionate Share of the Total Construction Cost (80 % of J).....	\$ 918,320
L. Municipal Proportionate Share of the Total Construction Cost (20% of J).....	\$ 229,580
M. Maximum Amount of Reimbursement to the Municipality (80% of E).....	\$ 840,720
N. Amount to be deposited by the Municipality in accordance with Article I, Paragraph (15)(a) of this Agreement (20% of I).....	\$ 19,400
O. Demand deposit required from the Municipality for depreciation reserve credit in accordance with Article I, Paragraph (15)(b) of this Agreement.....	\$ 0
P. Total Demand Deposit (N+O).....	\$ 19,400

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

(47) The Agreement itself is not an authorization for the Municipality to begin the Project or begin performance in any way. The Municipality may begin the Project or begin performance only after it has received a written official notice to proceed order against the Agreement. A Municipality's commencement of the Project or commencing performance without a official notice in accordance with this Article III., Paragraph (47) does so at the Municipality's own risk.

The State shall issue a written official notice against the Agreement directly to the Municipality.

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

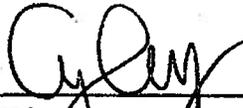
(49) That the Parties deem the Agreement to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, 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 Municipality waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

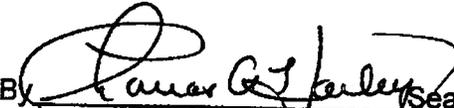
The Parties acknowledge and agree that nothing in the Agreement shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which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

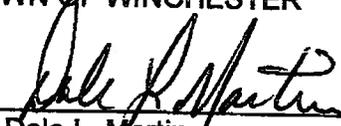
  
Name: CYNTHIA A. YOUNG

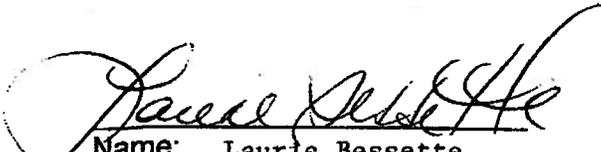
By  (Seal)  
Thomas A. Harley, P.E.  
Bureau Chief  
Bureau of Engineering and  
Construction

  
Name: BARBARA FARNSWORTH

Date: October 14, 2011

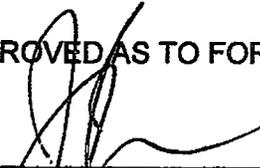
  
Name: Sheila S. Sedlack

TOWN OF WINCHESTER  
By  (Seal)  
Dale L. Martin  
Town Manager

  
Name: Laurie Bessette

Date: 10/4/2011

APPROVED AS TO FORM:

  
Attorney General  
State of Connecticut

Date: 10/26/11



STATE OF CONNECTICUT  
DEPARTMENT OF TRANSPORTATION

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



Office of the  
Commissioner

An Equal Opportunity Employer

Delegation of Authority  
Authorized by Sections 13b-17 and 13b-20 of the  
Connecticut General Statutes, As Amended

Know All Ye Persons By These Presents, That I, James Redeker, Commissioner of Transportation, as authorized by Section 13b-17 and Section 13b-20 of the Connecticut General Statutes, as amended, do hereby delegate to Thomas A. Harley, Bureau Chief of the Bureau of Engineering and Construction and who also serves as the Chief Engineer, Department of Transportation, the duties and responsibilities which relate to all day-to-day operational and administrative activities and functions for the Bureau of Engineering and Construction and the authority to sign any agreement, contract, document, or instrument pertaining to the above which I am authorized to sign for said Bureau.

James Redeker  
Commissioner

Date: 8.26.11

*Town of Winchester*  
*Office of the Town Clerk and Registrar of Vital Statistics*

Sheila S. Sedlack, Town Clerk  
Cheryl L. Carriere, Assistant Town Clerk  
Phone 860-738-6963

Town Hall  
338 Main Street  
Winsted, CT 06098-1697

FAX 860-738-6595

CERTIFIED RESOLUTION

I, Sheila S. Sedlack, Town Clerk of the Town of Winchester, SO  
HEREBY CERTIFY that the attached resolution is a true and correct  
copy of a resolution duly adopted by the Board of Selectmen, of the  
Town of Winchester at a meeting duly held and convened on October 3,  
2011 at which a duly constituted quorum of the Board of Selectmen  
were present and acting throughout, and that such motion has not been  
modified, rescinded or revoked and is at present in full force and effect

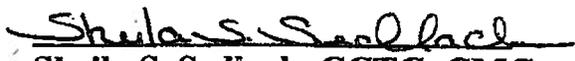
Motion by Sel. Smith, seconded by Sel. Closson

Move that the Board of Selectmen adopt the attached Resolution  
related to State Project No. 162-148:

“RESOLVED, that Dale L. Martin, Town Manager, is hereby  
authorized to sign the Agreement entitled “Agreement between  
the State of Connecticut and the Town of Winchester for the  
Construction, Inspection and Maintenance of Main Street  
Streetscape Improvements Phase II utilizing Federal Funds under  
the Enhancement Component of the Surface Transportation  
Program”

UNANIMOUS

IN WITNESS WHEREOF, the undersigned has affixed her signature and  
the municipal seal of the Town of Winchester, Connecticut, on the 6<sup>th</sup>  
day of October, 2011.

