

AGREEMENT

BETWEEN THE TOWN OF NEW FAIRFIELD

AND

**{CONSULTING ENGINEER INCORPORATED}**

FOR CONSULTING ENGINEERING SERVICES  
DOWNTOWN CENTER STREETScape IMPROVEMENTS  
STATE PROJECT NO. 90-99

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the TOWN OF NEW FAIRFIELD, a Connecticut municipality (hereafter referred to collectively as "the TOWN"), and **{CONSULTING ENGINEER INCORPORATED}**, a corporation organized under the laws of the State of Connecticut (hereinafter referred to as "CONSULTING ENGINEER" and, together with the TOWN, the "Parties" and each a "Party").

Whereas, the TOWN desires to secure certain professional engineering services in connection with the design and construction of certain downtown center streetscape improvements, including approximately 4000 L.F. of decorative sidewalk, plantings, decorative lighting, pedestrian crossings and pedestal mounted pedestrian signals, along State Route 37, State Route 39 and Sawmill Road in the Town of New Fairfield (hereinafter referred to as the "Project Site") identified by State Project No. 90-99 (hereinafter referred to as the "Project"); and

Whereas, CONSULTING ENGINEER desires to furnish such services upon terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the Parties agree as follows:

1. Scope of Services. CONSULTING ENGINEER shall, at its own cost and expense, provide all design and pre-construction engineering services for the Project, including, without limitation, the services and deliverables described in **Schedule A** annexed hereto.

2. Payment. The TOWN shall pay, and CONSULTING ENGINEER agrees to accept, the lump sum of **\$ 00,000.00** as full compensation for all of the services and deliverables described in Schedule A. CONSULTING ENGINEER will invoice monthly for services completed in accordance with the schedule of values allocated to the various portions of the work set forth below. Such invoice shall be supported by such data substantiating CONSULTING ENGINEER's right to payment, as the TOWN may require. Payment shall be due within 30 days of each invoice. Notwithstanding any other provision of this Agreement, the TOWN shall have no obligation to pay any invoice if, and for as long as, CONSULTING ENGINEER is in default.

The lump sum stated above shall be allocated to the portions of the work as follows:

Task 1 – Conceptual Plan Analysis Studies	\$ 00,000.00
Task 2 – Conceptual Design	\$ 00,000.00
Task 3 – Design Development	\$ 00,000.00
Task 4 – Construction Documents	\$ 00,000.00
Task 5 – Bid Phase	<u>\$ 00,000.00</u>
Total Lump Sum Fee	\$ 00,000.00

3. Change Orders; Extra Work. The TOWN, by written order, may make changes in the Scope of Services to increase or decrease the services performed by the CONSULTING ENGINEER. No additional payment will be made for revisions, additions, deletions, modifications, corrections, substitutions, or changes, unless such changes constitute extra work. Changes of services as ordered by the TOWN that are beyond the scope or limits of this Agreement, or such services as shall supersede or revise completed services by the CONSULTING ENGINEER within the Scope of Services of this Agreement, may be considered as extra work. Changes such as those to effect refinements in the designs and such as those made necessary by errors, omissions, oversight or neglect on the part of the CONSULTING ENGINEER, will not be considered extra work. If, in the opinion of the CONSULTING ENGINEER, a given assignment constitutes extra work, the CONSULTING ENGINEER shall immediately advise the TOWN in writing. Upon receiving written concurrence from the TOWN, the CONSULTING ENGINEER shall prepare a brief scope of services and fee proposal for the extra work. The payment for extra work shall be determined on the basis of the cost to the CONSULTING ENGINEER for performing such extra work. The TOWN shall promptly notify the CONSULTING ENGINEER of its decision regarding acceptance of the scope of services and fee proposal for extra work, and shall provide any instruction to perform the services. Classification of any work as extra work shall be the function of the TOWN, and the TOWN's decision shall be final and binding. Extra work costs shall be segregated in the CONSULTING ENGINEER's records if so requested by the TOWN. The CONSULTING ENGINEER shall not proceed with any extra work until written authorization is received in the form of a change order. No work, other than that for which a claim is being reviewed, shall be delayed pending a decision of the TOWN.

4. Work Period.

(a) CONSULTING ENGINEER shall complete all work specified in Schedule A, Task 1 of this Agreement within (number) calendar days, commencing from the date specified by the TOWN in a formal notice to proceed. A calendar day shall be every day in the week, Saturdays, Sundays, and holidays included.

(b) Complete all work specified in Schedule A, Task 2 of this Agreement within (number) calendar days, commencing from the date specified by the TOWN in a formal notice to proceed.

(c) Complete all work specified in Schedule A, Task 3 of this Agreement within (number) calendar days, commencing from the date specified by the TOWN in a formal notice to proceed.

(d) Complete all work specified in Schedule A, Task 4 of this Agreement within (number) calendar days commencing from the date specified by the TOWN in a formal notice to proceed.

(e) Complete all work specified in Schedule A, Task 5 of this Agreement within (number) calendar days commencing from the date specified by the TOWN in a formal notice to proceed.

**TIME IS OF THE ESSENCE.**

The TOWN may extend the allotted time beyond the period(s) specified above when the work has been delayed for reasons beyond the control of the CONSULTING ENGINEER. The CONSULTING ENGINEER may present to the TOWN, in writing, a request for extension of allotted time for completion of the work. The TOWN will evaluate such requests and if the TOWN determines such requests are based on valid grounds, shall grant such extension of time for completion of the work as the TOWN deems warranted. All requests for extension of time must be made prior to the time that the CONSULTING ENGINEER is in default. Decisions made by the TOWN relative to the granting of extension of time shall be final and binding.

The CONSULTING ENGINEER further agrees that no charges or claim for damages or additional compensation shall be made by him for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the TOWN may determine, it being understood, however, that the permitting of the CONSULTING ENGINEER to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the TOWN of any of its rights herein.

5. Progress Reports. CONSULTING ENGINEER shall, on a quarterly basis, submit to the TOWN, a narrative of the progress of the work performed and a report showing the percentage of each phase of the required services completed.

6. Ownership of Documents. CONSULTING ENGINEER agrees that all products of the work under the terms of this Agreement, including all reports, data, samples, field data, field notes, photographs, laboratory test data, calculations, deliverables, and other documents prepared by CONSULTING ENGINEER pursuant to or in connection with this Agreement shall become and remain the sole property of the TOWN. This shall include all partially completed work in the event that the Agreement is terminated before completion for any reason.

