

**STATE OF CONNECTICUT  
DEPARTMENT OF ADMINISTRATIVE SERVICES**

**ON-CALL CLAIMS AUDITOR CONTRACT**

**Contract Number: OC-DCS-AUD-0021**

This contract for claims auditing services herein designated in connection with various infrastructure projects throughout the State of Connecticut is entered into this 8th day of February, 2019, by and between the State of Connecticut, hereinafter referred to as the State, acting herein by its Commissioner or designee, duly authorized, of the Department of Administrative Services (DAS), under the provisions of Sections 4-8, 4b-1, 4b-1b, 4a-1, 4a-2, and 4b-3 of the Connecticut General Statutes, as revised and/or amended, and

**Martha & Alexander Engineering Co. Limited Liability Company**

**1166 E Putnam Avenue**

**Riverside, CT 06878**

hereinafter referred to as the Claims Auditor;

WITNESSETH, that the State and the Claims Auditor, in consideration of the mutual covenants herein contained, do hereby agree as follows:

**I. CLAIMS AUDITOR RELATIONSHIP**

The Claims Auditor shall act as the State's agent and covenants and agrees to perform all its services in accordance with the standards and practices of its profession. The Claims Auditor shall not have any conflicts of interest. The Claims Auditor shall be held to the highest standard of conduct in the performance of its duties, and must conduct itself so as to avoid even the appearance of any impropriety. The Claims Auditor is prohibited from accepting gratuities of any kind from any persons seeking work associated with this contract. The Claims Auditor shall staff the project with experienced and competent staff. It is understood that if the Claims Auditor requires additional staff to fulfill its obligations under this contract it shall provide such additional staff at no additional cost to the State.

**II. FEES AND PAYMENTS**

**A. CONTRACT FEE**

The maximum total cumulative fee allowed the Claims Auditor under this contract shall not exceed **Five Hundred Thousand Dollars (\$500,000.00)**. When approximately 75% of the fee set forth in this Article has been expended, the Claims Auditor shall notify the State in writing of the amount of work completed to that date under this contract. Said notification shall include an itemization of all fees that have been paid to the Claims Auditor pursuant to the work. The Claims Auditor shall not be reimbursed for per diem expenses or travel expenses. If at any time during the term of any project assigned under this contract the State should require the Claims Auditor to make any substantial change in the size or scope of the work which shall necessitate the Claims Auditor to do substantial work, then and in such event, the Claims Auditor shall prepare additional documents and make changes as required and shall be entitled to fair and equitable compensation therefor. The Commissioner of DAS, hereinafter referred to as the "Commissioner," shall determine the amount of such compensation and the manner of payment thereof. In addition, if at any time during the term of this contract the State should request the Claims Auditor to reduce the scope of services originally agreed upon for any task assigned under this contract, the Claims Auditor shall then reduce said scope of services, as requested, and the Claims Auditor's fee for such project shall be reduced by a fair and equitable amount determined by the Commissioner. The Claims Auditor shall be entitled to a payment of **Ten Dollars (\$10.00)** at the termination of this contract if at such time the Claims Auditor has not received any fee under this contract.



For the services and deliverables specified in a task letter, the Consultant shall be paid a fee based on the classification and hourly rate of personnel as shown in Exhibit A entitled "Hourly Rate Schedule." Said Exhibit A is attached hereto and made a part hereof. Hourly rates used for any task assigned under this contract shall remain unchanged for the term of this contract. In addition to providing the hours of services and fee of any particular employee on any particular job, the Consultant shall make available upon request appropriate information to verify the actual burden, fringe, and overhead rates that are included in the rates stated in the "Hourly Rate Schedule". The State reserves the right to audit these data.

