"On – Call Civil/Transportation/Traffic/Roadway Engineering Services"
Project No. 16-41
Bid #09-16-17-04

Scope of Work

The City of Danbury intends to hire a civil/transportation/traffic/roadway engineering firm or firms to provide on-call services on an as needed basis for work related to road and sidewalk design, traffic studies and designs, inspections and other related types of services. The on-call consultant(s) may be requested to provide services on short notice and within a tight time schedule. The contract(s) will be three year contracts with the possibility of a mutually agreed upon two year time extension. No guarantee is made as to the quantity of work to be awarded related to this on-call services contract. The successful consulting firm(s) will be required to provide copies of its professional liability and general liability insurance certificates naming the City as an additional insured which insurance certificates are to be in forms acceptable to the City's Risk Manager. The types and limits of required insurance coverage are indicated in the sample City/Consultant contract attached hereto. Modifications to the sample contract may be made for this specific project.

The qualification statements are to include the names of those qualified engineers who will be assigned to City projects (Project Manager, etc.). A copy of the firm's current fee schedule is to be included. The consulting firm is to be licensed to work in the State of Connecticut. The consulting firm is to be capable of producing projects using AutoCad. Five copies of the firm's qualification statement are to be submitted.

The following is a list of the types of work for which the engineer's services may be required. The list is not intended to be all inclusive but is meant to provide samples of the types of services that might be involved. Some improvements will be done by City personnel. Other improvements will be publicly bid. Full construction plans and contracts will be required for those contracts that will be publicly bid.

- Designs of roads and related drainage system, sidewalks, ramps for the handicapped, traffic signals and improvements, etc. Services required may include land surveying, field inspections, preparation of permit and funding applications, if warranted, preparation of construction plans, preparation of easement and taking maps, preparation of bid specifications and documents, preparation of cost estimates, construction inspection and administration, as well as any other services that may be required.

- Design services related to existing or expansion of storm drainage system, including modeling, capacity and sizing.

- Road and traffic corridor flow and safety studies. Services required may include land surveying, field inspections, inventory of existing facilities, preparation of potential funding applications, preparation of cost estimates, recommendations for improvements as well as any other related services.

- Provision of assistance to the City during funding application process and permit approval process

- Attendance at public information meetings/hearings or before approving agencies and/or commissions may be required.

- Construction inspection and contract administration services.

- Use of GPS to locate traffic signals, utility structures, etc. for record keeping purposes.

Questions regarding this request for qualifications can be directed to Patricia A. Ellsworth at (203) 797-4641.

CONTRACT FOR PROFESSIONAL SERVICES PROVIDED BY
ON-CALL CONSULTANTS

SAMPLE

THIS CONTRACT is made and entered into this _____ day of _____in the year Two Thousand _____ by and between the City of Danbury, Connecticut, a municipal corporation, having its principal office at 155 Deer Hill Avenue, Danbury, Connecticut 06810 hereinafter designated as the "CITY" and _____, a _____ corporation, having its principal office at _____, hereinafter designated as the "CONSULTANT".

WITNESSETH: That the CONSULTANT has agreed and by these presents does agree with the said CITY for the considerations herein mentioned and contained, to perform the proposed work in the manner and under the requirements further specified in this contract.

Section 1. WORK TO BE PERFORMED.

Consultant shall provide, or cause to be provided, the services set forth in the Request for Qualifications On-Call Consultants City Project No. _____, Bid No. _____, and the response to the request dated _____, and submitted by the Consultant, and the services set forth in contract addendums as may be submitted and provided from time to time by the Consultant in its capacity as an "On-Call Consultant". The Request for Qualifications and the Response to the Request and any subsequent contract addendums submitted pertaining to specific services to be performed by the Consultant are attached hereto and made a part hereof as Exhibit A, and any future submissions shall be referred to sequentially as Exhibit A-1, A-2 and so forth.

Section 2. TIME OF BEGINNING AND COMPLETING WORK.

Work to be performed hereunder shall commence upon the written authorization to proceed by the General Supervisor. CONSULTANT shall perform the required services, per the approved Scope of Services, estimated budget and schedule.