CONSULTING ENGINEER shall transfer to the TOWN as part of the consideration for this Agreement, any and all copyright rights or other proprietary interests which the CONSULTING ENGINEER may have in materials ("Work Products") produced by it under the terms of this Agreement, and the CONSULTING ENGINEER shall, whenever so requested by the TOWN, sign (with proper notarization or other lawful acknowledgment of its signature) and deliver to the TOWN a letter agreement, in form and content satisfactory to the TOWN, stating that the CONSULTING ENGINEER thereby irrevocably transfers to the TOWN all of its

copyright and other proprietary rights in the Work Products designated by the OWN in its related request.

If deemed appropriate by the TOWN in its sole discretion, CONSULTING ENGINEER shall agree that any or all Work Products shall be deemed a work of joint authorship by the TOWN and the CONSULTING ENGINEER for copyright purposes, and shall be registered as such with the United States Copyright Office. CONSULTING ENGINEER hereby waives any right to oppose or object to such a claim of joint authorship or to such related copyright registration.

CONSULTING ENGINEER shall not engage or allow any party ("Other Party") other than itself or the TOWN to contribute directly to the creation of any Work Product unless the CONSULTING ENGINEER has first obtained from said Other Party a written agreement ("Secondary Agreement") containing essentially the same terms as above; i.e., the Other Party (i) shall agree to transfer to the TOWN any and all copyright or other proprietary rights said Other Party may have in designated Work Products, or, if the TOWN so requests, shall agree to deem such Work Product a work of joint authorship by the TOWN and by Other Party, and, if appropriate, by the CONSULTING ENGINEER also; and (ii) shall agree to sign (with proper notarization or other lawful acknowledgment of its signature) and deliver to the TOWN any letter agreement ("Letter Agreement") of the kind described above which the TOWN shall request from it. The Secondary Agreement between the CONSULTING ENGINEER and an Other Party shall provide expressly that any such Letter Agreement delivered by the Other Party to the TOWN shall be directly enforceable by the TOWN, and that the execution, delivery, and enforceability of such a Letter Agreement are part of the consideration for the Secondary Agreement.

7. Indemnity. (a) CONSULTING ENGINEER shall indemnify, defend and hold harmless the TOWN and the State and their respective 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 CONSULTING ENGINEER and/or the Consulting Engineer 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 CONSULTING ENGINEER shall use counsel reasonably acceptable to the TOWN in carrying out its obligations under this section. The CONSULTING ENGINEER'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 CONSULTING ENGINEER's bid, proposal or any records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or un-copyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance of the Agreement.

(b) Consulting Engineer shall indemnify the TOWN and the State and their respective officers, agents and employees acting for the TOWN and the State against any liability, including cost and expenses, incurred as the result of the violation of trade secrets, copyright, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this Agreement; or any libelous or other unlawful matter contained in such data.

(c) CONSULTING ENGINEER shall reimburse the TOWN and the State for any and all damages to the real or personal property of the TOWN or the State caused by the Acts of the

CONSULTING ENGINEER or the Consulting Engineer Parties. The TOWN shall give the CONSULTING ENGINEER reasonable notice of any such Claims.

(d) CONSULTING ENGINEER'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 CONSULTING ENGINEER is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the TOWN or the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

(e) CONSULTING ENGINEER 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 CONSULTING ENGINEER shall name the TOWN and the State as additional insureds on the policy. The TOWN and State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the TOWN or the State is contributorily negligent.

(f) Consulting Engineer shall not use the defense of Governmental Immunity in the adjustment of claims or in the defense of any suit, unless requested by the TOWN or the State.

(g) 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, unmaturing, contingent, known or unknown, at law or in equity, in any forum.

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

The term "State", as used herein, is defined as the 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.

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

8. Insurance. With respect to the operations performed by the CONSULTING ENGINEER under the terms of this Agreement and each subcontractor, the CONSULTING ENGINEER shall carry, and shall ensure that each subcontractor carries, for the duration of this Agreement and any supplements thereto, with the TOWN and the State of Connecticut (the "State") being named as additional insureds with respect to the insurance specified in paragraphs (a) and (b) below, the following minimum insurance coverages at no direct cost to the TOWN. In the event the CONSULTING ENGINEER secures excess/umbrella liability insurance to meet the minimum requirements specified in paragraphs (a) and/or (b) below, the TOWN and the State shall be named as additional insureds.

(a) *Commercial General Liability*. The CONSULTING ENGINEER shall carry Commercial General Liability Insurance, including Contractual Liability Insurance, providing for a total limit of One Million Dollars (\$1,000,000) for all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all damages arising out of injury

to or destruction of property in any one accident or occurrence, and, subject to that limit per accident, a total (or aggregate) limit of Two Million Dollars (\$2,000,000) for all damages arising out of bodily injuries to or death of all persons in all accidents or occurrences and out of injury to or destruction of property during the policy period.

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

(c) *Worker's Compensation.* With respect to all operations the CONSULTING ENGINEER performs and all those performed for the CONSULTING ENGINEER by subcontractors, the CONSULTING ENGINEER and subcontractor(s) 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.

(d) *Valuable Papers Insurance.* The CONSULTING ENGINEER shall secure and maintain a Valuable Papers Insurance Policy at no direct cost to the TOWN, until the complete design has been accepted by the TOWN, and all original tracings, highway and bridge design computations, survey data, documents or data will have been returned to the TOWN. This will assure the TOWN that all records, papers, maps, statistics, survey notes, all tracings, highway and bridge design and other data or documents will be re-established, recreated, or restored if made unavailable by fire, theft, or any other cause. CONSULTING ENGINEER shall retain in CONSULTING ENGINEER's possession duplications of all products of his work under this Agreement, if and when it is necessary for the originals to be removed from CONSULTING ENGINEER's possession during the time that this policy is in force. This policy shall provide coverage in the amount of One Hundred Thousand Dollars (\$100,000) when the insured items are in its possession, and in the amount of Twenty-Five Thousand Dollars (\$25,000) regardless of the physical location of the insured items.

