

Board of Selectmen Special Meeting
September 16, 2020
Notice & Agenda

Notice is hereby given that the Westport Board of Selectmen will hold a special public meeting on Wednesday, September 16, 2020 at 2:00 PM. Pursuant to the Governor's Executive Order No. 7B, there is no physical location for this meeting. It will be held electronically, live streamed on www.westportct.gov, and broadcast on Westport's Optimum Government Access Channel 79 and Frontier Channel 6020. Emails to the Board of Selectmen prior to the meeting may be sent to selectman@westportct.gov. Comments to be read during the public comment portion of the meeting may be emailed to BOScomments@westportct.gov. Agenda as follows:

- 1) To take such action as the meeting may determine to approve the Award of Contract, Bid #21-002T (Pavement Preservation and Repairs-Fall 2020) in the amount of \$1,152,845.36 to FGB Construction Company, Norwalk, CT.

- 2) To take such action as the meeting may determine to approve the Agreement Between the State of Connecticut and the Town of Westport for the Development of Contract Plans, Specifications and Estimates in Conjunction With the Replacement of the Greens Farms Road Bridge (Bridge No. 04972) Over Sasco Brook Utilizing State and Federal Funds (State Project No. 158-216), Federal-aid Project No. 6158(013).

James S. Marpe, First Selectman
September 15, 2020

It is the policy of the Town of Westport that all Town-sponsored public meetings and events are accessible to people with disabilities. If you need assistance in participating in a meeting or event due to a disability as defined under the Americans with Disabilities Act, please contact Westport's ADA Coordinator at 203-341-1043 or eflug@westportct.gov at least three (3) business days prior to the scheduled meeting or event to request an accommodation.

1) To take such action as the meeting may determine to approve the Award of Contract, Bid #21-002T (Pavement Preservation and Repairs-Fall 2020) in the amount of \$1,152,845.36 to FGB Construction.



WESTPORT, CONNECTICUT

DEPARTMENT OF PUBLIC WORKS

TOWN HALL, 110 MYRTLE AVE
WESTPORT, CONNECTICUT 06880
(203) 341 1120 www.westportct.gov

September 14, 2020

Mr. James S. Marpe
First Selectman
Town Hall, 110 Myrtle Ave
Westport, CT 06880

Re: Award of Contract: Bid #21-002T
Pavement Preservation and Repairs – Fall 2020

Dear Mr. Marpe,

On Friday, September 11, 2020, the Town of Westport received nine (9) bids for the Fall 2020 Pavement Preservation and Repairs project. They are summarized as follows, listed from lowest to highest bid amount:

1. FGB Construction Company, Norwalk, CT	\$ 1,152,845.36
2. B & W Paving & Landscaping, Waterford, CT	\$ 1,195,924.40
3. Deering Construction, Inc., Norwalk, CT	\$ 1,196,759.20
4. Alcaide, Inc., dba A & J Construction, Brookfield, CT	\$ 1,219,283.70
5. Waters Construction Co., Inc., Bridgeport, CT	\$ 1,229,464.50
6. The Grasso Companies, LLC, Monroe, CT	\$ 1,339,372.70
7. Guerrero Construction Company, Inc., Oxford, CT	\$ 1,415,336.70
8. Empire Paving, Inc., North Haven, CT	\$ 1,421,203.72
9. Laydon Industries, LLC, New Haven, CT	\$ 1,467,908.40

Based on my comparison of the nine submitted bids, I would recommend awarding the contract to the lowest bidder, FGB Construction Company.

Please contact me should you have any question regarding this recommendation.

Thank you kindly,

Keith Wilberg, PE, LS
Westport Town Engineer

2) To take such action as the meeting may determine to approve the Agreement Between the State of Connecticut and the Town of Westport for the Development of Contract Plans, Specifications and Estimates in Conjunction With the Replacement of the Greens Farms Road Bridge (Bridge No. 04972) Over Sasco Brook Utilizing State and Federal Funds (State Project No. 158-216), Federal-aid Project No. 6158(013).