#### B. PROGRESS PAYMENTS

The State will make progress payments. Before the first progress payment becomes due, the Claims Auditor must prepare a breakdown of its fees specified in the task letter in a manner acceptable to the State. The breakdown amounts will be used to determine the amounts of the progress payments to be made. Before each payment is made the Claims Auditor must furnish proof of the quantity, value, and delivery of services. All materials and work covered by progress payments will be the sole property of the State. However, the progress payments do not relieve the Claims Auditor of responsibility for all materials and work for which payment has been made or for the restoration of any damaged work nor do the progress payments waive the right of the State to require fulfillment of all contract terms and conditions. If for reasons of incomplete scope, complexity, etc., a fixed fee cannot be determined by the Commissioner, the State shall compensate the Claims Auditor for services rendered under this contract on the basis of hourly rates for the personnel assigned to perform the services. A pre-approved hourly rate shall not exceed a reasonable rate, as determined by the Commissioner, taking into consideration the skills and experience of the person providing the services. Hourly rate payments shall be made in accordance with the terms and conditions of each task letter. It is specifically understood that these pre-approved hourly rate payments shall only apply for the period of time that the person is gainfully employed on projects assigned under this contract. Requests for payment shall be submitted on properly prepared State invoice forms with attachments showing actual hours worked, hourly rates applied, and any allowable additional direct costs included in the invoice forms. The Claims Auditor shall certify that each amount invoiced is both accurate and commensurate with the work performed for the State under this contract. The State reserves the right to periodically audit the Claims Auditor's financial and project records.

### III. CONTRACT DURATION

This contract shall commence with the date this contract was entered into and shall expire on **April 15, 2021**. No new projects may be assigned on or after the expiration date, but all projects assigned prior to the expiration date will be allowed to continue to completion with all the terms and conditions of this contract herein set forth remaining in full force and effect. The term of this contract may be extended in writing by the Commissioner.

### IV. TASK LETTERS

The scope of each project, duration of services, request for the provision of certain services specified in Article V and Article VI, respectively, schedule of deliverables, and the total fixed-fee or not-to-exceed fee compensation allowed shall be included in task letters prepared by the State for each project. Such task letters shall be issued during the time period set forth in Article III of this contract. Each task letter shall reference both a DAS project number and a task number specific to the project.

### V. DUTIES AND SERVICES

The Claims Auditor shall consult with the DAS to ascertain the requirements of the project. The Claims Auditor shall familiarize itself with all project documents relating to the tasks set forth in each task letter. Claims auditing services may include, but not be limited to, entitlement analysis, cost analysis (including major cost and time sheet document research and evaluation), schedule analysis, and expert witness testimony.

### VI. ADDITIONAL SERVICES

If, in the opinion of the State, any service is required that is not usually furnished in claims auditing practice and that is not included in this contract, either expressed or implied by the nature of the service, then the State shall, in writing, authorize the service and the related cost. The Claims Auditor's written selection of any service provider retained under this Article is to be submitted for approval by the State. The Claims Auditor shall adequately support, in writing to the State, its recommendations as to its selection of any such service provider.



Any registered consultants retained under this Article shall provide evidence of their competence by affixing their seals on any work prepared by them or under their supervision. The State shall reimburse the Claims Auditor for the cost of any services provided under this Article and in addition shall also pay the Claims Auditor five percent (5%) of such cost, or such other percentage deemed reasonable by the Commissioner, for overhead and profit. When the Claims Auditor requests the need for any additional services provided under this Article there shall be a minimum of three (3) written bids obtained and forwarded to the State for approval.

## VII. OWNERSHIP OF WORK

It is mutually agreed and understood that all finished and unfinished documentation prepared pursuant to this contract shall become the exclusive property of the State, and that the State shall have the right to immediate possession and use thereof. The State agrees that all such documentation is not to be altered by others and is to be used only in conjunction with the project for which it was prepared unless written consent is obtained from the Claims Auditor. Such consent will not be withheld provided the State agrees that upon any alterations of the Claims Auditor's documents by others, or upon reuse of the documents for any other project, the Claims Auditor will be relieved by the State of any and all responsibility arising out of such alterations or reuse or in connection therewith. The provisions of this Article shall survive the termination of this contract and shall thereafter remain in full force and effect.

## VIII. INSURANCE

The Claims Auditor for the duration of this contract, including any extension term, must carry insurance to protect the interest of the State. The Claims Auditor must obtain statutory workers' compensation and employers' liability insurance (if applicable), comprehensive automobile liability insurance, commercial general liability insurance, and professional services liability insurance to not less than the minimum limits as required in this Article, all at no cost to the State.