(e) *Professional Liability Insurance.* Secure and maintain at no direct cost to the Municipality a Professional Liability Insurance policy for errors and omissions in the minimum amount of One Million Dollars (\$1,000,000). CONSULTING ENGINEER shall obtain the appropriate and proper endorsement to its Professional Liability Policy to cover the Indemnification clause in this contract as the same relates to negligent acts, errors or omissions in the work performed by the CONSULTING ENGINEER. CONSULTING ENGINEER may, at CONSULTING ENGINEER's election, obtain a policy containing a maximum Two Hundred Fifty Thousand Dollars (\$250,000) deductible clause, but if CONSULTING ENGINEER should obtain a policy containing such a clause, the CONSULTING ENGINEER shall be liable, as stated above herein, to the extent of the deductible amount. CONSULTING ENGINEER shall continue this liability insurance coverage for a period of three (3) years from the date of acceptance of the completed design or work subject to the continued commercial availability of such insurance.

Failure of the CONSULTING ENGINEER to maintain insurance coverage in accordance with the terms of the Agreement shall constitute a violation of the Agreement and shall subject CONSULTING ENGINEER to liquidated damages in the amount of ten percent (10%) of the total contract price, subject to the continued commercial availability of such insurance.

CONSULTING ENGINEER agrees to furnish to the TOWN, a Certificate of Insurance, fully executed by an insurance company or companies satisfactory to the TOWN and the State, for the insurance policy or policies required hereinabove, which policy or policies shall be in accordance with the terms of said Certificate of Insurance. Each insurance policy shall state that the insurance company agrees to investigate and defend the insured against all claims for damages, even if groundless.

CONSULTING ENGINEER and its prime contractor, subcontractor(s), consultant, and subconsultant(s) and their insurers shall have no right of recovery or subrogation against the TOWN or the State, and said insurance carried by the CONSULTING ENGINEER and its prime contractor, subcontractor(s), consultant, and subconsultant(s) shall be its primary coverage. Each required insurance policy shall not be suspended, voided, cancelled, or reduced except after thirty (30) days prior written notice by certified mail has been given to the TOWN. CONSULTING ENGINEER shall produce, within five (5) business days, a copy, or copies of all applicable insurance policies when requested by the TOWN or the State. This provision shall survive the suspension, expiration, or termination of this Agreement.

The insurance requirements of this paragraph shall not be a limitation of liability on the part of the CONSULTING ENGINEER.

9. Termination. The TOWN, by written notice to the CONSULTING ENGINEER, may suspend, postpone, abandon, or terminate this Agreement for the convenience of the TOWN, for violation by the CONSULTING ENGINEER of any provision contained in this Agreement, or for any failure by the CONSULTING ENGINEER to render to the satisfaction of the TOWN the services required under this Agreement, including any failure to make acceptable progress with work required under this Agreement. Such action on the part of the TOWN shall in no event be deemed a breach of contract. Upon receipt of written notification from the TOWN that this Agreement is to be suspended, postponed, abandoned, or terminated, the CONSULTING ENGINEER shall immediately cease operations on work required under this Agreement. Upon receipt of written notification that this Agreement is to be abandoned or terminated, the CONSULTING ENGINEER shall also immediately assemble all material which is in its possession or custody and which has been prepared, developed, furnished, or obtained under the terms of this Agreement, and shall transmit the same, together with the CONSULTING ENGINEER's evaluation of the cost of the work performed, to the TOWN on or before the fifteenth day following the receipt of written notice of abandonment or termination. Said material shall include, but not be limited to, documents, plans, computations, drawings, notes, records, and correspondence. Upon receipt of this material, the TOWN shall make settlement with the CONSULTING ENGINEER in the following manner:

(a) If the TOWN terminates this Agreement for its convenience, the TOWN shall pay the CONSULTING ENGINEER a percentage of the lump sum fee specified in this Agreement,

said percentage to be the same as the percentage of work completed by the CONSULTING ENGINEER under this Agreement as of the designated date of termination.

(b) If the TOWN terminates this Agreement because the CONSULTING ENGINEER has failed to fulfill its obligations under the Agreement, the TOWN may complete the work required hereunder by contracting with another party or by any other means, and the CONSULTING ENGINEER shall be liable for any additional costs incurred by the TOWN in doing so.

(c) If the TOWN, after terminating the CONSULTING ENGINEER for alleged failure to fulfill its obligations under this Agreement, determines that the CONSULTING ENGINEER has not failed to fulfill those obligations, the rights and remedies of the parties shall be the same as if the TOWN had terminated the Agreement for convenience.

In determining the basis for such equitable settlement for items (a), (b), and (c) as indicated above, the TOWN shall take into account any monies owed the CONSULTING ENGINEER for work previously performed under this Agreement, less any payments previously made for said work, and the amount of reimbursable expenses incurred by the CONSULTING ENGINEER, less any payments previously made, to reimburse the CONSULTING ENGINEER for those expenses.

The CONSULTING ENGINEER agrees to accept the TOWN's valuation of the work performed under this Agreement, and the TOWN will not be liable for any profit that the CONSULTING ENGINEER expected or might have expected to make on portions of the work that have not been performed.

If postponement, suspension, abandonment, or termination is ordered by the TOWN because it lacks sufficient funding to complete or proceed with the Project, the CONSULTING ENGINEER may not make a claim against the TOWN in any form or forum for loss of anticipated profit or for any other reason related to the Project or to this Agreement.

The rights and remedies of the TOWN under this Article are in addition to any other rights and remedies that the TOWN may possess by law under this Agreement. Termination of the Agreement shall not relieve the CONSULTING ENGINEER or its subcontractors of responsibility for the completed work, nor shall it relieve the CONSULTING ENGINEER or its subcontractors, or their sureties of their obligations concerning any claims arising out of the work performed or any obligations existing under bonds or insurance required pursuant to the Connecticut General Statutes or by this or any other Agreement with the TOWN or the State.

Decisions of the TOWN on matters discussed in this provision shall be final and binding.

10. Notices. All invoices, notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent for next-business-day delivery by a nationally recognized overnight carrier to the following addresses:



Town of New Fairfield:

First Selectman  
Town of New Fairfield  
4 Brush Hill Road  
New Fairfield, Connecticut 06812

**{Consulting Engineer Incorporated}**  
**{Street Address}**  
**{City, State, Zip Code}**

11. Conditions for Subcontract of Work. CONSULTING ENGINEER shall not subcontract any portion of the work required for the completion of this Agreement without the written approval of the TOWN. The form of the subcontract shall be approved by the TOWN. CONSULTING ENGINEER shall furnish to the TOWN certification of Public Liability and Property Damage Insurance Coverage, including the use of motor vehicles, for the operations to be performed by subcontract.