Agreement No. _____
CORE I.D. No. _____

AGREEMENT
BETWEEN
THE STATE OF CONNECTICUT
AND
THE TOWN OF WESTPORT
FOR THE DEVELOPMENT OF CONTRACT PLANS, SPECIFICATIONS AND ESTIMATES
IN CONJUNCTION WITH THE REPLACEMENT OF
THE GREENS FARMS ROAD BRIDGE (BRIDGE NO. 04972)
OVER SASCO BROOK
UTILIZING STATE AND FEDERAL FUNDS

State Project No. 158-219

Federal-Aid Project No. 6158(013)

THIS AGREEMENT, concluded at Newington, Connecticut, this _____ day of _____, 2020, by and between the State of Connecticut, Department of Transportation, Joseph J. Giulietti, Commissioner, acting herein by Mark D. Rolfe, P.E., Bureau Chief, Bureau of Engineering and Construction, duly authorized, hereinafter referred to as the "State," and the Town of Westport, Connecticut, acting herein by The Honorable James S. Marpe, its First Selectman, hereunto duly authorized, hereinafter referred to as the "Second Party," said State and Second Party hereinafter collectively referred to as the "Parties."

WITNESSETH, THAT,

WHEREAS, the Second Party has requested that improvements be made to the Greens Farms Road Bridge over Sasco Brook, a facility owned and maintained by the Second Party, which improvements are identified as State Project No. 158-219 and Federal-aid Project No. 6158(013), hereinafter referred to as the "Project"; and

WHEREAS, said improvements include, but are not limited to, the replacement of the Greens Farm Road Bridge and roadway construction related to the bridge approaches; and

WHEREAS, the Second Party has requested the State's assistance in performing the design activities associated with said improvements; and

WHEREAS, the State shall administer the design phase of the Project and the Second Party shall advertise the Project and administer the construction phase; and

WHEREAS, the "Federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) and/or the "Moving Ahead for Progress in the 21st Century Act" (MAP-21) provide funding for, among other things, highways and bridges; and

WHEREAS, federal funds are available to provide a share of the funding to repair and/or replace municipal bridges; and

WHEREAS, State bond funds are available to provide a share of the funding to repair and/or replace municipal bridges; and

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

WHEREAS, the Commissioner has the authority to enter into this Agreement pursuant to §§ 13a-86a(c), 13a-165, 13b-21, and 13b-23 of the Connecticut General Statutes.

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

DEFINITIONS:

The following Definitions shall apply to this Agreement:

"Acts" is defined in Section 11 of this Agreement.

"CEPA" means the Connecticut Environmental Policy Act, §§ 22a-1a through 22a-1h of the Connecticut General Statutes.

"Claims" means all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.

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

"NEPA" means the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*

"Project" is defined in the Recitals.

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

"State" means the State of Connecticut, including the Connecticut Department of Transportation ("Department"), and any office, department, board, council, commission, institution or other agency or entity of the State.

ARTICLE I. THE SECOND PARTY:

(1) Shall designate an individual to act as liaison with the State and the State's consulting engineer to provide for the proper interchange of information concerning the Project. The signatory on behalf of the Second Party to this Agreement or his or her successor thereto will be considered the liaison unless another individual is so designated by the Second Party by providing Official Notice of the same to the State as set forth in Article III, Section 32 of this Agreement. The liaison shall be responsible for Project coordination with Municipal agencies and for monitoring the progress of the Project's design phase.

(2) Shall conduct a public involvement program in compliance with State CEPA and Federal NEPA requirements, which shall include but not be limited to early notices and press releases, as requested by the State, and assist the State in conducting a public information meeting(s).

(3) Shall assist the State and/or the State's consulting engineer, in obtaining permission to enter upon private property from all owners or occupants of property which may have to be accessed to perform surveying and/or geological investigations that may be necessary for the Project, or other Project-related activities.

(4) Shall cooperate with the State and/or the State's consulting engineer in obtaining all necessary environmental permits that may be required for the Project and, when deemed necessary by the State, shall be the permit applicant.

(5) Shall issue an appropriate order pursuant to Section 13a-98f of the Connecticut General Statutes, when requested by the State or the State's consulting engineer, to any utility to readjust or relocate or remove its utility facility located within the Municipal right-of-way and timely take all necessary legal action provided under Section 7-148 of the Connecticut General Statutes, as revised, to enforce compliance with the issuance of such order.

Any delays resulting in charges or claims by the Second Party's contractor which are the result of the failure of any utility to readjust, relocate, or remove its facilities within the area impacted by the Project because of the failure of the Second Party to carry out its responsibility, as set forth in the first paragraph of this Article I, Section 5, shall be at the sole cost and expense of the Second Party.

(6) Shall provide services which may include, but not be limited to, technical assistance, engineering reviews, cost estimate reviews, environmental reviews, contract development, and liaison with other government agencies, any and all of which may be necessary for proper development of the Project.