CONSULTANT is not responsible for delays caused by factors beyond the CONSULTANT'S reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the CITY to furnish timely information or approve or disapprove of the CONSULTANT'S services or work product promptly, or delays caused by faulty performance by the CITY, or by contractors of any level. When such delays beyond the CONSULTANT'S reasonable control occur, the CITY agrees the CONSULTANT is not responsible for damages, nor shall the CONSULTANT be deemed to be in default of this agreement.

Section 3. COMPENSATION.

The total compensation for services related to the work will be in accordance with the rates set forth in the fee schedule, which will be amended on an annual basis and will in no event exceed such amount set forth in said fee schedule and in the Project Budget therein, and as, subject to adjustment as provided in Section 16 below. Said fee schedule is attached hereto as Exhibit B and made a part hereof. The CITY will pay all invoices due to CONSULTANT within thirty (30) days from the date of receipt of said invoice. All invoices are to include employee names, pay rates and hours worked during the pay period. Direct costs billed to the City shall be accompanied by receipts and back up data. City will not pay direct costs related to air travel, hotel stays or meals, unless previously approved by the General Supervisor in extraordinary circumstances.

The CITY may withhold from the CONSULTANT so much of any approved payments due it as may be in the judgment of the CITY necessary (a) to assure the payment of just claims then due and unpaid of any person supplying labor or materials for the work; or (b) to protect the CITY from loss due to defective work now remedied. The CITY shall have the right, as Agent for the CONSULTANT to apply any such amounts so withheld in such manner as the CITY may deem proper to satisfy such claims, or to secure such protection. Such application of such money shall be deemed payments for the accounts of the CONSULTANT.

Section 4. CITY, CONSULTANT AND GENERAL SUPERVISOR DEFINED.

Whenever the words defined in this section occur in this and in the specifications, they shall have the meaning given below:

CITY:	The word "CITY" shall mean the City of Danbury, Connecticut.
CONSULTANT:	The word "CONSULTANT" shall mean the party above designated.
GENERAL SUPERVISOR:	The words "General Supervisor" shall mean _____ of the City of Danbury, Connecticut, acting either directly or through his personally authorized agent.

Section 5. <u>GENERAL SUPERVISOR TO DETERMINE.</u>

It is agreed by the parties to this Contract that the General Supervisor for the CITY shall in all cases determine the amount and character of the work to be done and to be paid for under this contract, the quality and acceptability of the materials to be used therein, and shall decide all questions that may arise relative to the intent and fulfillment of this contract. His estimate and decisions shall be final and conclusive and shall be a condition precedent to the right of the CONSULTANT to receive any payments under this contract.

Section 6. <u>ABSENCE OF CONSULTANT.</u>

Whenever the CONSULTANT is not present at the work when it may be desired to give instructions, orders may be given by the General Supervisor or his agent, to the superintendent or foreman who may have charge of the work at the time, and he shall receive and obey such orders forthwith.

Section 7. <u>DISCREPANCIES, ERRORS AND OMISSIONS.</u>

Exhibits A and any subsequent contract addendums submitted pertaining to specific services to be performed by Consultant are intended to be explanatory of the work to be done, but should any discrepancies, errors or omissions appear they shall be subject to correction and interpretation by the General Supervisor, thereby defining and fulfilling the intent of this contract. If any part of the work is omitted in the specifications, whether intentionally or otherwise, or is usually and customarily required to complete fully such work as is specified herein, the CONSULTANT will not be entitled to extra compensation.

Section 8. <u>ALTERATIONS.</u>

The General Supervisor may make alterations in the scope of the work or any part thereof, either before or after the commencement of services. If such alterations increase or diminish the quantity of work to be done, adjustment for such increase or decrease shall be made at the unit prices stipulated for such work under this contract, except that if unit prices are not stipulated for such work, compensation for increased work shall be made under the item for Extra Work (Section 16 hereof), and for decreased work, the CONSULTANT shall allow the CITY a reasonable credit as determined by the General Supervisor. If such alterations diminish the quantity of work to be done, they shall not warrant any claim for damages or for anticipated profits on the work that is dispensed with.

Section 9. <u>OBLIGATIONS OF CONSULTANT</u>.

The CONSULTANT shall perform the work and furnish the services necessary or proper for performing and completing the work required by this contract within the allowed time. The CONSULTANT shall complete the entire work to the satisfaction of the General Supervisor and in accordance with Exhibits A and any subsequent contract addendums submitted pertaining to specific services to be performed by Consultant, and the directions of the General Supervisor, as given during the progress of the work at the prices agreed upon and fixed therefore.