12. Prompt Payment to Subcontractor(s) and Release of Retainage. The CONSULTING ENGINEER shall pay each subcontractor for work performed within thirty (30) days after the CONSULTING ENGINEER receives payment for the work performed by the subcontractor. Also, any retained monies on a subcontractor's work shall be paid to the subcontractor within thirty (30) days after satisfactory completion of all the subcontractor's work. For the purpose of this paragraph, satisfactory completion shall have been accomplished when:

- (1) The subcontractor has fulfilled the contract requirements of both the TOWN and the subcontract for the subcontracted work, including the submission of all submittals and audit requirements specified in this Agreement, when applicable, and
- (2) The work done by the subcontractor has been reviewed and accepted by the TOWN and final approval of the subcontractor's work has been determined and agreed upon.

If the CONSULTING ENGINEER determines that a subcontractor's work is not complete, the CONSULTING ENGINEER shall notify the subcontractor and the TOWN, in writing, of the reasons why the subcontractor's work is not complete. This written notification shall be provided to the subcontractor and the TOWN within twenty-one (21) days of the subcontractor's request for release of retainage. The above requirements are also applicable to all sub-tier subcontractors and the above provisions shall be made a part of all subcontract agreements. Failure of the CONSULTING ENGINEER to comply with the provisions of this section will be reflected in the "Consultant Performance Evaluation" for future projects.

13. Review of Work. CONSULTING ENGINEER shall permit the TOWN, the State, and/or the Federal Highway Administration to review at any time, all work performed under the terms of this Agreement at any stage of the work.

8. Maintenance and Audit of Records.

(a) *Project Accounts.* The CONSULTING ENGINEER shall maintain an accounting system that is adequate to segregate and accumulate reasonable, allocable costs and maintain accounts and records in accordance with generally accepted accounting principles consistently applied.

(b) *Allowable Costs.* CONSULTING ENGINEER shall comply with, and the authority for determining allowable costs under the Agreement shall be, Connecticut Department of Transportation Policy No. EX.O.-33, dated June 25, 2015, a copy of which is annexed hereto as **Schedule 1** and which is hereby made a part of this Agreement.

(c) *Audit and Inspection of Records.* The CONSULTING ENGINEER shall permit the authorized representatives of the TOWN, the State, the U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of the CONSULTING ENGINEER relating to his performance under the Agreement until the expiration of three (3) years after final payment under this Agreement. The CONSULTING ENGINEER agrees that the TOWN upon request, may forward copies of audit reports and/or audit work papers relating to audits, performed by and/or for the TOWN, of the CONSULTING ENGINEER's Burden, Fringe and Overhead Costs, to the State, Federal Agencies or Local Governmental Agencies. The CONSULTING ENGINEER further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the TOWN, the State, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontractor. The term "subcontract" as used in this clause excludes work not exceeding \$25,000.00. The periods of access and examination described above, for records which relate to (1) appeals for disputes, (2) litigation of the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Municipality, the State, the Comptroller General, or any of their duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

(d) *Record Retention.* CONSULTING ENGINEER agrees that it shall preserve all of its records and accounts concerning the implementation of this Agreement including, but not limited to, any records, books, or other documents relative to charges, including charges for extra work, alleged breaches of agreement, settlement of claims, soils and foundation services, or any other matter involving the CONSULTING ENGINEER's or Subcontractor's demand for compensation by the TOWN for a period of not less than three (3) years from the date of the final payment under this Agreement. If any litigation, claim, or audit is started before the expiration of

the three (3) year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(e) CONSULTING ENGINEER agrees to assist and cooperate with the TOWN in any Federal Single Audit and/or State Single Audit of the TOWN to the extent required by the TOWN.

(f) CONSULTING ENGINEER shall incorporate the provisions of this section in all subconsultant agreements.

14. Responsibility for Accuracy of Work.

(a) CONSULTING ENGINEER agrees to assume full responsibility for the accuracy of all products of CONSULTING ENGINEER's work produced under this Agreement, including any supplements thereto, and shall indicate acceptance of said responsibility by affixing his signature and Connecticut Professional Engineer's Seal on the Title Sheets(s) of all plans, designs, and/or documents so produced. Each partner who will be performing engineering work under this Agreement shall be registered as a Professional Engineer in Connecticut, throughout the life of this Agreement including any supplements thereto, all in accordance with existing Statutes of the State of Connecticut and the regulations of the State Board of Registration for Professional Engineers and Land Surveyors.

(b) With prior written approval of the TOWN, the CONSULTING ENGINEER shall retain a Connecticut registered Land Surveyor either as a member of his organization or as an independent subcontractor to perform and accept complete responsibility for all survey operations required under this Agreement, including any supplements thereto, all such performance being in strict conformance to all specifications and requirements established herein. Said Connecticut registered Land Surveyor shall assume full responsibility for the accuracy of all products of his surveying work produced under this Agreement, including any supplements thereto and shall indicate acceptance of said responsibility by affixing his signature and Connecticut Land Surveyor's Seal to the Title Sheet(s) of all maps, plans, and/or other documents so produced.

15. Covenant against Contingent Fees. CONSULTING ENGINEER warrants that CONSULTING ENGINEER has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTING ENGINEER, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONSULTING ENGINEER, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of the above stipulation the TOWN shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the agreed price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

16. Pre-qualifications and Right of Removal. The TOWN shall have the right to prequalify every employee of the CONSULTING ENGINEER and the subcontractor(s) working on this project and the salary classification of each. The TOWN reserves the right to require removal from the project of any person or persons employed by the CONSULTING ENGINEER

or subcontractor(s) performing services under this Agreement who in the sole opinion of the TOWN has misconducted himself or is incompetent or negligent in the due and proper performance of his duties or who neglects or refuses to comply with the requirements of this Agreement.

17. Revisions in Organization of Corporation. The CONSULTING ENGINEER shall notify the TOWN in writing when there is a change in its Certificate of Registration for the corporate practice of engineering or land surveying in the State of Connecticut or a change in the individual(s) in charge of the work specified herein. Neither change shall relieve the CONSULTING ENGINEER of any responsibility for the accuracy and completeness of all products of the work under this Agreement, including all supplements thereto.