1. Statutory Workers' Compensation and Employers' Liability:
  - a. Workers' Compensation: Statutory limits
  - b. Employers' Liability:
    - Bodily injury by accident: \$100,000 each accident
    - Bodily injury by illness: \$100,000 each employee  
\$500,000 policy limit
2. Commercial General Liability: \$1,000,000 each occurrence  
\$2,000,000 annual aggregate
3. Comprehensive Automobile Liability (to include owned, non-owned, and hired vehicles):  
Combined single limit: \$1,000,000 each occurrence
4. The Claims Auditor shall furnish evidence by way of a certificate of insurance that he/she/it has obtained a professional services liability insurance policy with \$1,000,000.00 each occurrence and per aggregate minimum coverage for negligence and errors and omissions. If any claims are paid against its professional services liability insurance policy, the Claims Auditor agrees to purchase additional insurance in order to maintain the minimum coverage of \$1,000,000.00 each occurrence and per aggregate. The insurance shall remain in effect during the entire duration of this contract, including such additional time period as may be necessary to complete specific projects, as hereinbefore set forth. The policy shall provide that it shall indemnify and save harmless the State and its officers, agents, and employees from claims, suits, actions, damages, and costs of every name and description resulting from negligence and errors and omissions in the work performed by the Claims Auditor under the terms of this contract.

Each of the policies for such kinds of insurance mentioned above shall be issued by an insurance company or companies satisfactory to the DAS and shall contain a provision that coverages will not be changed, cancelled, or non-renewed until at least sixty (60) calendar days' prior written notice has been given to the DAS. Each insurance policy shall state that the insurance company agrees to investigate and defend the insured against all claims for damages to the extent that all alleged damages might be covered by insurance. Such insurance policies shall name the State as an additional insured, except that the State shall not be named as an additional insured



with respect to the coverage for the statutory workers' compensation, automobile liability, and employers' liability insurance and to the coverage for professional liability insurance. Certificates of insurance showing such coverages as required in this Article shall be filed with the DAS prior to the time this contract is executed on behalf of the State.

#### **IX. NONPERFORMANCE**

If the Claims Auditor does not fulfill or complete its services in a timely and adequate manner, the State reserves the right to withhold monetary payments to the Claims Auditor until such time as the work is brought up to date in an adequate manner. The amount withheld shall be determined by the Commissioner. If the State is harmed by the Claims Auditor's nonperformance, the State shall be granted fair and equitable compensation by the Claims Auditor as determined by the Commissioner.

The State has the right for inspection on demand of the Claims Auditor's products. The State will accept only those products that meet reasonable professional standards.

#### **X. SUSPENSION OF THE WORK**

A. The State, at any time, may suspend all or any part of the services of the Claims Auditor. In such event, the Claims Auditor shall be given seven (7) days' notice of such suspension in writing by registered or certified mail to the Claims Auditor's address as given for correspondence purposes. The mailing of such notice shall preclude any claim on the part of the Claims Auditor as to failure to receive notice of such suspension.

B. In the event of suspension by the State as noted above, the Claims Auditor shall be entitled to such compensation as the State shall deem reasonable.

C. Should the State reactivate any assigned work covered by this contract, in whole or in part, within one year from the time the work was suspended, any fees paid to the Claims Auditor pursuant to this contract shall be applied as payment on the fees for work as set forth in this contract at the time of reactivation. Should reactivation occur after a period of suspension exceeding one (1) year, the Claims Auditor and the State may renegotiate the fees for the work based on current conditions or either may unilaterally elect to terminate the remaining work.

D. In the event the State decides to suspend any work under this contract, the State shall become entitled, after payment of outstanding fees, to all finished and unfinished documents prepared pursuant to this contract.

E. If the Claims Auditor should be unwilling or unable to perform the services required by this contract at the time the State desires to reactivate the work after a period of suspension, then all finished or unfinished documents prepared pursuant to this contract shall become the property of the State and the State shall have the right to immediate possession and use thereof.

#### **XI. TERMINATION OF CONTRACT**

A. Notwithstanding any provisions or language in this contract to the contrary, the Commissioner may terminate the contract whenever he determines in his sole discretion that such termination is in the best interest of the State. Any such termination shall be effected by delivery to the Claims Auditor of a written notice of termination. The notice of termination shall be sent by registered or certified mail to the Claims Auditor's address as furnished to the State for purposes of correspondence or by hand delivery. Upon receipt of such notice, the Claims Auditor shall both immediately discontinue all services affected (unless the notice directs otherwise) and deliver to the State all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Claims Auditor in performing its duties under this contract, whether completed or in progress. All such documents, information, and materials shall become the property of the State.

B. If the termination is for the convenience of the State, the Claims Auditor shall be entitled to receive reasonable compensation for services already satisfactorily performed and accepted, but no amount shall be allowed for anticipated profit on unperformed services. The Commissioner shall determine the amount of such compensation.