The CONSULTANT will perform all work in a prudent manner. The CITY acknowledges, however, that the CONSULTANT'S services require decisions, which are not based exclusively upon science, but rather upon judgmental considerations. The CITY, in accepting the CONSULTANT'S Proposal, acknowledges the inherent risk to the CITY and its property associated with the work described in the Proposal, in general. The CONSULTANT will observe that degree of care and skill as is generally exercised by members of such professions in the same locale acting under similar circumstances and conditions.

Section 10. COMPETENT AND SUFFICIENT WORKERS.

Sufficient and competent workers shall be employed by the CONSULTANT to complete the work within the time specified in Exhibits A and any subsequent contract addendums submitted pertaining to specific services to be performed by Consultant. If, in the opinion of the General Supervisor, the CONSULTANT shall employ personnel who are incompetent or unfaithful in the performance of the work, they shall be removed from the job at the request of the General Supervisor.

Section 11. INSURANCE.

The CONSULTANT shall not commence work under this contract until it has obtained all insurance required under this article and such insurance has been approved by the CITY, nor shall the CONSULTANT allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Certificates of insurance shall be filed with the CITY and shall be subject to the approval of the CITY for adequacy of protection before the execution of this contract.

All policies relating to this shall be so written that the CITY shall be notified of cancellation or change at least thirty (30) days prior to the effective date of such cancellation or change.

Certificates from the insurance carrier shall be filed in triplicate with the CITY and shall state the limits of liability and the expiration date for each policy and type of coverage. The CITY OF DANBURY shall be named as an additional insured. Renewal certificates covering the renewal of all policies expiring during the life of this contract shall be filed with the CITY not less than ten (10) days before the expiration of such policies.

A. Comprehensive General Liability Insurance

The CONSULTANT shall take out and maintain during the life of this contract such Comprehensive General Liability Insurance as will protect the CONSULTANT, the CITY, and any subcontractor performing work covered by this contract, from any claims for damages for personal injury, including accidental or wrongful death, as well as claims for property damages, which may arise from operations under this contract whether such operations be by itself or by any subcontractor or by anyone directly or indirectly employed by either of them and the amounts of insurance shall be in the following minimum limits:

Bodily Injury Liability and Property Damage Liability	$ 1,000,000 (combined) each occurrence

The CONSULTANT agrees that in the event that one or more claims are paid under the policies containing an aggregate coverage limit it shall immediately notify the CITY thereof and at the same time shall seek either to reinstate the limits of said policy or policies, or alternatively to seek to obtain a new policy providing for full coverage in accordance with the limits established within. Said replacement coverage shall be obtained within twenty-four (24) hours and the CITY shall be notified thereof.

B. Comprehensive Auto Liability Insurance

The CONSULTANT shall take out and maintain during the life of this contract Comprehensive Auto Liability Insurance which shall cover the operation of all motor vehicles owned by the CONSULTANT or used by the CONSULTANT in the prosecution of the work under this contract and the amounts of such insurance shall be in the following minimum limits:

Bodily Injury Liability and Property Damage Liability	$ 1,000,000 (combined) each occurrence

C. Excess Liability Insurance

The Excess Liability Policy coverage is **in addition** to the limits expressed in A. and B. above

Bodily Injury, Property Damage and Auto	$ 5,000,000 (combined) each occurrence

D. Workers' Compensation Insurance and Employer's Liability

The CONSULTANT shall take out and maintain during the life of this contract, Workers' Compensation Insurance for all of its employees, employed at the site and in case any work is sublet, the CONSULTANT shall require the subcontractor similarly to provide Workers' Compensation Insurance for all employees of the latter unless such employees are covered by the protection afforded by the CONSULTANT.

Workers' Compensation and Employer's Liability - Statutory Limits

E. Professional Liability

The CONSULTANT shall take out and maintain during the life of this contract Professional Liability Insurance and the amounts of such insurance shall be in the following minimum limits:

$ 4,000,000 Aggregate

Section 12. INDEMNITY AND LIMITATION OF LIABILITY.