  
Sheila S. Sedlack, CCTC, CMC  
Town Clerk – Town of Winchester

SEAL

Bill

## EXHIBIT A

### ADMINISTRATIVE AND STATUTORY REQUIREMENTS

#### THE MUNICIPALITY AGREES:

- (1) That 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. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 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 Municipality's request, the Department shall provide a copy of these orders to the Municipality.
- (2) To acknowledge and agree to comply with the policies enumerated in this Exhibit A, Schedule 7 (attached herewith), "Connecticut Department of Transportation, Policy Statement, Policy No. F&A-10 Subject: "Code of Ethics Policy," June 1, 2007.
- (3) 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 Municipality shall constitute certification that to the best of its knowledge and belief the Municipality or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of Federal or State funds:
- (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) Has not, within a five-year period preceding this Agreement, had one or more public transactions (Federal, State or local) terminated for cause or default.
- (b) Where the Municipality is unable to certify to any of the statements in this certification, such Municipality shall attach an explanation to this Agreement.

The Municipality 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.

(4) As a condition to receiving federal financial assistance under the Agreement, if any, the Municipality 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 in this Exhibit A, Schedule 8 (attached herewith).

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

**FEDERAL SINGLE AUDIT:** Each Municipality that expends a total amount of Federal awards: 1) equal to or in excess of \$500,000 in any fiscal year shall have either a single audit made in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" or a program-specific audit (i.e. an audit of one federal program); 2) less than \$500,000 shall be exempt for such fiscal year.

**STATE SINGLE AUDIT:** Each Municipality that expends a total amount of State financial assistance: 1) equal to or in excess of \$300,000 in any fiscal year shall have an audit made in accordance with the State Single Audit Act, Connecticut General Statutes (C.G.S.) §§ 4-230 to 4-236, hereinafter referred to as the State Single Audit Act or a program audit; 2) less than \$300,000 in any fiscal year shall be exempt for such fiscal year.

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

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

The audited Municipality shall provide supplementary schedules with the following program/grant information: the program/grant number, CONNDOT project number, Federal project number, phase and expenditures by phase. The sum of project expenditures should agree, in total, to the program/grant expenditures in the Audit Reports. Federal and State programs/grants should be listed separately. (See Exhibit A, Schedule 9, attached herewith entitled "Supplementary Program Information" for format.)

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

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

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

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

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

**(6) Certification for Federal-Aid Contracts-(For contracts exceeding \$100,000)**

That the Municipality 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 Municipality, 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 Municipality shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. If applicable, the Disclosure Form-LLL in this Exhibit A, Schedule 10 (attached herewith), 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 Municipality also agrees by submitting his/her/its Bid, Agreement, Contract, or Proposal that he/she/it shall require that the language of this Certification be included in all lower tier 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.**

(7) That this clause applies to those municipalities who are or will be responsible for compliance with the terms of the Americans Disabilities Act of 1990 ("Act"), Public Law 101-336, during the term of the Agreement. The Municipality represents that it is familiar with the terms of this Act and that it is in compliance with the Act. Failure of the Municipality 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 Municipality. The Municipality 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 Municipality to be in compliance with this Act, as the same applies to performance under this Agreement.

(8) That with respect to all operations the Municipality performs and all those performed for the Municipality by subcontractors, the Municipality and its subcontractors shall carry Workers' Compensation Insurance and, as applicable, insurance required in accordance with the U. S. Longshore and Harbor Workers' Compensation Act, in accordance with the requirements of the laws of the State of Connecticut, and of the laws of the United States respectively.

(9) That when the Municipality receives State or Federal funds it shall incorporate the "Connecticut Required 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 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 Municipality shall also attach a copy of the SEEOR, as part of any agreements with contractors, consulting engineers or other vendors and require that the contractors, consulting engineers or other vendors attach the SEEOR to its subcontracts.

Schedule 1

**SPECIAL PROVISIONS**  
**DISADVANTAGED BUSINESS ENTERPRISES**  
**FOR FEDERAL FUNDED PROJECTS**  
(For Municipal Advertised and Awarded Projects Only)  
Revised – February 26, 2009

NOTE: Certain of the requirements and procedures stated in this special provision are applicable prior to the execution of the Contract document.

I. **ABBREVIATIONS AND DEFINITIONS AS USED IN THIS SPECIAL PROVISION**

- 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 for others in negotiating contracts, agreements, purchases, sales, etc., in return for a fee or commission.
- D. "Contract," "agreement" or "subcontract" means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For the purposes of this provision a lease for equipment or products is also considered to be a Contract.
- E. "Contractor," means a consultant, second party or any other entity doing business with 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 both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock of which is owned by one or more such individuals; and
  - 2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- G. "DOT-assisted Contract" means any Contract between a recipient and a Contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees.
- H. "Good Faith Efforts" means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Refer to Appendix A of 49 Code of Federal Regulation ("CFR") Part 26 - "Guidance Concerning Good Faith Efforts," a copy of which is attached to this provision, for guidance as to what constitutes good faith efforts.

- I. "Small Business Concern" means, with respect to firms seeking to participate as DBEs in DOT-assisted Contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration ("SBA") regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26, Section 26.65(b).
- J. "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 CDOT finds on a case-by-case basis to be a socially and economically disadvantaged individual.
  2. Any individuals in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
    - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
    - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
    - iii. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
    - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
    - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
    - vi. Women;
    - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

## II. GENERAL REQUIREMENTS

- A. The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the DOT deems appropriate.
- B. The Contractor shall cooperate with the Municipality, CDOT and DOT in implementing the requirements concerning DBE utilization on this Contract in accordance with Title 49 of the Code of Federal Regulations, Part 26 entitled "Participation by Disadvantaged Business

Enterprises in Department of Transportation Financial Assistance Programs" ("49 CFR Part 26"), as revised. The Contractor shall also cooperate with the Municipality, CDOT and DOT in reviewing the Contractor's activities relating to this Special Provision. This Special Provision is in addition to all other equal opportunity employment requirements of this Contract