C. If the termination is for reason of failure of the Claims Auditor to fulfill its contract obligations, the State may take over the work and prosecute the same to completion by contract or otherwise. In such event, the Claims Auditor shall be liable to the State for any additional costs occasioned to the State thereby.



- D. If after notice of termination for failure of the Claims Auditor to fulfill its contract obligations it is determined that the Claims Auditor had not so failed, the termination shall be deemed to have been effected for the convenience of the State. In such event, the Claims Auditor shall be entitled to reasonable compensation provided in Section B of this Article.
- E. The rights and remedies of the parties provided in this Article are in addition to any other rights and remedies provided by law or under this contract.

## **XII. SUCCESSORS AND ASSIGNS**

If the Claims Auditor is a sole proprietor and the Claims Auditor should die during the term of this contract, this contract shall be considered terminated. In the event of such termination, the Claims Auditor's estate shall be entitled to a reasonable payment for any uncompensated work performed to the date of death, and the State shall have title to, and shall have the right to immediate use and possession of, all finished and unfinished documents prepared under this contract. The Commissioner shall determine the amount of such payment. The Claims Auditor shall not assign, sublet, or transfer any rights under or interest in this contract without the written consent of the State. No assignment will release or discharge the Claims Auditor from any duty or responsibility under this contract. The Claims Auditor shall be responsible to the State for acts and omissions of its own employees and any of its service providers hereinbefore mentioned and their employees.

## **XIII. FORCE MAJEURE**

Neither party shall be liable to the other nor deemed to be in breach of this contract for failure or delay in rendering performance arising out of causes factually beyond its control and without its fault or negligence. Such causes may include, but are not limited to: acts of God, wars, fires, floods, epidemics, quarantine restrictions, strikes, or freight embargoes. Irrespective of the occurrence of any of the foregoing events or circumstances the Claims Auditor shall take reasonable measures to mitigate any damage caused thereby.

## **XIV. WAIVERS**

All conditions, covenants, duties, and obligations contained in this contract can be waived only by written agreement. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal and/or equitable remedies to that party.

## **XV. SEVERABILITY**

If any of the provisions of this contract are declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of the obligations under any such provisions. The remainder of the contract shall be enforced to the fullest extent permitted by law.

## **XVI. ENTIRE CONTRACT**

No prior stipulation, agreement or understanding, verbal or otherwise, of the parties hereto, their agents or legal representatives shall be valid or enforceable unless embodied in the provisions of this contract.

## **XVII. FORUM AND CHOICE OF LAW**

The parties deem the contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the 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 Claims Auditor 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.



**XVIII. NONDISCRIMINATION AND AFFIRMATIVE ACTION PROVISIONS, NONDISCRIMINATION PROVISIONS REGARDING SEXUAL ORIENTATION, EXECUTIVE ORDERS, ANTI-HARASSMENT POLICY, SUMMARY OF STATE ETHICS LAWS AND CAMPAIGN FINANCE LAWS**

For the purposes of this Article, the word "contractor" is substituted for and has the same meaning and effect as if it read "Claims Auditor."

**A. NONDISCRIMINATION.**

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

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

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

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when



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

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

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

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

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

(g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this Section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this Section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and



permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes §46a-56.

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

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

**C.** This contract is subject to the provisions of the Department of Administrative Services' Anti-Harassment Policy ("Policy") and, as such, the contract may be cancelled, terminated, or suspended by the State in the event that the contractor, its employees, contractors, subcontractors, consultants, subconsultants, or vendors engage in behavior prohibited by the provisions of the Policy (a copy of the Policy is available on the DAS website). The contractor agrees to include a copy of the Policy, and the requirement to prevent behavior as defined in such Policy, in all contracts with its contractors, subcontractors, consultants, subconsultants, and vendors.

**D. Summary of State Ethics Laws.** Pursuant to the requirements of Section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to Section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the contract as if the summary had been fully set forth in the contract.

**E. Campaign Contribution Restriction**

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

**XIX. WHISTLEBLOWING**

This contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Claims Auditor takes or threatens to take any personnel action against any employee of the Claims Auditor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Claims Auditor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be



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

## **XX. INDEMNIFICATION**

The Claims Auditor shall indemnify 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 contract, concerning the negligent acts of commission or omission (collectively, the "Acts") of the Claims Auditor or Claims Auditor 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 contract, to the extent of the Claims Auditor's or Claims Auditor Parties' negligence. The Claims Auditor's obligations under this Section to indemnify and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Claims Auditor'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.