The CONSULTANT has neither created, nor contributed to the creation of any hazardous radioactive, toxic pollutant, or otherwise dangerous substance or condition, or asbestos, at the site, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions, and the CONSULTANT shall, therefore, not be liable for the release of pollutants; or bodily injury (including death), property damage or other economic loss, caused by release, removal, remedial action or investigation of pollutants; or removal or investigation of, or remedial action taken because of the release or suspected release of pollutants; or the assessment of fines or penalties related to pollutants; or in any way related to asbestos, except where such damages, losses or other liability arise from the CONSULTANT'S gross negligence or willful misconduct.

In all other cases, the CONSULTANT, however, assumes responsibility and liability for any and all bodily injury to, or death of any and all persons, including the CONSULTANT'S agents, servants and employees and, for any and all damages to property caused by or resulting from or arising out of any negligence, gross negligence or willful misconduct of the CONSULTANT in connection with this contract or the prosecution of work hereunder. CONSULTANT shall indemnify and hold harmless the CITY from and against any and all loss, expense or liability it may suffer or pay as a result of third party claims or suits due to, because of, or arising out of any and all such injuries, death and/or damage. The CONSULTANT, if requested shall assume and defend at the CONSULTANT'S own expense, any suit, action and other legal proceedings arising therefrom, and the CONSULTANT hereby agrees to satisfy, pay and cause to be discharged of record any judgment which may be rendered against the owner, the CITY, arising therefrom.

Section 13. DAMAGE, SUITS AND CLAIMS.

The Contractor covenants and agrees to and shall at all times indemnify, protect and save harmless and defend the City from and against all costs or expenses resulting from any and all losses, damages, detriment, suits, claims, demands, costs and charges, including attorneys' fees, if any, which the City may directly or indirectly suffer, sustain or be subjected to by reason or on account of the work to be performed pursuant to this contract or any activities in connection with said contract, or on account of any claim for patent, trademark or copyright infringement, whether such losses and damages be suffered or sustained by the City directly or by its employees, licensees or invitees or be suffered or sustained by other persons or corporations who may seek to hold the City liable therefore. The City may withhold such portions of any payments that may be due hereunder as may be considered necessary to cover any suits and claims until they have been settled and satisfactory evidence to that effect has been furnished to the City. This section shall also apply to "extra work" and all other operations by the Contractor in connection with this contract.

Section 14. NOT TO SUBLET.

The CONSULTANT shall give its personal care and attention to the faithful prosecution of the work, shall keep the work under its personal control and with the exception of the Communications Design Consulting

Group as named in CONSULTANT'S Proposal, shall not assign or sublet the work or any part of the work, and shall not assign any of the money payable under this contract, or its claim thereto, except by and with the consent of the CITY. No such consent by the CITY shall operate to relieve the CONSULTANT from any obligation or liability hereunder or modify the obligations or liabilities of the CONSULTANT to the CITY.

Section 15. WORK MAY BE SUSPENDED.

Construction work may be temporarily suspended at any time on account of the weather or for any other reason, if deemed necessary or advisable by the General Supervisor of the CITY without additional compensation to the CONSULTANT.

Section 16. EXTRA WORK: INCREASED COMPENSATION.

The CITY may seek the performance of such Extra Work, or change in the work as it may find necessary or desirable. The amount of compensation to be paid to the CONSULTANT for Extra Work as so ordered shall be determined in accordance with the documentation referred to as Exhibit B.

The CONSULTANT shall, when requested by the General Supervisor to do so, furnish itemized statements of the cost of the work ordered and give the General Supervisor access to the accounts, bills and vouchers relating thereto.

When extra work is ordered at any time during the progress of the work, which requires, in the opinion of the General Supervisor, an increase of time for the completion of the contract, a suitable extension of the time of completion shall be granted.

Section 17. MODIFICATION OF CONTRACT.

This contract is intended by the parties hereto as a final expression of their contract and as a complete and exclusive statement of the terms thereof. No representations, understandings or agreements have been made or relied upon in the making of this contract other than those specifically set forth herein. This contract can only be modified by a writing signed by both parties hereto, or by their duly authorized representatives. It is distinctly agreed that in the case of modification or amendment in, or additions to this contract, so much of this contract as is not necessarily affected thereby shall remain in full force and be binding upon the parties hereto; and that the making of such alterations, modifications, additions or amendments shall in no way annul, release or affect the liability of the parties hereto.