- C. The Contractor shall designate a liaison officer who will administer the Contractor's DBE program. Upon execution of this Contract, the name of the liaison officer shall be furnished in writing to the Municipality.
- D. For the purpose of this Special Provision, DBEs to be used to satisfy the DBE goal must be certified by CDOT's Division of Contract Compliance for the type(s) of work they will perform.
- E. If the Contractor allows work designated for DBE participation required under the terms of this Contract and required under III-B to be performed by other than the named DBE organization without concurrence from the Municipality, the Municipality will not pay the Contractor for the value of the work performed by organizations other than the designated DBE.
- F. At the completion of all Contract work, the Contractor shall submit a final report to the Municipality, indicating the work done by, and the dollars paid to DBEs. If the Contractor does not achieve the specified Contract goals for DBE participation, the Contractor shall also submit written documentation to the Municipality, detailing its good faith efforts to satisfy the goal that were made during the performance of the Contract. Documentation is to include but not be limited to the following:
  - 1. A detailed statement of the efforts made to select additional subcontracting opportunities to be performed by DBEs in order to increase the likelihood of achieving the stated goal.
  - 2. A detailed statement, including documentation of the efforts made to contact and solicit bids/proposals with CDOT certified DBEs, including the names, addresses, dates and telephone numbers of each DBE contacted, and a description of the information provided to each DBE regarding the scope of services and anticipated time schedule of work items proposed to be subcontracted and nature of response from firms contacted.
  - 3. Provide a detailed statement for each DBE that submitted a subcontract proposal, which the Contractor considered not to be acceptable stating the reasons for this conclusion.
  - 4. Provide documents to support contacts made with CDOT requesting assistance in satisfying the Contract specified goal.
  - 5. Provide documentation of all other efforts undertaken by the Contractor to meet the defined goal.
- G. Failure of the Contractor at the completion of all Contract work to have at least the specified percentage of this Contract performed by DBEs as required in III-B will result in the reduction in Contract payments to the Contractor by an amount determined by multiplying the total Contract value by the specified percentage required in III-B and subtracting from that result, the dollar payments for the work actually performed by DBEs. However, in instances where the Contractor can adequately document or substantiate its good faith efforts made to meet the specified percentage to the satisfaction of the Municipality, no reduction in payments will be imposed.
- H. All records must be retained for a period of three (3) years following acceptance by the Municipality of the Contract and shall be available at reasonable times and places for inspection by authorized representatives of the Municipality, 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, claims, or audits findings involving the records are resolved.

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

### III. SPECIFIC REQUIREMENTS:

In order to increase the participation of DBEs, the Municipality requires the following

- A. The Contractor shall assure that certified DBEs will have an opportunity to compete for subcontract work on this Contract, particularly by arranging solicitations and time for the preparation of proposals for services to be provided so as to facilitate the participation of DBEs regardless if a Contract goal is specified or not.
- B. The DBE contact goal percentage for the Project is 7% (Construction) and 0% (Construction Inspection). The goal shall be based upon the total contract value. Compliance with this provision may be fulfilled when a DBE or any combination of DBEs perform work under Contract in accordance with 49 CFR Part 26, Subpart C, Section 26.55, as revised. Only work actually performed by and/or services provided by DBEs which are certified for such work and/or services can be counted toward the DBE goal. Supplies and equipment a DBE purchases or leases from the prime Contractor or Its affiliate can not be counted toward the goal.

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

- C. Within 7 days after the bid opening, the low bidder shall indicate in writing to the Municipality, on the forms provided, the DBE(s) it will use to achieve the goal indicated in III-B. The submission shall include the name and address of each DBE that will participate in this Contract, a description of the work each will perform, the dollar amount of participation, and the percentage this is of the bid amount. This information shall be signed by the named DBE and the low bidder. The named DBE shall be from a list of certified DBEs available from CDOT. In addition, the named DBE(s) shall be certified to perform the type of work they will be contracted to do.
- D. The prime Contractor shall submit to the Municipality all requests for subcontractor approvals on the standard forms provided by the Municipality.

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

In addition, the following documents are to be attached:

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

- E. The Contractor is required, should there be a change in a DBE they submitted in III-C, to submit documentation to the Municipality which will substantiate and justify the change, (i.e., documentation to provide a basis for the change for review and approval by the Municipality) prior to the implementation of the change. The Contractor must demonstrate that the originally named DBE is unable to perform in conformity to the scope of service or is unwilling to perform, or is in default of its Contract, or is overextended on other jobs. The Contractor's ability to negotiate a more advantageous agreement with another subcontractor is not a valid basis for change. Documentation shall include a letter of release from the originally named DBE indicating the reason(s) for the release.
- F. Contractors subcontracting with DBEs to perform work or services as required by this Special Provision shall not terminate such firms without advising the Municipality in writing, and providing adequate documentation to substantiate the reasons for termination if the DBE has not started or completed the work or the services for which it has been contracted to perform.
- G. When a DBE is unable or unwilling to perform or is terminated for just cause the Contractor shall make good faith efforts to find other DBE opportunities to increase DBE participation to the extent necessary to at least satisfy the goal required by III-B.
- H. In instances where an alternate DBE is proposed, a revised submission to the Municipality together with the documentation required in III-C, III-D, and III-E, must be made for its review and approval.
- I. Each quarter after execution of the Contract, the Contractor shall submit a report to the Municipality indicating the work done by, and the dollars paid to the DBE for the current quarter and to date.
- J. Each contract that the Municipality signs with a contractor and each subcontract the Contractor signs with a subcontractor must include the following assurance: The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49CFR part 26 in the award and administration of DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

#### IV. MATERIAL SUPPLIERS OR MANUFACTURERS

- A. If the Contractor elects to utilize a DBE supplier or manufacturer to satisfy a portion or all of the specified DBE goal, the Contractor must provide the Municipality 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 or leased to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products, need not keep such products in stock if it owns or operates distribution equipment Brokers and packagers shall not be regarded as material suppliers or manufacturers.
- C. Credit for DBE manufacturers is 100% of the value of the manufactured product. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or

supplies obtained by the Municipality, Department of Transportation or Contractor.