(7) Shall be responsible for the administration of the construction phase of the Project. The responsibilities shall include, but not be limited to, advertising the Project for construction upon the receipt of a written "Authorization to Advertise" letter from the State's Principal Engineer, Bureau of Engineering and Construction, Division of Bridges, Bridge Consultant Design, issuing addenda (in consultation with and the assistance of the State), reviewing bids, awarding the contract and inspecting the work.

(8) Agrees that the State, on written notice, may suspend, postpone, abandon, or terminate this Agreement, and such action shall in no event be deemed a breach of this Agreement. Such suspension, postponement, abandonment, or termination may be for the convenience of the State.

(9) Shall reimburse the State for all costs incurred by the State associated with the Project in the event that: (a) the Project is terminated by the Second Party without the prior approval of the State; (b) property acquisitions are necessary and the Second Party fails to timely enter into a rights-of-way agreement with the State; (c) the Second Party fails to advertise the Project for construction within ninety (90) days of the date stipulated in the State's "Authorization to Advertise" letter to the Second Party; (d) the construction phase does not commence within one (1) year of the Project's advertising date; or (e) the construction phase of the Project is not completed and accepted by the State, as set forth in the "Municipal Manual" Connecticut Department of Transportation that is in effect when the contract with the Second Party and its contractor is executed. A shift in Municipal priorities or lack of Municipal funding are considered to be within the control of the Second Party and will not be considered a justifiable reason to request the termination of the Project. Additionally, an increase in the Project's estimated preliminary engineering and/or construction costs of up to but not exceeding, fifty percent (50%), will not be considered a justifiable reason for the Second Party to request the Project's termination. This Section shall survive the expiration or termination of this Agreement.

(10) Shall comply with the provisions contained in Exhibit A entitled "Administrative and Statutory Requirements," a copy of which is attached hereto and hereby made part of this Agreement.

(11) (a) Shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Agreement, including the acts of commission or omission (collectively, the "Acts") of the Second Party or Second Party 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 Second Party shall use counsel reasonably acceptable to the State in carrying out its obligations under this Section. The Second Party'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 Second Party's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance.

(b) Shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any third party acting under the direct control or supervision of the State.

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

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

(e) The Second Party 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 Second Party shall name the State as an additional insured on the policy. The Department shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Department or the State is contributorily negligent.

(f) This Section 11 shall survive the termination of the Agreement and shall not be limited by reason of any insurance coverage.

(12) Agrees that nothing in this Agreement shall preclude the Second Party from asserting its governmental immunity rights in the defense of third party Claims. The Second Party's governmental immunity defense against third party Claims, however, shall not be interpreted or deemed to be a limitation or compromise of any of the rights or privileges of the State, at law or in equity, under this Agreement, including, but not limited to, those relating to damages.

(13) Shall fully cooperate with the State and its representatives should the State pursue any action against its design consultant.

(14) Shall, in its contract with its contractor, require its contractor, at no cost to the State, to cooperate fully with the State should the State pursue any action against its design consultant. This Section shall survive the expiration or termination of this Agreement.

(15) Shall review any work performed under the terms of this Agreement and all Project records pertaining thereto within the time limit stipulated by the State in its transmittal memorandum.

(16) Shall submit to the State review comments concerning the Plans, Specifications and Estimates (PS&E), as described in the current "Consultant Administration and Project Development Manual," if any, within the time limit stipulated by the State in its transmittal memo.

ARTICLE II. THE STATE SHALL:

(17) Be responsible for performing and completing the design activities associated with the Project, within the designated time frame established for the Project, unless modified by written notice from the State to the Second Party. The Project shall be designed in accordance with Federal Highway Administration standards and the current version of the following engineering manuals, published by the Connecticut Department of Transportation, as may be applicable to the Project:

- (a) Bridge Design Manual (2003 edition).
- (b) Bridge Inspection Manual, Version 2.1 (2001).
- (c) Consultant Administration and Project Development Manual (September 2008).
- (d) Drainage Manual (2000).
- (e) Geotechnical Engineering Manual (2005).
- (f) Highway Design Manual (2003 edition).
- (g) Utility Accommodation Manual (2009).
- (h) Traffic Control Signal Design Manual (2009).
- (i) Public Service Facility Policy and Procedures for Highways in Connecticut (November 2008).