Section 18. COMPLIANCE WITH LAWS.

The CONSULTANT shall keep itself reasonably informed of all state and national laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the work, or the materials used in the work, or in any way affecting the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for this work in relation to any such law, ordinance, regulation, order or decree, the CONSULTANT shall forthwith report the same to the General Supervisor in writing. It shall at all times itself observe and comply with, all such laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the CITY, its officials and agents against any claim or liability arising from or based upon violation of any such law, ordinance, regulation, order or decree, whether by itself or its employees.

Section 19. TERMINATION WITHOUT CAUSE.

CITY may terminate this Contract at any time without cause by giving thirty (30) days written notice to CONSULTANT. As soon as practicable after receipt of a written notice of termination without cause, CONSULTANT shall submit a statement to the CITY showing in detail the Services performed under this Contract through the date of termination. In the event of termination without cause pursuant to this Section, CITY agrees to: (i) pay CONSULTANT a pro rata amount of the purchase price for Services rendered through the termination date based on percentage of completion of the services; and (ii) pay CONSULTANT any reasonable and unavoidable additional costs and expenses which CONSULTANT incurs or becomes obligated for prior to the effective termination date and/or as a result of such termination. The forgoing payment obligation

is contingent upon CONSULTANT having provided CITY with written documentation reasonably adequate to verify the above payments to CONSULTANT for such termination.

Section 20. TERMINATION FOR CAUSE BY EITHER PARTY.

By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:

(a) The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is not a material breach and reasonably susceptible to cure; and (ii) the other party cures such default or provides a mutually acceptable resolution within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

(b) The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any written notice of default pursuant to this Section shall describe such default, identify this Section of this Contract and shall state the party's intent to terminate this Contract if the default is not cured within the specified period.

Section 21. OBLIGATIONS UPON TERMINATION FOR CAUSE.

Upon termination by the CITY for CONSULTANT'S default of this Contract, CONSULTANT shall promptly deliver to the CITY all Work Product up to the termination date.

Section 22. WAIVERS.

Neither inspection by the CITY, nor any of its agents, nor any orders, measurement or certificate by the General Supervisor, nor any order by the CITY for payment of money, nor any payment for, nor acceptance of the whole or any part of the work by the CITY, nor any extension of time, nor any possession taken by the CITY, or its employees shall operate as a waiver of any provision of this contract, or of any power herein reserved to the CITY, or any right to damages herein provided, nor shall any waiver of any breach of this contract be held to be a waiver of any other or subsequent breach. Any remedy provided in this contract shall be taken and construed as cumulative, this is in addition to all other suits, actions, or legal proceedings.

Section 23. THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.

The CONSULTANT shall comply with the provisions of the Immigration Reform and Control Act of 1986 as subsequently amended, which Act makes unlawful the hiring for employment or subcontracting of individuals failing to provide documentation of legal eligibility to work in the United States. The CONSULTANT shall hold the CITY OF DANBURY harmless for the failure of the CONSULTANT to comply with the provisions of said Act.

Section 24. ORDER OF WORK.

The order or sequence of the work and the general conduct of the work shall be subject to the approval of the General Supervisor.

Section 25. SUBCONTRACTORS. (If applicable)

To perform test borings, other explorations, site survey, and chemical analyses, the CONSULTANT will engage a subcontractor (s) and laboratory(ies) directly as warranted. The CONSULTANT does not guarantee or take responsibility for the performance of the subcontractor(s) or laboratory(ies) or the accuracy of their results.

Section 26. PRICES.

The CITY agrees to pay and the CONSULTANT agrees to accept the prices specified in the documentation referred to as Exhibit B herein or any relevant attachments hereto submitted as full compensation for the execution of the work contemplated in the contract. The CONSULTANT shall submit its invoices to the CITY and the CITY shall within thirty (30) days thereafter, subject to Section 18 hereof, pay to the CONSULTANT such sums as are represented thereby for all services provided or materials received and accepted by the CITY.

Section 27. TERM.

The term of this Contract shall be three (3) years from the date of execution, along with a two (2) year option to renew by the CITY at the CITY's sole discretion.