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

- A. Contactors may count towards their DBE goals 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 Municipality to be reasonable and consistent with fees customarily allowed for similar services.
  2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is a 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 Municipality to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  3. The fees or commissions charged for providing bonds or insurance specifically required for the performance of the Contract, provided that the fees or commissions are determined by the Municipality to be reasonable and not excessive as compared with fees customarily allowed for similar services.

VI. BROKERING

- A. Brokering of work by 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 and/or majority firms who engage in willful falsification, distortion or misrepresentation with respect to any facts related to the project shall be referred to the U.S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U.S. Code, Section 10.20.

VII. REVIEW OF PRE-AWARD GOOD FAITH EFFORTS

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

The application must include the following documentation:

1. a statement setting forth in detail which parts, if any, of the Contract were reserved by the Contractor and not available for subcontracting;

2. a statement setting forth all parts of the Contract that are likely to be sublet;
3. a statement setting forth in detail the efforts made to select subcontracting work in order to likely achieve the stated goal;
4. copies of all letters sent to DBEs;
5. a statement listing the dates and DBEs that were contacted by telephone and the result of each contact;
6. a statement listing the dates and DBEs that were contacted by means other than telephone and the result of each contact;
7. copies of letters received from DBEs in which they declined to bid;
8. a statement setting forth the facts with respect to each DBE bid received and the reason(s) any such bid was declined;
9. a statement setting forth the dates that calls were made to CDOT's Division of Contract Compliance seeking DBE referrals and the result of each such call; and
10. any information of a similar nature relevant to the application.

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

- B. Upon receipt of the submission of an application for review of pre-award good faith efforts, the Municipality shall submit the documentation to CDOT initiating unit for submission to the CDOT Division of Contract Compliance. CDOT Division of Contract Compliance will review the documents and determine if the package is complete, accurate and adequately documents the Contractor's good faith efforts. Within fourteen (14) days of receipt of the documentation the CDOT Division of Contract Compliance shall notify the Contractor by certified mail of the approval or denial of its good faith efforts.
- C. If the Contractor's application is denied, the Contractor shall have seven (7) days upon receipt of written notification of denial to request administrative reconsideration. The Contractor's request for administrative reconsideration should be sent in writing to the Municipality. The Municipality will forward the Contractor's reconsideration request to the CDOT initiating unit for submission to the DBE Screening Committee. The DBE Screening Committee will schedule a meeting within fourteen (14) days from receipt of the Contractor's request for administrative reconsideration and advise the Contractor of the date, time and location of the meeting. At this meeting the Contractor will be provided with the opportunity to present written documentation and/or argument concerning the issue of whether it made adequate good faith efforts to meet the goal. Within seven (7) days following the reconsideration meeting, the chairperson of the DBE Screening Committee will send the contractor via certified mail a written decision on its reconsideration request, explaining the basis of finding either for or against the request. The DBE Screening Committee's decision is final. If the reconsideration is denied, the Contractor shall indicate in writing to the Municipality within fourteen (14) days of receipt of written notification of denial, the DBEs it will use to achieve the goal indicated in III-B.
- D. Approval of pre-execution good faith efforts does not relieve the Contractor from its obligation to make additional good faith efforts to achieve the DBE goal should contracting opportunities arise during actual performance of the Contract-work.

## 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 this 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 all 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 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 or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
  - A. Soliciting through all reasonable and available means (e.g. attendance 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.
  - C. 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.

- D. (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 negotiation 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 the 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.
- 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.

CONNECTICUT DEPARTMENT OF TRANSPORTATION  
DBE SUPPLIER/MANUFACTURER AFFIDAVIT

This affidavit must be completed by the State Contractor's DBE notarized and attached to the Contractor's request to utilize a DBE supplier a 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. 26.55(e)(2), as the same may be revised.

I further certify and affirm that \_\_\_\_\_ will assume the actual  
(DBE person, firm, association or organization)  
contractual responsibility for the provision of the materials and/or supplies sought by \_\_\_\_\_  
(State Contractor)

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

I understand that false statements made herein are punishable by Law (Sec. 53a-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

I, \_\_\_\_\_, 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 \_\_\_\_\_ of 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)

Schedule 2  
**SPECIAL PROVISIONS**  
**SMALL BUSINESS PARTICIPATION PILOT PROGRAM SBPPP**  
**AS SUBCONTRACTORS AND MATERIAL SUPPLIERS OR MANUFACTURERS**  
(For Municipal Advertised and Awarded Projects Only)  
Revised – February 3, 2009

NOTE: Certain of the requirements and procedures stated in this Special Provision are applicable prior to the award and execution of the Contract document.

I. **ABBREVIATIONS AND DEFINITIONS AS USED IN THIS SPECIAL PROVISION**

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

also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26, Section 26.65(b).