For purposes of this Section, the term "Claim" is defined as follows: "All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmaturing, contingent, known or unknown, at law or in equity, in any forum."

## **XXI. ANTITRUST PROVISION**

The Consultant hereby irrevocably assigns to the State of Connecticut all rights, title and interest in and to all Claims associated with this Contract that the Consultant now has or may or will have and that arise under the antitrust laws of the United States, 15 USC Section 1, *et seq.* and the antitrust laws of the State of Connecticut, Connecticut General Statutes §35-24, *et seq.*, including but not limited to any and all Claims for overcharges. This assignment shall become valid and effective immediately upon the accrual of a Claim without any further action or acknowledgment by the parties.

For purposes of this Section, the term "Claim" is defined as follows: "All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmaturing, contingent, known or unknown, at law or in equity, in any forum."

## **XXII. ANNUAL CERTIFICATION**

If the aggregate value of this contract is \$50,000.00 or more, including all amendments and/or commission letters, then the Claims Auditor shall annually submit electronically, on or within two (2) weeks of the anniversary date of the execution of this contract, a completed Gift and Campaign Contribution Certification and notify the DAS Legal Unit that it has been uploaded. Said certification shall be uploaded on the Department of Administrative Services website. For the purposes of this Article, the execution date of the contract shall be the date the Commissioner of DAS signs the contract.

## **XXIII. SOVEREIGN IMMUNITY**

The parties acknowledge and agree that nothing in the Solicitation or the contract 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 contract. To the extent that this Section conflicts with any other Section, this Section shall govern.

## **XXIV. APPROVAL OF THE STATE PROPERTIES REVIEW BOARD**

As provided in Connecticut General Statutes Section 4b-23 (i), it is essential for the Claims Auditor contracting with the Department of Administrative Services to understand that the approval of the State Properties Review Board must be granted before the Claims Auditor's contract can begin. By providing service without a properly executed contract, the Claims Auditor accepts the risk that payment will not be made by the State of Connecticut.



## **XXV. APPROVAL OF THE ATTORNEY GENERAL'S OFFICE**

This contract shall become effective when it is approved as to form by the Attorney General of the State of Connecticut, the Deputy Attorney General of the State of Connecticut, or an Associate Attorney General of the State of Connecticut.

## **XXVI. STATE'S RIGHTS OF INSPECTION, AUDIT AND COLLECTION; MAINTENANCE OF RECORDS**

- (a) All services performed by and material supplied by the Claims Auditor under this contract shall be subject to the inspection and approval of the State at all times, and Claims Auditor shall furnish all information concerning such material and services as may be requested by the State.
- (b) The Claims Auditor shall maintain, and shall require each of its subcontractors hereunder to maintain, accurate and complete records, books of account and other documents that delineate the nature and extent of the State's, Claims Auditor's, and, in the case of each subcontract, the applicable subcontractor's, performance hereunder. The Claims Auditor shall maintain all such documentation and any and all other of its records (whether stored in electronic or other form) that in any way pertain or relate to this contract and/or the actual or alleged performance and/or lack of performance by any party hereunder (individually and collectively, "Records") at the Claims Auditor's address provided on the first page of this contract or such other location as is approved in writing in advance by the State.
- (c) The Claims Auditor agrees to make all of its Records available for inspection and/or examination, and copying, by the State's authorized representatives during reasonable hours. The State and its representatives also shall have the right, at reasonable hours, to inspect and examine all of the part(s) of the Claims Auditor's and its subcontractors' plant(s) and/or place(s) of the businesses which, in any way, are related to, or involved in, the performance of this contract and/or any subcontract to ensure compliance with the same. Except in the case of suspected fraud or other abuse or in the event of an emergency, the State will give the Claims Auditor at least twenty-four (24) hours notice of any intended inspections or examinations.
- (d) At the State's request, the Claims Auditor shall provide the State with hard copies of or electronic media containing any data or information in the possession or control of the Claims Auditor which pertains to the State's business or this contract.
- (e) The Claims Auditor agrees that it will keep and preserve or cause to be kept and preserved all of its Records until three (3) years after the latter of (i) final payment under this contract, or (ii) the expiration or earlier termination of this contract, as the same may be extended or renewed, and any holdover period.
- (f) The Claims Auditor also agrees that it will require each subcontractor under this contract to maintain all of its Records until three (3) years after the expiration or earlier termination of said subcontract or other agreement, as the same may be renewed or extended.
- (g) If any litigation, claim or audit is started before the expiration of said three (3) year periods, such records shall be (and shall be required to be) retained until all litigation, claims or audit findings have been resolved.
- (h) The Claims Auditor shall incorporate the provisions of this Article, including this Section (h), verbatim into any contract or other agreement it enters into with any subcontractor under this contract.