18. State Code of Ethics. The CONSULTING ENGINEER hereby acknowledges and agrees to comply with the policies enumerated in "Connecticut Department of Transportation Policy Statement Policy No. F&A-10, Subject: Code of Ethics Policy" dated June 1, 2007, a copy of which is attached hereto as **Schedule 4** and made a part hereof.

19. Suspension or Debarment. Suspended or debarred consulting engineers, suppliers, materialmen, lessors or other vendors may not submit proposals for a municipal 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. The signature on the Agreement by the CONSULTING ENGINEER shall constitute certification that to the best of CONSULTING ENGINEER's knowledge and belief the CONSULTING ENGINEER 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 Municipal, State or Federal funds:

- a. Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Has not within a five-year period preceding this Agreement been convicted of or had a civil judgement rendered against him/her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust Statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. 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 (1)b. of this certification; and

- d. 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.

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

“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.

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.”

20. Certification for Federal-Aid Contracts. The CONSULTING ENGINEER certifies, by signing and submitting this Agreement, to the best of his/her/its knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the CONSULTING ENGINEER, 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.
- (2) 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 any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the CONSULTING ENGINEER shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

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 CONSULTING ENGINEER also agrees by signing and submitting this Agreement, 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.

21. Code Of Ethics For Public Officials And Lobbyists. CONSULTING ENGINEER shall comply with the provisions contained in Section 1-86e of the Connecticut General Statutes, which provides as follows:

- (a) No person hired by the State as a consulting engineer or independent contractor shall:
  - (1) Use the authority provided to the person under the contract, or any confidential information acquired in the performance of the contract, to obtain financial gain for the person, an employee of the person or a member of the immediate family of any such person or employee;
  - (2) Accept another State contract which would impair the independent judgment of the person in the performance of the existing contract; or
  - (3) Accept anything of value based on an understanding that the actions of the person on behalf of the State would be influenced.
- (b) No person shall give anything of value to a person hired by the State as a consulting engineer or independent contractor based on an understanding that the actions of the consulting engineer or independent contractor on behalf of the State would be influenced.

22. Executive Orders. This Agreement is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings, and Executive Order No. Sixteen of Governor John G. Rowland, promulgated August 4; 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Agreement as if they had been fully set forth in it. The Agreement may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, and to Executive Order 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 Agreement as if they had been fully set forth in it.

23. Americans With Disabilities Act. This clause applies to those Consulting Engineers who are or will be responsible for compliance with the terms of the Americans with

Disabilities Act of 1990 ("Act"), Public Law 101-336, during the term of the Agreement. The CONSULTING ENGINEER represents that it is familiar with the terms of this Act and that it is in compliance with the Act. Failure of the CONSULTING ENGINEER 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 TOWN upon notice to the CONSULTING ENGINEER. The CONSULTING ENGINEER warrants that it will hold the Municipality harmless and indemnify the Municipality from any liability which may be imposed upon the Municipality as a result of any failure of the CONSULTING ENGINEER to be in compliance with this Act, as the same applies to performance under this Agreement.

24. Title VI Compliance. Consulting Engineer agrees to 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 (49CFR Part 21) issued in implementation thereof, and the "Title VI Contractor Assurances", attached hereto as **Schedule 5**, all of which are hereby made a part of this Agreement.

25. Connecticut Required Agreement Provisions. The "Connecticut Required Agreement Provisions, Specific Equal Employment Opportunity Responsibilities" (SEEOR), date March 3, 2009, a copy of which are annexed hereto as **Schedule 6**, are incorporated herein and hereby made a part of this Agreement.

26. Prohibited Interests. CONSULTING ENGINEER shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the CONSULTING ENGINEER's professional judgment with respect to this project.

27. Unlawful Provisions Deemed Stricken. Any provision of this Agreement found to be unlawful by a court of law, designated finder of fact, or by agreement of both parties, shall be deemed stricken from this Agreement and shall be of no further force or effect. Any unlawful provision shall be considered stricken without the binding force of the remainder of the Agreement.

28. All Legal Provisions Included. It is the intention and the agreement of the parties hereto that all legal provisions of law required to be inserted herein shall be and are inserted herein. However, if by mistake or otherwise, some such provisions are not herein inserted, or are not inserted in proper form, then on the application of either party, the agreement shall be amended so as to strictly comply with the law and without prejudice to the rights of either party hereunder.

29. Assignment. CONSULTING ENGINEER shall not assign or otherwise transfer this agreement to any other person.

30. Authority. The persons who have executed this agreement each represent and warrant that they are duly authorized to execute this agreement in their individual or representative capacity as indicated.

31. Construction and Venue. This agreement shall be construed in accordance with the laws of the State of Connecticut and the Superior Court of the State of Connecticut for the Judicial District of Danbury shall be the exclusive forum for all litigation related in any way to this agreement. CONSULTING ENGINEER AND THE TOWN EACH HEREBY IRREVOCABLY CONSENTS TO THE FOREGOING JURISDICTION AND WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT OR ACTION AND CLAIM THAT ANY SUCH SUIT OR ACTION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

32. Miscellaneous.

(a) *Entire agreement.* This writing constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreement, with respect to the subject matter and property covered by this agreement, and no verbal or oral agreements, promises, statements, assertions or representations by CONSULTING ENGINEER or the TOWN or any employees, agents, contractors or other representatives of either, shall be binding upon CONSULTING ENGINEER or the TOWN. This agreement cannot be modified except by a written modification executed by CONSULTING ENGINEER and the TOWN.

(b) *No Waiver.* The failure of either party to insist upon strict performance of any of the terms and conditions of this agreement or to exercise any of its rights under this agreement shall not waive such rights and such party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this agreement or at law or equity.

(c) *Schedules.* All schedules referred to herein and any addenda are incorporated herein for all purposes. The terms of all schedules are incorporated herein for all purposes.

(d) *Counterparts.* This agreement may be executed in several counterparts, each of which shall constitute an original and all of which shall constitute the same agreement.

*(signatures on next page)*



In witness thereof, the undersigned have executed this Agreement as of the date first above written:

**{CONSULTING ENGINEER  
INCORPORATED}**

By: \_\_\_\_\_  
**{Name of President}**  
President

**TOWN OF NEW FAIRFIELD**

By: \_\_\_\_\_  
Susan Chapman  
First Selectman

STATE OF CONNECTICUT )

ss.

December 2016

COUNTY OF )

Personally appeared \_\_\_\_\_, President of \_\_\_\_\_, signer and sealer of the foregoing instrument, he being thereunto duly authorized, who acknowledged that he executed the same in the capacity and for the purpose therein stated, and that the same is his free act and deed, before me.