- J. "Small Business Participation Pilot Program" means small businesses certified as a Disadvantaged Business Enterprise (DBE) firms by the Connecticut Department of Transportation; firms certified as a Small Business Enterprise or Minority Business Enterprise by the Connecticut Department of Administrative Services; firms certified by the United States Small Business Administration (USBA) as an 8(a) or SDB or HUBZone firm; or firms that are a current active recipient of a United States Small Business Administration Loan (loan must be documented).
- K. "Socially and Economically Disadvantaged Individuals" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—
1. Any individual who CONNDOT finds on a case-by-case basis to be a socially and economically disadvantaged individual.
  2. Any individuals in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
    - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
    - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
    - iii. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
    - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
    - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
    - vi. Women;
    - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

## II. GENERAL REQUIREMENTS

- A. The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the Municipality and ConnDOT deem appropriate.
- B. The Contractor shall cooperate with the Municipality, ConnDOT and DOT in implementing the requirements concerning SBPPP utilization on this Contract. The Contractor shall also cooperate with the Municipality, CONNDOT and DOT in reviewing the Contractor's activities relating to this Special

Provision. This Special Provision is in addition to all other equal opportunity employment requirements of this Contract.

- C. The Contractor shall designate a liaison officer who will administer the Contractor's SBPPP program. Upon execution of this Contract, the name of the liaison officer shall be furnished in writing to the Municipality.
- D. For the purpose of this "Special Provision", the SBPPP contractor/s named to satisfy the requirements must meet one of the following criteria;
  - 1. Certified as a Disadvantaged Business Enterprise (DBE) firm by the Connecticut Department of Transportation;
  - 2. Certified as a Small Business Enterprise or Minority Business Enterprise by the Connecticut Department of Administrative Services;
  - 3. Certified by the United States Small Business Administration (USSBA) as a 8(a) or SDB firm;
  - 4. Certified by the USSBA as a HUBZone firm; or
  - 5. A current active recipient of a United States Small Business Administration Loan (loan documentation required).
- E. If the Contractor allows work designated for SBPPP participation required under the terms of this Contract and required under III-B to be performed by other than the named SBPPP firm without concurrence from the Municipality, the Municipality will not pay the Contractor for the value of the work performed by firms other than the designated SBPPP.
- F. At the completion of all Contract work, the Contractor shall submit a final report to the Municipality indicating the work done by, and the dollars paid to SBPPPs. If the Contractor does not achieve the specified Contract goals for SBPPP participation, the Contractor shall also submit written documentation to the Municipality detailing its good faith efforts to satisfy the goal throughout the performance of the Contract. Documentation is to include, but not be limited to the following:
  - 1. A detailed statement of the efforts made to select additional subcontracting opportunities to be performed by SBPPPs in order to increase the likelihood of achieving the stated goal.
  - 2. A detailed statement, including documentation of the efforts made to contact and solicit bids with SBPPPs, including the names, addresses, dates and telephone numbers of each SBPPP contacted, and a description of the information provided to each SBPPP regarding the scope of services and anticipated time schedule of work items proposed to be subcontracted and nature of response from firms contacted.
  - 3. Provide a detailed statement for each SBPPP that submitted a subcontract proposal, which the Contractor considered not to be acceptable stating the reasons for this conclusion.
  - 4. Provide documents to support contacts made with CONNDOT requesting assistance in satisfying the Contract specified goal.
  - 5. Provide documentation of all other efforts undertaken by the Contractor to meet the defined goal.
- G. Failure of the Contractor, at the completion of all Contract work, to have at least the specified percentage of this Contract performed by SBPPPs as required in III-B will result in the reduction in Contract payments to the Contractor by an amount determined by multiplying the total Contract value by the specified percentage required in III-B and subtracting from that result, the dollar payments for the work actually performed by SBPPPs. However, in instances where the Contractor can adequately

document or substantiate its good faith efforts made to meet the specified percentage to the satisfaction of the Municipality and ConnDOT, no reduction in payments will be imposed.

- H. All records must be retained for a period of three (3) years following acceptance by the Municipality of the Contract and shall be available at reasonable times and places for inspection by authorized representatives of the Municipality, ConnDOT and or Federal agencies. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audits findings involving the records are resolved.
- I. Nothing contained herein, is intended to relieve any Contractor or subcontractor or material supplier or manufacturer from compliance with all applicable Federal and State legislation or provisions concerning equal employment opportunity, affirmative action, nondiscrimination and related subjects during the term of this Contract.

### III. SPECIFIC REQUIREMENTS:

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

- A. The Contractor shall assure that certified SBPPPs will have an opportunity to compete for subcontract work on this Contract, particularly by arranging solicitations and time for the preparation of proposals for services to be provided so as to facilitate the participation of SBPPPs regardless if a Contract goal is specified or not.
  - B. The SBPPP goal percentage for the project is N/A. The goal shall be shall be based upon the total final contract value. Compliance with this provision may be fulfilled when a SBPPP or any combination of SBPPPs perform work. **Only work actually performed by and/or services provided by SBPPPs which are certified for such work and/or services can be counted toward the SBPPP goal. Supplies and equipment a SBPPP purchases or leases from the prime Contractor or its affiliate cannot be counted toward the goal.**
- If the Contractor does not document commitments, by the subcontracting and/or procurement of material and/or services that at least equal the goal, it must document the good faith efforts that outline the steps it took to meet the goal in accordance with VII.
- C. Within seven (7) days after the bid opening, the low bidder shall indicate in writing to the Municipality, on the forms provided, the SBPPP(s) it will use to achieve the goal indicated in III-B. The submission shall include the name and address of each SBPPP that will participate in this Contract, a description of the work each will perform, the dollar amount of participation, and the percentage this is of the bid amount. This information shall be signed by the named SBPPP and the low bidder.

If the Contractor does not document commitments by the subcontracting and/or procurement of material and/or services that equal the goal the Contractor must submit a request for Good Faith Effort consideration along with the proposed SBPPP commitments.