## **XXVII. CONFIDENTIALITY OF DOCUMENTS**

- A. The Claims Auditor agrees on behalf of the Claims Auditor and the Claims Auditor's principals, employees, agents, heirs, successors and assigns that they shall only utilize drawings, specifications, maps, reports, records or other documents to the extent necessary for the performance of the Claims Auditor's work and duties under this contract. This limitation on use applies to those items produced by the Claims Auditor, as well as to those items received by the Claims Auditor from the Department of Administrative Services or others in connection with the Claims Auditor's work and duties under this contract.
- B. The Claims Auditor further agrees that said drawings, specifications, maps, reports, records and other documents may not be released to any other entity or person except for the sole purpose of the work described in this contract. No other disclosure shall be permitted without the prior written consent of the Department of Administrative Services.



- C. The Claims Auditor further agrees that the following provision will be included in its contracts with sub-consultants:

Any and all drawings, specifications, maps, reports, records or other documents associated with the contract work shall only be utilized to the extent necessary for the performance of the work and duties under this contract. Said drawings, specifications, maps, reports, records and other documents may not be released to any other entity or person except for the sole purpose of the work described in this contract. No other disclosure shall be permitted without the prior written consent of the Department of Administrative Services. When any such drawings, specifications, maps, reports, records or other documents are no longer needed, they shall be destroyed.

#### **XXVIII. DISCLOSURE OF RECORDS**

This contract may be subject to the provisions of Section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person or entity for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of Sections 1-205 and 1-206 of the Connecticut General Statutes.

#### **XXIX. NOTICES**

The Consultant provides the following information for the purpose of receiving notices under this contract, and agrees to promptly notify the DAS project manager in writing if there are changes to the information.

Contact person: Candace Agonafir  
Address for registered or certified mail: 274 Bruce Park Avenue, Unit 2, Greenwich, CT 06830  
Address for hand delivery. 274 Bruce Park Avenue, Unit 2, Greenwich, CT 06830  
Email: [Candace.agonafir@maengineeringcompany.com](mailto:Candace.agonafir@maengineeringcompany.com)  
Facsimile transmission telecopy (fax) number: (203) 637-3968



IN WITNESS WHEREOF, the State, acting herein by its Commissioner of the Department of Administrative Services, or his/her designee, duly authorized, and the Claims Auditor have executed this contract.

Attested by:

State of Connecticut

E. Cloquette  
Witness

Print name: Eun Cloquette

Cindy Rusocyp  
Witness

Print name: Cindy Rusocyp

By: [Signature]  
Josh Geballe  
Commissioner  
Department of Administrative Services

Date signed: 2-8-19

Attested by:

Martha & Alexander Engineering Co.  
Limited Liability Company

Rose Mitchell  
Witness

Print name: Rose Mitchell

Cathy E. Phelps  
Witness

Print name: CATHY E. PHELPS

By: [Signature]

Print name: CANDACE AGONAFIR

Its CHIEF EXECUTIVE MEMBER Duly Authorized

Date signed: 2-6-19

Approved as to form:

[Signature]  
Joseph Rubin, Asst. Deputy Attorney General

Date signed: 2/11/19



EXHIBIT A

HOURLY RATE SCHEDULE  
CLAIMS AUDITOR ON-CALL CONTRACT  
OC-DCS-AUD-0021

A. Hourly Rate Schedule

<u>Labor Category</u>	<u>Rate Per Hour</u>
Project Manager	\$180
Senior Construction Claims Analyst	\$145
Construction Claims Analyst	\$110
Administrative Assistant	\$65

- B. Professional Engineer's stamping of drawings: \$300 per category
- C. Consultants travel time will be charged at the hourly fees
- D. Trial work or expert testimony fee: \$250 per hour

These rates will apply for the initial contract duration of approximately two years.



# ATTACHMENT



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

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

### CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

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

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

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

### DUTY TO INFORM

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

### PENALTIES FOR VIOLATIONS

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

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

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

### CONTRACT CONSEQUENCES

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

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

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

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





## DEFINITIONS

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

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

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

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

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

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

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

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

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

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