Section 28. HAZARDOUS CONDITIONS. DISCLOSURE OF HAZARDS. (If applicable)

If potentially hazardous conditions are encountered during the course of the work, the CONSULTANT shall have the right to suspend its work immediately and the right by written notice to the CITY to terminate the work described in this contract ten (10) days after such written notice is provided, unless the CONSULTANT and the CITY within ten (10) days of the CONSULTANT'S notice of intent to terminate agree upon a mutually satisfactory amendment to the contract that may include a revision of the scope of services, adjustment of budget estimates, revised contract, and revised fees.

The CITY shall remain liable for and shall pay all fees and charges incurred under the provisions of the contract through the date of termination, notwithstanding the CITY and the CONSULTANT not having reached a new, mutually satisfactory, revision of their contract.

The CONSULTANT will take reasonable precautions for the health and safety of its employees while at the site with consideration for the available information regarding existing hazards. The CITY will furnish to the CONSULTANT, at the time of CITY authorization to proceed, all readily available information in CITY'S possession concerning oil, hazardous, toxic, radioactive or asbestos materials in, or near the site presenting a potential danger to human health or the environment, then known to the CITY to the best of its knowledge.

Section 29. ASSIGNMENT OF ANTI - TRUST CLAIMS.

The CONSULTANT or its subcontractor offers and agrees to assign to the CITY all right, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act, 15 U.S.C. Section 15, or under Chapter 624 of the General Statutes of Connecticut, arising out of the purchase of services, property or intangibles of any kind pursuant to a public purchase contract or subcontract. This assignment shall be made and become effective at the time the CITY awards or accepts such contract, without further acknowledgment by the parties.

Section 30. CONTRACT DOCUMENTS.

The provisions contained in Exhibits A and any subsequent contract addendums submitted pertaining to specific services to be performed by Consultant shall comprise a portion of this contract, and are incorporated herein and made a part hereof.

Section 31. LEGAL ADDRESS OF CONSULTANT.

Both the address provided in the bid or proposal submitted by the CONSULTANT and the CONSULTANT'S office at or near the site of the work are hereby designated as places to either of which letters and other communications to the CONSULTANT shall be certified, mailed or delivered. The delivering at the above named place, or depositing in a postage paid wrapper directed to the above named place, in the post office box regularly maintained by the Post Office Department, of any notice, letter, or other communication to the CONSULTANT shall be deemed sufficient service thereof upon the CONSULTANT, and the date of CONSULTANT'S receipt of said service shall be the date of such delivery or mailing. The first named address may be changed at any time by an instrument in writing, executed and acknowledged by the CONSULTANT

and delivered to the General Supervisor. Nothing herein contained shall be deemed to preclude or render inoperative the services of any notice, letter or other communication upon the CONSULTANT personally.

Section 32. 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 contract shall be amended so as to strictly comply with the law and without prejudice to the rights of either party hereunder.

Section 33. UNLAWFUL PROVISIONS DEEMED STRICKEN.

All unlawful provisions shall be deemed stricken from this contract and shall be of no effect. On the application of either party, the unlawful part shall be considered stricken without affecting the binding force of the remainder of the contract.

Section 34. HEADINGS.

The headings or title to the sections hereof are not a part hereof and shall have no effect upon the construction or interpretation of any part hereof.

Section 35. EMPLOYEE DISCRIMINATION AND AFFIRMATIVE ACTION.

The CONSULTANT agrees and warrants that in the performance of this contract it will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religion, national origin, sex, or physical disability, including, but not limited to, blindness, unless it is shown by such CONSULTANT that such disability prevents performance of the work involved, and further agrees to provide the Connecticut Commission on Human Rights and Opportunities with such information requested by the Commission concerning the employment practices and procedures of the CONSULTANT as related to the provisions of this section.

The CONSULTANT further agrees and warrants that in the performance of this contract it will comply with the following and any subsequent executive orders concerning employee discrimination and affirmative action:

Executive Order No. 3 of Governor Thomas J. Meskill promulgated June 16, 1971.

Executive Order No. 17 of Governor Thomas J. Meskill promulgated February 15, 1973.

Executive Order No. 16 of Governor John J. Rowland promulgated August 4, 1999.

Executive Order No. 7C of Governor M. Jodi Rell promulgated July 13, 2006.