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

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

In addition, the following documents are to be attached:

1. An explanation indicating who will purchase material.
  2. A statement explaining any method or arrangement for renting equipment. If rental is from a prime, a copy of the Rental Agreement must be submitted.
  3. A statement addressing any special arrangements for manpower.
- E. The Contractor is required, should there be a change in a SBPPP they submitted in III-C, to submit documentation to the Municipality which will substantiate and justify the change (i.e., documentation to provide a basis for the change for review and approval by the Municipality) prior to the implementation of the change. The Contractor must demonstrate that the originally named SBPPP is unable to perform in conformity to the scope of service or is unwilling to perform, or is in default of its Contract, or is overextended on other jobs. **The Contractor's ability to negotiate a more advantageous Agreement with another subcontractor is not a valid basis for change.** Documentation shall include a letter of release from the originally named SBPPP indicating the reason(s) for the release.
- F. Contractors subcontracting with SBPPPs to perform work or services as required by this Special Provision shall not terminate such firms without advising the Municipality in writing, and providing adequate documentation to substantiate the reasons for termination if the SBPPP has not started or completed the work or the services for which it has been contracted to perform.
- G. When a SBPPP is unable or unwilling to perform, or is terminated for just cause, the Contractor shall make good faith efforts to find other SBPPP opportunities to increase SBPPP participation to the extent necessary to at least satisfy the goal required by III-B.
- H. In instances where an alternate SBPPP is proposed, a revised submission to the Municipality together with the documentation required in III-C, III-D, and III-E, must be made for its review and approval.
- I. Each quarter after execution of the Contract, the Contractor shall submit a report to the Municipality indicating the work done by, and the dollars paid to the SBPPP for the current quarter and to date.
- J. Each contract that the Municipality signs with a Contractor and each subcontract the Contractor signs with a subcontractor must include the following assurance: *The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.*

#### IV. MATERIAL SUPPLIERS OR MANUFACTURERS

- A. If the Contractor elects to utilize a SBPPP supplier or manufacturer to satisfy a portion or all of the specified SBPPP goal, the Contractor must provide the Municipality with:
1. An executed "Affidavit for the Utilization of Material Suppliers or Manufacturers" (sample attached), and
  2. Substantiation of payments made to the supplier or manufacturer for materials used on the project.
- B. Credit for SBPPP suppliers is limited to 60% of the value of the material to be supplied, provided such material is obtained from a regular SBPPP dealer. A regular dealer is a firm that owns, operates, or

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

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

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

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

#### VI. BROKERING

- A. Brokering of work by SBPPPs who have been approved to perform subcontract work with their own workforce and equipment is not allowed, and is a Contract violation.
- B. SBPPPs involved in the brokering of subcontract work that they were approved to perform may be decertified.
- C. Firms involved in the brokering of work, whether they are SBPPPs and/or majority firms who engage in willful falsification, distortion or misrepresentation with respect to any facts related to the project may be referred to the U.S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, U.S. Code, Section 10.20.

#### VII. REVIEW OF PRE-AWARD GOOD FAITH EFFORTS

- A. If the Contractor does not document pre-award commitments by subcontracting and/or procurement of material and/or services that at least equal the goal stipulated in III-B, the Contractor must document the good faith efforts that outline the specific steps it took to meet the goal. The Contract will be awarded to the Contractor if its good faith efforts are deemed satisfactory and approved by CONNDOT. To obtain such an exception, the Contractor must submit an application to the

Municipality, which documents the specific good faith efforts that were made to meet the SBPPP goal. **Application form for Review of Pre-Award Good Faith Efforts is attached hereto.**

The application must include the following documentation:

1. a statement setting forth in detail which parts, if any, of the Contract were reserved by the Contractor and not available for bid by subcontractors;
2. a statement setting forth all parts of the Contract that are likely to be sublet;
3. a statement setting forth in detail the efforts made to select subcontracting work in order to likely achieve the stated goal;
4. copies of all letters sent to SBPPPs;
5. a statement listing the dates and SBPPPs that were contacted by telephone and the result of each contact;
6. a statement listing the dates and SBPPPs that were contacted by means other than telephone and the result of each contact;
7. copies of letters received from SBPPPs in which they declined to bid;
8. a statement setting forth the facts with respect to each SBPPP bid received and the reason(s) any such bid was declined;
9. a statement setting forth the dates that calls were made to CONNDOT's Division of Contract Compliance seeking SBPPP referrals and the result of each such call; and
10. any information of a similar nature relevant to the application.

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

- B. Upon receipt of the submission of an application for review of pre-award good faith efforts, the Municipality shall submit the documentation to CONNDOT initiating unit for submission to the CONNDOT Division of Contract Compliance. CONNDOT Division of Contract Compliance will review the documents and determine if the package is complete, accurate and adequately documents the Contractor's good faith efforts. Within fourteen (14) days of receipt of the documentation, the CONNDOT Division of Contract Compliance shall notify the Contractor by certified mail of the approval or denial of its good faith efforts.
- C. If the Contractor's application is denied, the Contractor shall have seven (7) days upon receipt of written notification of denial to request administrative reconsideration. The Contractor's request for administrative reconsideration should be sent in writing to the Municipality. The Municipality will forward the Contractor's reconsideration request to the CONNDOT initiating unit for submission to the Screening Committee. The Screening Committee will schedule a meeting within fourteen (14) days from receipt of the Contractor's request for administrative reconsideration and advise the Contractor of the date, time and location of the meeting. At this meeting, the Contractor will be provided with the opportunity to present written documentation and/or argument concerning the issue of whether it made adequate good faith efforts to meet the goal. Within seven (7) days following the reconsideration

meeting, the chairperson of the Screening Committee will send the Contractor, via certified mail, a written decision on its reconsideration request, explaining the basis of finding either for or against the request. The Screening Committee's decision is final. **If the reconsideration is denied, the Contractor shall indicate in writing to the Municipality within fourteen (14) days of receipt of the written notification of denial, the SBPPPs it will use to achieve the goal indicated in III-B.**