(18) Use its own forces, or the services of a consulting engineer that has been retained by the State, to provide preliminary engineering and design services which may include, but are not limited to: (a) performing survey work, geotechnical investigations, and hydraulic analyses; (b) preparing reports, studies, and environmental permit applications; (c) determining rights-of-way impacts; (d) developing acquisition maps, contract plans, specifications, and estimates; (e) reviewing shop plans and construction drawings; (f) performing design and consultation services during construction; (g) assisting the Second Party in bidding the Project for construction, (h) and acting as liaison with other governmental agencies, as necessary, to complete the Project's design activities.

(19) Submit to the Second Party for review and comment, any studies, reports, permits, plans, specifications, estimates, proposed property acquisitions and other pertinent information developed for the Project by the State and/or the State's consulting engineer. However, the State, at its sole discretion, shall make the final decision as to whether changes suggested by the Second Party will be incorporated.

(20) Permit the Second Party to review, at any time, all work performed under the terms of this Agreement and all Project records pertaining thereto.

(21) Conduct a public information meeting(s) in compliance with State and Federal Highway Administration requirements, with the assistance of the State's consulting engineer, if applicable, and the Second Party.

(22) Use federal apportionments made available to the State under SAFETEA-LU and/or MAP-21 and State funds for participating Project engineering costs including services provided by the State or its consulting engineer as described in Article II, Sections 17, 18 and 21 hereof.

(23) During the design of the Project, forward to the Second Party for review and comment the "Plans, Specifications and Estimates (PS&E)", as described in the current "Consultant Administration and Project Development Manual". The Second Party's review comments, if any, shall be made within the time limit stipulated by the State in its transmittal memo.

(24) Upon completion of the Project's design, furnish copies of the final PS&E to the Second Party together with a written "Authorization to Advertise" the Project for construction.

ARTICLE III. THE STATE AND THE SECOND PARTY MUTUALLY AGREE:

(25) That in the event that property rights outside of the Second Party's right-of-way are necessary to complete the Project, the Second Party shall enter into an agreement(s) for the acquisition of rights-of-way, which stipulates that the State shall undertake all rights-of-way activities that include, but are not limited to, title search, survey, preparation of acquisition maps, appraisal and negotiation for the acquisition of permanent and temporary rights and land acquisition.

(26) That the Second Party shall enter into an agreement(s) for construction; utility adjustment, relocation or removal; inspection, and maintenance, as deemed necessary by the State, for the completion of the Project. The State shall enter into a preliminary engineering agreement(s), as may be necessary, for the adjustment, relocation or removal of utility facilities that are municipally or quasi-municipally owned. Private utilities, that are located within a municipal right-of-way, are not eligible for the reimbursement of any costs associated with the adjustment, relocation or removal of their facilities, as ordered by the Second Party.

(27) To collaborate on the scope of, and design schedule for rehabilitating and/or replacing the existing structure, including the reconstruction of the roadway approaches.

(28) That upon completion of the preliminary engineering report and/or structure type study, to discuss and select the rehabilitation/replacement option that shall be presented at the public information meeting.

(29) To attend meetings at locations designated by the State for consultation and review of field data and/or design parameters, including structure type and rights-of-way impacts, and to discuss advertising, bidding and contract award requirements for the Project, upon request of any stake-holder having direct concern with the Project. This Section shall survive the expiration or termination of this Agreement.

(30) That all properties, permanent easements and permanent rights acquired by the State for the construction of the Project will be released for highway purposes to the Second Party upon completion of construction phase of the Project and the Second Party agrees to accept the same AS IS. This Section shall survive the expiration or termination of this Agreement.

(31) That this Agreement shall terminate when one of the following conditions is met:

(a) Upon satisfactory completion of the conditions stated herein.

(b) Upon mutual consent of the Second Party, the State and the Federal Highway Administration.

(c) Upon written notice from the State to the Second Party that the Agreement is terminated, including, but not limited to, cancellation

(32) That any "Official Notice" from one party to the other, for such Notice to be binding thereon, shall:

(a) Be in writing (hardcopy) addressed to:

(i) When the State is to receive such Notice -

Commissioner of Transportation
Connecticut Department of Transportation
2800 Berlin Turnpike
P.O. Box 317546
Newington, Connecticut 06131-7546;

(ii) When the Second Party is to receive such Notice -

First Selectman
Town of Westport
110 Myrtle Avenue, Room 310
Westport, Connecticut 06880;

(b) Be delivered in person with acknowledgement of receipt or be mailed by the United States Postal Service - "Certified Mail" to the address recited herein as being the address of the party(ies) to receive such Notice; and

(c) Contain complete and accurate information in sufficient detail to properly and adequately identify and describe the subject matter thereof.