\_\_\_\_\_  
Notary Public

STATE OF CONNECTICUT)

ss. New Fairfield

December , 2016

COUNTY OF FAIRFIELD )

Personally appeared **Susan Chapman**, First Selectman of the Town of New Fairfield, signer and sealer of the foregoing instrument, she being hereunto duly authorized, who acknowledged that she executed the same in the capacity and for the purpose therein stated, and that the same is her free act and deed, as First Selectman, before me.

\_\_\_\_\_  
Commissioner of the Superior Court  
Notary Public

## SCHEDULES

**Schedule A** – Scope of Work

**Schedule 1** – Connecticut DOT Policy Statement, Policy No. EX.O.-33 (June 25, 2015)

**Schedule 2** – Not used

**Schedule 3** – Not used

**Schedule 4** - Connecticut DOT Policy Statement, Policy No. F&A-10 (June 1, 2007)

**Schedule 5** – Title VI Contractor Assurances

**Schedule 6** – Connecticut Required Agreement Provisions, Specific Equal Employment Opportunity Responsibilities (SEEOR), dated March 3, 2009

**SCHEDULE A**

**State Project 90-94**  
**New Fairfield Town Center Streetscape**  
**Scope of Work**

- Notes:*
- 1. All mapping work shall be prepared in metric units as required by the State of Connecticut Department of Transportation.*
  - 2. Please note that reference to town in the Scope of Work indicates Town of New Fairfield and reference to DOT indicates the State of Connecticut Department of Transportation.*

**Task 1- Conceptual Plan Analysis Studies**

- 1.01 Inventory the existing site within the conceptual plan area for the following:
- 1.01.1 Roadway characteristics including pavement widths, number of lanes, lane usage, on street parking, pavement markings, signs, utility poles and surface utilities
  - 1.01.2 Building uses including front facade and front entrance features
  - 1.01.3 Existing driveways and other curb cuts
  - 1.01.4 Underground vault locations
  - 1.01.5 Existing landscaping including type, size, location and condition
  - 1.01.6 Existing signage including type, size, location and condition
  - 1.01.7 Existing lighting including type, size, location and condition
  - 1.01.8 Existing topography
  - 1.01.9 Existing solar orientation and solar mapping
  - 1.01.10 Existing pedestrian patterns, pavement types and crosswalks
  - 1.01.11 Existing site amenities including fencing, bollards, benches, trash receptacles, etc.

- 1.02 Coordinate with Project Surveyor with regard to road right of way survey, topography, and site observation data.
- 1.03 Research existing codes and regulations that will pertain to the proposed project. Conduct interviews with town and state agencies as appropriate.
- 1.04 Prepare an analysis of the existing conditions in conjunction with background data and final TEA-21 grant application, including an analysis map which outlines the assets and problems of the existing site and a letter detailing the evaluation of the existing conditions. The limits of the project area will be determined and approved by the Town of New Fairfield.
- 1.05 Attend progress meeting throughout task 1 with the town and DOT. Attendance at one progress meeting will be included as part of the scope of work.
- 1.06 Attend selectmen's meeting for the purpose of presenting the project. Attendance at three selectmen's meetings will be included as part of the scope of work.
- 1.07 Prepare and provide to the town an A-2 survey of the project area and a topographic survey of the project area in mylar and Autocad drawing format.

## **Task 2 - Conceptual Design**

- 2.01 Identify properties that require temporary easements to accommodate the proposed street scape improvements
- 2.02 Contact the public and private utility companies having facilities in the project area regarding the proposed design and the impact on the utilities if any.
- 2.03 Prepare preliminary design sketch of one preliminary design of street scape improvements based on the information gathered as described above. The sketch will address pedestrian access, street scape design, recommended program to address public and private utilities, and proposed grading. The sketch will be submitted for review to the town and DOT.
- 2.04 Develop construction cost estimate for the one preliminary design sketch based on state and/or federal market rates of labor and market rates of materials. Identify participatory and non-participatory tasks.
- 2.05 Attend progress meetings with the town, DOT and utilities to receive comments on the alternatives. Attendance at one meeting will be provided as part of the scope of work.

- 2.06 Attend a final review meeting with the town and DOT to respond to comments from the progress meetings and to receive approval for the conceptual design.
- 2.07 Prepare and submit Conceptual Design Packages based on the approved sketch as per paragraph 2.03 including plans, design report and estimates to the town and DOT for review.
- 2.08 Provide one public involvement meeting for presentation with the public, town agencies and community organizations interested in providing input for the project. The town will coordinate the date, time and place for the meeting and will provide public notice in accordance with applicable state statutes.

### **Task 3 - Design Development**

- 3.01 Coordinate with affected utility companies. Submit copies of the Conceptual Plan for their review and comment.
- 3.02 Prepare design development plans of the approved conceptual plan. These plans will incorporate any further comments from the town and DOT. Included in the design development plans will be the following drawings and documents

:

- Title Sheet
- Survey
- Location Plan/ Sheet Index/ General Notes
- Erosion and Sediment Control Plans
- Layout and Grading Plans of Street Scape Improvements
- Planting Plan of Street Scape Improvements
- Maintenance and Protection of Traffic Plan and Specifications
- Electrical Plans
- Street Scape Details
- Electrical Details
- Preliminary Specifications
- Detailed Estimate Sheet
- Quantity Computation

- 3.03 Attend progress meetings with the town and DOT to receive comments on the design development. Attendance at one meeting will be provided as part of the scope of work.
- 3.04 Prepare and submit Design Development Packages as per paragraph 3.02 to the town and DOT

for review.

- 3.05 Attend a final review meeting with the town and DOT to respond to comments from the progress meetings and to receive approval for the design development plans.