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

## 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 must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by SBPPP firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a SBPPP goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient SBPPP 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 whether a bidder 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 has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain SBPPP participation sufficient to meet the SBPPP Contract goal. Mere pro forma efforts are not good faith efforts to meet the SBPPP 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 meet a Contract goal (i.e., obtain a specified amount of SBPPP participation) in order to be awarded a Contract, even though the bidder 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's good faith efforts to obtain SBPPP participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
  - A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified SBPPPs who have the capability to perform the work of the Contract. The bidder must solicit this interest within sufficient time to allow the SBPPPs to respond to the solicitation. The bidder must determine with certainty if the SBPPPs are interested by taking appropriate steps to follow up initial solicitations.
  - B. Selecting portions of the work to be performed by SBPPPs in order to increase the likelihood that the SBPPP goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units to facilitate SBPPP participation, even when the prime Contractor might otherwise prefer to perform these work items with its own forces.
  - C. Providing interested SBPPPs with adequate information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation.
  - D. (1) Negotiating in good faith with interested SBPPPs. It is the bidder's responsibility to make a portion of the work available to SBPPP subcontractors and suppliers and to select those portions of the work or material needs consistent with the available SBPPP subcontractors and suppliers, so as to facilitate SBPPP participation. Evidence of such negotiation includes the names,

addresses, and telephone numbers of SBPPPs 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 SBPPPs to perform the work.

- (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including SBPPP 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 SBPPPs is not in itself sufficient reason for a bidder's failure to meet the Contract SBPPP 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 of the responsibility to make good faith efforts. Prime Contractors are not, however, required to accept higher quotes from SBPPPs if the price difference is excessive or unreasonable.
- E. Not rejecting SBPPPs 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 in the Contractor's efforts to meet the project goal.
- F. Making efforts to assist interested SBPPPs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- G. Making efforts to assist interested SBPPPs 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 SBPPPs.
- V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the Contract. For example, when the apparent successful bidder 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 could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average SBPPP participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

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

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

State Project No.  
Federal Aid Project No.  
Description of Project

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

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

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

I contractually assume responsibility for the provision of the materials and/or supplies sought by \_\_\_\_\_  
(Municipality Contractor)

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

I understand that false statements made herein are punishable by Law (Sec. 53a-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 \_\_\_\_\_  
of 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)

Schedule 3

FHWA-1273  
REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendent and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:  
  
Section I, paragraph 2;  
Section IV, paragraphs 1, 2, 3, 4, and 7;  
Section V, paragraphs 1 and 2a through 2g.
5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
6. **Selection of Labor:** During the performance of this contract, the contractor shall not:
  - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A) or
  - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23

U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
- b. The contractor will accept as his operating policy the following statement:

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

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are 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 contractor's EEO policy and contractual will be taken as a minimum:
  - a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
  - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
  - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
  - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
  - a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.



contractor's association acting as agent will include the procedures set forth below:

- a. The contractor 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 contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
  - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
  - d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral, failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
  - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
  - c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
    - (1) The number of minority and non-minority group members and women employed in each work classification on the project;
    - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

- (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 DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### **III. NONSEGREGATED FACILITIES**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled park).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

### **IV. PAYMENT OF PREDETERMINED MINIMUM WAGE**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

#### **1. General:**

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and

mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

## **2. Classification:**

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
  - (1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
  - (2) the additional classification is utilized in the area by the construction industry;
  - (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (4) with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the

Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

- e The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

**3. Payment of Fringe Benefits:**

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**4. Apprentices and Trainees (Programs of U.S. DOL) and Helpers:**

**a. Apprentices:**

- (1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
- (2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
- (3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and

Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

- (4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

- (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
- (2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- (3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
- (4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**5. Apprentices and Trainees (Programs of the U.S. DOT):**

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

**6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**8. Violation:**

**Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

**9. Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

**V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

**1. Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are

herein incorporated by reference.

**2. Payrolls and Payroll Records:**

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. 

The payroll records shall contain the name, and the last four digits of the social security number of each such employee, his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - (1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
  - (2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
  - (3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore,

failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

## **VII. SUBLETTING OR ASSIGNING THE CONTRACT**

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
  - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

## **VIII. SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. ).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards

and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

#### **IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

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

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

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

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

#### **X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director,

Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

## **XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

### **1. Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A

participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\*\*\*\*\*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
- d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

\*\*\*\*\*

**2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

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

- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\*\*\*\*\*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:**

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

\*\*\*\*\*

## **XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS**  
(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
  1. To the extent that qualified persons regularly residing in the area are not available.
  2. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
  3. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.
5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**Schedule 4**

CON-100M  
 [ Replacing Con-82/58 ]

State of Connecticut  
 Bureau of Engineering & Highway Operations  
 Office of Construction

Contract No. \_\_\_\_\_  
 Project No.(s) \_\_\_\_\_  
 Fed. Aid No(s). \_\_\_\_\_  
 Date CON-100M Prepared \_\_\_\_\_

**CONTRACT STATUS**

Town: \_\_\_\_\_

Full Description  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Project Limits: (From): \_\_\_\_\_ **Start** (T0) : \_\_\_\_\_ **End**