The term "Official Notice," as used herein, shall be construed to include, but not be limited to, any request, demand, authorization, direction, waiver, and/or consent of the party(ies) as well as any document(s), including any electronically-produced versions, provided, permitted, or required for the making or ratification of any change, revision, addition to, or deletion from, the document, contract, or agreement in which this "Official Notice" specification is contained.

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

(33) That the estimated costs for this Project, exclusive of rights-of-way acquisition costs, are as follows:

(a) The estimated preliminary engineering cost is Four Hundred Thousand Dollars (\$400,000).

The Second Party shall receive notification from the State's Manager of Bridges, Bureau of Engineering and Construction within thirty (30) calendar days of the States approval of the negotiated fee for the preliminary engineering services, or the negotiated fee for additional services due to encountering unforeseen conditions.

(b) The estimated construction cost is Two Million Six Hundred Twenty-six Thousand Dollars (\$2,626,000).

The Second Party shall receive notification from the State's Principal Engineer, Bureau of Engineering and Construction, Division of Bridges, Bridge Consultant Design, within thirty (30) calendar days of the thirty percent (30%), sixty percent (60%), ninety percent (90%) and one hundred (100%) completion of the progress plans.

(34) That this Agreement is deemed to have been made in the City of Hartford, State of Connecticut. Both Parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Second Party 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.

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

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

ARTICLE IV: RECITALS

(37) The Recitals are incorporated into this Agreement.

Agreement No. _____
CORE I.D. No. _____

The Parties hereto have set their hands and seals on the day and year indicated.

STATE OF CONNECTICUT
Department of Transportation
Joseph J. Giulietti, Commissioner

By: _____ (Seal)
Mark D. Rolfe, P.E.
Bureau Chief
Bureau of Engineering and
Construction

Date: _____

TOWN OF WESTPORT

By: _____ (Seal)
James S. Marpe
First Selectman

Date: _____

EXHIBIT A

ADMINISTRATIVE AND STATUTORY REQUIREMENTS
(with Schedules 1 and 2)

THE SECOND PARTY AGREES:

(1) 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. At the Second Party's request, the Department shall provide a copy of these orders to the Second Party.

(2) To acknowledge and agree to comply with the policies set forth in the "Connecticut Department of Transportation Policy Statement: Policy No. F&A-10: Subject: Code of Ethics Policy," June 1, 2007, attached herewith as Schedule 1.

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

(a) The signature on the Agreement by the Second Party shall constitute certification that to the best of its knowledge and belief the Second Party or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of Federal or State funds:

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

(ii) Has not, within the prescribed statutory time period preceding this Agreement, been convicted of or had a civil judgment rendered against him/her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

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

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

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

(4) As a condition to receiving federal financial assistance under the Contract/Agreement, if any, the Second Party shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d-2000d-7), all requirements imposed by the regulations of the United States Department of Transportation (49 CFR Part 21) issued in implementation thereof, "Title VI Contractor Assurances" and "Nondiscrimination Statutes and Authorities" attached hereto, all of which are hereby made a part of this Agreement, attached herewith as Schedule 2.

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



SCHEDULE 1
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. 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

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). 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

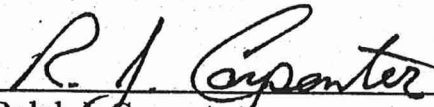
web site or otherwise, a copy of this policy to all vendors, contractors, and other business entities doing business with the Department.

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
- Ethics Regulations Sections 1-81-14 through 1-81-38, found at: 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. 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 2

TITLE VI CONTRACTOR ASSURANCES

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 will comply with the Regulations relative to nondiscrimination in federally assisted programs of the United States Department of Transportation Federal Highway Administration, as they may be amended from time to time, 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, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income or Limited English Proficiency in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by 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 will be notified by the contractor of the contractor's obligations under this contract and Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, 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 will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Non-compliance:** In the event of the contractor's non-compliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- a. withholding contract payments to the contractor under the contract until the contractor complies; and/or
- b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with, litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Nondiscrimination Statutes and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d et seq.), (prohibits discrimination on the basis of race, color, national origin), as implemented by 49 C.F.R. § 21.1 et seq. and 49 C.F.R. part 303;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 et seq.) prohibits discrimination on the basis of disability); and 49 C.F.R. part 27;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (Pub. L. 97-248 (1982)), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (102 Stat. 28) ("*... which restore[d] the broad scope of coverage and to clarify the application of Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title VI of the Civil Rights Act of 1964.*");
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 --12189), as implemented by Department of Justice regulations at 28 C.F.R. parts 35 and 36, and Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).