#### **Task 4 - Construction Documents**

- 4.01 Prepare final construction documents from the approved design development plans. These plans will incorporate any further comments from the town and DOT. Included in the final construction plans will be the following drawings and documents

:

- Title Sheet
- Survey
- Location Plan/ Sheet Index/ General Notes
- Erosion and Sediment Control Plans
- Layout and Grading Plans of Street Scape Improvements
- Planting Plan of Street Scape Improvements
- Maintenance and Protection of Traffic Plan and Specifications
- Electrical Plans
- Street Scape Details
- Electrical Details
- Final Specifications
- Detailed Estimate Sheet
- Quantity Computation

- 4.02 Prepare and submit Construction Documents as per paragraph 4.01 to the town and DOT for review.
- 4.03 Attend a final review meeting with the town and DOT to respond to comments from the progress meetings and to receive approval for the design development plans.
- 4.04 Prepare bid packages for the purpose of submitting bids for the work as specified. Bid Packages will include a copy of all the Plans and Specifications and instructions to bidders which shall indicated the manner and place to submit bids. The bid package will be in conformance with the State of Connecticut Department of Transportation and the Town of New Fairfield standards.
- 4.05 The consultant shall be responsible for the printing of all plans and contract documents including all copies necessary for conceptual, preliminary, final design and bidding phases.

#### **Task 5 - Bid Phase**

- 5.01 Attend one pre-bid meeting on site with all interested contractors to review the project
- 5.02 Respond to any request for information from any contractor during the bid phase
- 5.03 Provide any required addendums to the bid package to all interested contractors.
- 5.04 Assist the town in reviewing the bids including researching any references provided by the lowest bidder and offer advice in choosing a contractor. The Town of New Fairfield and The State Department of Transportation will make the final decision regarding acceptance of bids and selection of a contractor.



Schedule 1



CONNECTICUT DEPARTMENT OF TRANSPORTATION  
**POLICY STATEMENT**

**POLICY NO. EX.O.-33**

**June 25, 2015**

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

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

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

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

1. Burden, Fringe, Overhead and Profit — Actual but not to exceed 165% for work utilizing a Home Office rate and 130% for work utilizing a Field Office rate.
2. Travel — Maximum Is established per the State Travel Regulations (Manager's Agreement).

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

A handwritten signature in cursive script, reading "James Redeker", written over a horizontal line.

James Redeker  
Commissioner

## Schedule 4



# CONNECTICUT DEPARTMENT OF TRANSPORTATION POLICY STATEMENT

**POLICY NO. F&A-10**

**June 1, 2007**

### **SUBJECT: Code of Ethics Policy**

The purpose of this policy is to establish and maintain high standards of honesty, integrity, and quality of performance for all employees of the Department of Transportation ("DOT" or "Department"). Individuals in government service have positions of significant trust and responsibility that require them to adhere to the highest ethical standards. Standards that might be acceptable in other public or private organizations are not necessarily acceptable for the DOT.

It is expected that all DOT employees will comply with this policy as well as the Code of Ethics for Public Officials, and strive to avoid even the appearance of impropriety in their relationships with members of the public, other agencies, private vendors, consultants, and contractors. This policy is, as is permitted by law, in some cases stricter than the Code of Ethics for Public Officials. Where that is true, employees are required to comply with the more stringent DOT policy.

The Code of Ethics for Public Officials is State law and governs the conduct of all State employees and public officials regardless of the agency in which they serve. The entire Code, as well as a summary of its provisions, may be found at the Office of State Ethics' web site: [www.ct.gov/ethics/site/default.asp](http://www.ct.gov/ethics/site/default.asp). For formal and informal interpretations of the Code of Ethics, DOT employees should contact the Office of State Ethics or the DOT's Ethics Compliance Officer or her designee.

All State agencies are required by law to have an ethics policy statement. Additionally, all State agencies are required by law to have an Ethics Liaison or Ethics Compliance Officer. The DOT, because of the size and scope of its procurement activities, has an Ethics Compliance Officer who is responsible for the Department's: development of ethics policies; coordination of ethics training programs; and monitoring of programs for agency compliance with its ethics policies and the Code of Ethics for Public Officials. At least annually, the Ethics Compliance Officer shall provide ethics training to agency personnel involved in contractor selection, evaluation, and supervision. A DOT employee who has a question or is unsure about the provisions of this policy, or who would like assistance contacting the Office of State Ethics, should contact the Ethics Compliance Officer or her designee.

#### **The DOT Ethics Compliance Officer is:**

Denise Rodosevich, Managing Attorney  
Office of Legal Services

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

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

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

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

## Enforcement

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

## Prohibited Activities

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

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

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

2. **Contracting for Goods or Services for Personal Use With Department Contractors, Consultants, or Vendors:** Executive Order 7C provides that: "Appointed officials and state employees in the Executive Branch are prohibited from contracting for goods and services, for personal use, with any person doing business with or seeking business with his or her agency, unless the goods or services are readily available to the general public for the price which the official or state employee paid or would pay."
3. **Gift Exchanges Between Subordinates and Supervisors/Senior Staff:** A recent change in the Code of Ethics prohibits exchanges of gifts valued at \$100 or more between (*i.e.*, to and from) supervisors and employees under their supervision. The Citizen's Ethics Advisory Board has advised that: (1) the monetary limit imposed by this provision is a per-gift amount; (2) gifts given between supervisors and subordinates (or *vice versa*) in celebration of a "major life event," as defined in the Code of Ethics, need not comply with the \$100 limit; and (3) the limitations imposed by this provision apply to a direct supervisor and subordinate and to any individual up or down the chain of command. The Citizen's Ethics Advisory Board has also advised that supervisors or

subordinates may not pool their money to give a collective or group gift valued at \$100 or more, even though each of the individual contributions is less than \$100.

4. **Acceptance of Gifts to the State:** A recent change to the Code of Ethics for Public Officials modified the definition of the term "gift" to limit the application of the so-called "gift to the State" exception. In general, "gifts to the State" are goods or services given to a State agency for use on State property or to support an event and which facilitate State action or functions. Before accepting any benefit as a "gift to the State," DOT employees should contact the Ethics Compliance Officer.
5. **Charitable Organizations and Events:** No DOT employee shall knowingly accept any gift, discount, or other item of monetary value for the benefit of a charitable organization from any person or entity seeking official action from, doing or seeking business with, or conducting activities regulated by, the Department.
6. **Use of Office/Position for Financial Gain:** DOT employees shall not use their public office, position, or influence from holding their State office/position, nor any information gained in the course of their State duties, for private financial gain (or the prevention of financial loss) for themselves, any family member, any member of their household, nor any "business with which they are associated." In general, a business with which one is associated includes any entity of which a DOT employee or his/her immediate family member is a director, owner, limited or general partner, beneficiary of a trust, holder of 5 percent or more stock, or an officer (president, treasurer, or executive or senior vice president).