Contract Awarded on: \_\_\_\_\_ To: \_\_\_\_\_

Order to Start on: \_\_\_\_\_

Inspector: \_\_\_\_\_ Job Tel.: \_\_\_\_\_

Final Maint. Responsibility: \_\_\_\_\_ Date closed to traffic \_\_\_\_\_  
 Date open to traffic \_\_\_\_\_

Status of Contract (Check One)	Active <input type="checkbox"/>	Suspended <input type="checkbox"/>	Resumed <input type="checkbox"/>	Completed <input type="checkbox"/>
Date				

\_\_\_\_\_ on \_\_\_\_\_  
 Municipal Official

cc:  
 Construction Division Chief/Finals Section (Original)  
 Manager of Bridge Safety-  
 Manager of Inventory & Forecasting-  
 Director of Research & Materials (Completion Only)-  
 Office of Construction – Examiner’s Supervisor-  
 District Finals Chief  
 MSAT File  
 Town of



Schedule 5

CONNECTICUT DEPARTMENT OF TRANSPORTATION  
**POLICY STATEMENT**

POLICY NO. F&A-30  
April 12, 2006

**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 these 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 defacto ceilings of any kind."

Travel - shall be the maximum established per the State Travel Regulations (managers' agreement).

If a project is federally funded in any phase, the above stated new requirements shall apply to all new agreements negotiated on or subsequent to December 1, 2005. New agreements that do not have federal funding in any phase, including construction will continue to apply the requirements of the Office of Policy and Management's (OPM) General Letter 97-1. Supplemental agreements negotiated on or after December 1, 2005, that are merely a continuation or refinement of work, shall continue to adhere to the maximums as contained in OPM's General Letter 97-1. Supplemental agreements that result in a new phase of work or more than a continuation or refinement of work will use the above stated new requirements. Supplemental agreements on federally funded projects that continue to utilize the OPM General Letter 97-1 maximums require the approval of the Federal Highway Administration before processing. Existing on-call assignments may be completed using the maximums in OPM's General Letter 97-1, as well as, new on-call assignments (projects) that have no federal funding. New on-call assignments (projects) that have federal funding must use the above stated new requirements. Extra work claims for existing agreements shall continue to adhere to those maximums established in OPM's General Letter 97-1. Computer Aided Design and Drafting (CADD) will be reimbursed through the overhead rate only.

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 December 17, 1996)

Stephen E. Korta, II  
Commissioner



**STATE OF CONNECTICUT**  
*OFFICE OF POLICY AND MANAGEMENT*

November 21, 1996

**GENERAL LETTER NO. 97-1**

**TO:** All State Agencies

**FROM:** Michael W. Kozlowski, Secretary  
Office of Policy & Management

**SUBJECT:** Contract Fees for Architects, Engineers and Consultants on State Projects

All Contracts for architects, engineers and consultants on capital projects or studies related thereto, shall be awarded on the following basis:

1. Principals -Maximum of \$35/hour
  - A. Corporations Principal is defined as follows:
    - a. A corporate officer administratively responsible to the Corporation for the contract. The principal classification (whether corporate or other) is intended to include the principal's effort on the contract relating only to managing, directing and/or administering of the contract. In no event will the number of Principal hours established be in excess of 5% of the total contract salary hours established during negotiations.
    - b. A principal may also work on the contract in the "employee" classification, for example; as a Project Manager, Draftsman, Senior Engineer, etc. While performing those services for which qualified, the principal's rate of pay shall be within the salary range for the specific classification.
2. Assistants - Actual payroll at straight time rates. Overtime at actual rates subject to prior approval.
3. Overhead and Profit - Actual but not to exceed 150% for a Home Office project; 125% for a Field Office project and 165% for an Environmental project
4. Travel - Maximum is established per the State Travel Regulations (Manager's Agreement.)

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

Schedule 7



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.

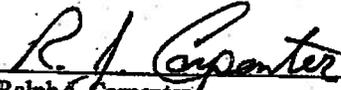
### **Important Ethics Reference Materials**

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 J. 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 8

### 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, ETA 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 9**

**SUPPLEMENTARY PROGRAM INFORMATION**

**FEDERAL**

FEDERAL PROGRAM/GRANT IDENTIFICATION NUMBER	CONNDOT PROJECT NO.	FEDERAL PROJECT NO.	PHASE (1) (PE, ROW, CONST, CE)	EXPENDITURES (BY PHASE) (2)
--	------------------------	---------------------------	-----------------------------------	--------------------------------


(1) PRELIMINARY ENGINEERING (PE), RIGHTS OF WAY (ROW), CONSTRUCTION (CONST), CONSTRUCTION ENGINEERING (CE)

(2) THE SUM OF THE PROJECT EXPENDITURES SHOULD AGREE, IN TOTAL, TO THE PROGRAM EXPENDITURES.

**STATE**

STATE PROGRAM/GRANT IDENTIFICATION NUMBER	CONNDOT PROJECT NO.	PHASE (1) (PE, ROW, CONST, CE)	EXPENDITURES (BY PHASE) (2)
--	------------------------	-----------------------------------	--------------------------------


(1) PRELIMINARY ENGINEERING (PE), RIGHTS OF WAY (ROW), CONSTRUCTION (CONST), CONSTRUCTION ENGINEERING (CE)

(2) THE SUM OF THE PROJECT EXPENDITURES SHOULD AGREE, IN TOTAL, TO THE PROGRAM EXPENDITURES.



## 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-LLA 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 secured 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 follow up 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. Subawards 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 identifying 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-90-001."
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 payment is 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-LLA 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. 0348-0046. 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 the 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 (0348-0046), Washington, DC 20503.