In addition, the CONSULTANT further certifies that it is an affirmation action employer meeting both in policy and practices the principles of the Affirmative Action Program.

Section 36. CONTROL OF SITE. (If applicable)

The CITY acknowledges that it is now and shall remain in control of the site at all times to the extent not limited by leases now, or hereafter entered into by and between the CITY and any tenant. To the extent that the CITY'S control over the site is so limited and such limitation renders the CONSULTANT unable to complete an obligation under this contract, such inability will not be deemed default under this contract by the CONSULTANT. The CONSULTANT shall have no responsibility or liability for any aspect or condition of the site now existing or hereafter arising or discovered. The CONSULTANT does not, by its entry into an agreement with the CITY, or its performance of services under any such agreement as set forth in the Proposal, assume any responsibilities or liability with respect to the site; nor shall any liability or responsibilities be implied or inferred by reason of the CONSULTANT'S performance of any work under the contract, the foregoing being modified only by the application of Sections 5, 8, 12 and 23 hereof. Unless specifically required by law, regulation or ordinance, the CONSULTANT will not undertake to report to any federal, state, or local public agency, as required by such law, the existence of any condition at the site which may present potential danger to public health, safety or the environment.

Section 37. DOCUMENTS.

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents, data or information prepared by the CONSULTANT as instruments of service shall remain the property of the CONSULTANT for use by the CITY. All reports and other work prepared by the CONSULTANT for the CITY shall be utilized for the purposes described in the Proposal. The CONSULTANT will retain all pertinent records for a period of three (3) years following the submission of the CONSULTANT'S report to the CITY. Such reports and records shall be disclosable pursuant to the terms of the Connecticut Freedom of Information Act. Such reports and records may be utilized by the CITY in any capacity if the CITY determines it is necessary. Such records will be available to the CITY upon request at the CONSULTANT'S office during office hours on reasonable notice, and copies will be furnished by the CONSULTANT to the CITY, and the CITY will pay costs of reproduction. Prior to the destruction of any such documents, the CONSULTANT will provide reasonable notice and opportunity for the CITY to gain access to and use of said documents.

Section 38. CONFIDENTIALITY.

The CONSULTANT will not divulge any information regarding work, the CONSULTANT'S services or its reports, except to the CITY or parties designated by the CITY in writing, or as otherwise required by law or order.

Section 39. STATUTORY DISCLOSURE REQUIREMENTS.

Notwithstanding the provisions of Sections 31, 32 and 33, the CONSULTANT will comply with judicial orders and federal, state and local laws, regulations, ordinances and applicable codes regarding the reporting to the appropriate public agencies of findings with respect to potential dangers to public health, safety or environment. The CONSULTANT shall have no liability or responsibility to the CITY or to any other person or entity for reporting or disclosures made in accordance with such statutory or other lawful requirements, and the CITY shall defend, indemnify and hold the CONSULTANT harmless from and against any and all claims, demands, liabilities and expense, including reasonable attorney's fees, incurred by the CONSULTANT, and related in any way to the CONSULTANT'S reporting or disclosing such information under a bona fide belief or upon advice of counsel that such reporting or disclosure is required by law. To the extent permitted by the applicable judicial order or federal, state and local law, regulation, ordinance and code, the CONSULTANT will provide notice to the CITY at the earliest practicable time prior to such reporting and will provide the CITY the opportunity to cure any defect.

Section 40. GOVERNING LAW; SEVERABILITY, ASSIGNMENT.

The contract between the CONSULTANT and the CITY as set forth herein shall be governed by and enforceable in accordance with the law of the State of Connecticut. The CONSULTANT consents to personal jurisdiction in Connecticut. The provisions of this contract are severable. The invalidity of any part of this contract shall not invalidate the remainder of any portion hereof. Neither the CITY nor the CONSULTANT shall assign any aspect of the contract between the CITY and the CONSULTANT except upon the prior written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the day and year first above written.

WITNESS: **CITY OF DANBURY**

_____ By: _____

Mark D. Boughton, Mayor

_____

WITNESS:

_____

_____

CONSULTANT:

By: _____

EXHIBIT A

Request for Qualifications
On-Call Consultants
Project No. 07-14
Bid No. 05-06-7-01

EXHIBIT B – Fee Schedule