DOT employees shall not use or distribute State information (except as permitted by the Freedom of Information Act), nor use State time, personnel, equipment, or materials, for other than State business purposes.

7. **Other Employment:** DOT employees shall not engage in, nor accept, other employment that will either impair their independence of judgment with regard to their State duties or require or induce them to disclose confidential information gained through their State duties.

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

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

8. **Outside Business Interests:** Any DOT employee who holds, directly or indirectly, a financial interest in any business, firm, or enterprise shall complete an Employment/Outside Business Disclosure Form (see attached) and submit it to the Department's Human Resources Administrator. An indirect financial interest includes situations where a DOT employee's spouse has a financial interest in a business, firm, or enterprise. A financial interest means that the employee or his spouse is an owner, member, partner, or shareholder in a non-publicly traded entity. Disclosure of such outside business interests to the DOT Human Resources Administrator shall not constitute approval of the outside business interest under this Policy or the Code of Ethics for Public Officials. DOT employees shall not have a financial interest in any business, firm, or enterprise which will either impair their independence of judgment with regard to their State duties or require or induce them to disclose confidential information gained through their State duties. Inquiries concerning the propriety of a DOT employee's outside business interests shall be directed to the Office of State Ethics to assure compliance with the Code of Ethics for Public Officials.
9. **Contracts With the State:** DOT employees, their immediate family members, and/or a business with which a

DOT employee is associated, may not enter into a contract with the State, other than pursuant to a court appointment, valued at \$100 or more unless the contract has been awarded through an open and public process.

10. ***Sanctioning Another Person's Ethics Violation:*** No DOT official or employee shall counsel, authorize, or otherwise sanction action that violates any provision of the Code of Ethics.
11. ***Certain Persons Have an Obligation to Report Ethics Violations:*** If the DOT Commissioner, Deputy Commissioner, or "person in charge of State agency procurement" and contracting has reasonable cause to believe that a person has violated the Code of Ethics or any law or regulation concerning ethics in State contracting, he/she must report such belief to the Office of State Ethics. All DOT employees are encouraged to disclose waste, fraud, abuse, and corruption about which they become aware to the appropriate authority (see also Policy Statement EX.O.-23 dated March 31, 2004), including, but not limited to, their immediate supervisor or a superior of their immediate supervisor, the DOT Office of Management Services, the Ethics Compliance Officer, the Auditors of Public Accounts, the Office of the Attorney General, or the Office of the Chief State's Attorney.
12. ***Post-State Employment Restrictions:*** In addition to the above-stated policies of the Department, DOT employees are advised that the Code of Ethics for Public Officials bars certain conduct by State employees *after they leave State service. Upon leaving State service:*
  - ***Confidential Information:*** DOT employees must never disclose or use confidential information gained in State service for the financial benefit of any person.
  - ***Prohibited Representation:*** DOT employees must never represent anyone (other than the State) concerning any "particular matter" in which they participated personally and substantially while in State service and in which the State has a substantial interest.

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

- ***Employment With State Vendors:*** DOT employees who participated substantially in, or supervised, the negotiation or award of a State contract valued at \$50,000 or more must not accept employment with a party to the contract (other than the State) for a period of one year after resigning from State service, if the resignation occurs within one year after the contract was signed.
13. ***Ethical Considerations Concerning Bidding and State Contracts:*** DOT employees also should be aware of various provisions of Part IV of the Code of Ethics that affect any person or firm who: (1) is, or is seeking to be, prequalified by DAS under Conn. Gen. Stat. §4a-100; (2) is a party to a large State construction or procurement contract, or seeking to enter into such a contract, with a State agency; or (3) is a party to a consultant services contract, or seeking to enter into such a contract, with a State agency. These persons or firms shall not:
    - With the intent to obtain a competitive advantage over other bidders, solicit any information from an employee or official that the contractor knows is not and will not be available to other bidders for a large State construction or procurement contract that the contractor is seeking;
    - Intentionally, willfully, or with reckless disregard for the truth, charge a State agency for work not performed or goods not provided, including submitting meritless change orders in bad faith with the sole intention of increasing the contract price, as well as falsifying invoices or bills or charging unreasonable and unsubstantiated rates for services or goods to a State agency; and

- Intentionally or willfully violate or attempt to circumvent State competitive bidding and ethics laws.

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

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

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

### **Training for DOT Employees**

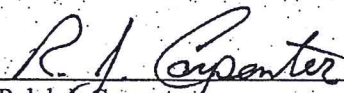
A copy of this policy will be posted throughout the Department, and provided to each employee either in hard copy or by e-mail. As set forth above, State law requires that certain employees involved in contractor/consultant/vendor selection, evaluation, or supervision must undergo annual ethics training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

### **Important Ethics Reference Materials**

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

- Code of Ethics for Public Officials, Chapter 10, Part 1, Conn. General Statutes Sections 1-79 through 1-89a found at: [www.ct.gov/ethics/site/default.asp](http://www.ct.gov/ethics/site/default.asp)
- Ethics Regulations Sections 1-81-14 through 1-81-38, found at: [www.ct.gov/ethics/site/default.asp](http://www.ct.gov/ethics/site/default.asp)
- The Office of State Ethics web site includes summaries and the full text of formal ethics advisory opinions interpreting the Code of Ethics, as well as summaries of previous enforcement actions: [www.ct.gov/ethics/site/default.asp](http://www.ct.gov/ethics/site/default.asp). DOT employees are strongly encouraged to contact the Department's Ethics Compliance Officer or her designee, or the Office of State Ethics with any questions or concerns they may have.

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

  
Ralph 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 5

### TITLE VI CONTRACTOR ASSURANCES

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

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

1. **Compliance with Regulations:** The Contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the United States Department of Transportation (hereinafter, "USDOT"), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Subsection 5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
4. **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Connecticut Department of Transportation (ConnDOT) or the Funding Agency (FHWA, FTA and FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to ConnDOT or the Funding Agency, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the ConnDOT shall impose such sanctions as it or the Funding Agency may determine to be appropriate, including, but not limited to:
  - A. Withholding contract payments until the Contractor is in-compliance; and/or
  - B. Cancellation, termination, or suspension of the Contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the ConnDOT or the Funding Agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the ConnDOT to enter into such litigation to protect the interests of the Funding Agency, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**SCHEDULE 6**

Connecticut Required Agreement Provisions, Specific Equal Employment Opportunity  
Responsibilities (SEEOR), dated March 3, 2009