

**GRANT AGREEMENT FOR STATE AID TO COUNTIES AND MUNICIPALITIES
TERMS AND CONDITIONS**

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I. Compliance with Existing Laws

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- A. The Grantee, in order to permit the Department to award this grant, agrees to comply with all applicable Federal, State and municipal laws, rules, and regulations.
- B. These laws and regulations include, but are not limited to the following:
1. Federal Office of Management and Budget (OMB) documents:
<http://www.whitehouse.gov/omb/circulars/>
 2. New Jersey Department of the Treasury, Office of Management and Budget documents:
 - a) Circular Letter 04-04-OMB, Single Audit Policy for Recipients of State Grants and State Aid:
<http://www.state.nj.us/infobank/circular/cir0404b.htm>
 - b) State Grant Compliance Supplement:
<http://www.state.nj.us/treasury/omb/publications/grant/index.shtml>
 - c) Circular Letter 07-05-OMB, Grant Management – Agreement Contract:
<http://www.state.nj.us/infobank/circular/cir0705b.pdf>
 3. State Affirmative Action Legal Citations:

The Grantee agrees to require its contractors to comply with the requirements of N.J.A.C. 17:27, applicable provisions of N.J.S.A 10:5, et. al., and P.L. 1975, c.127 and all implementing regulations.
 4. The Grantee will comply with N.J.A.C. 16:20A, N.J.A.C. 16:20B and any supplemental compliance statements by the Department must be complied by the grantee.
 5. The Grantee will comply with Title VI of the 1964 Civil Rights Act.
 6. The Grantee shall advertise and award the contract in accordance with the provisions of the Local Public Contracts Law, N.J.S.A. 40 A:11-1 et. seq.
 7. The Grantee will comply with all applicable election laws and conflict of interest and ethics laws and regulations, including the NJDOT Code of Ethics for Vendors, available at:
<http://www.state.nj.us/transportation/business/procurement/ethics.shtml>

Failure to comply with the laws, rules and regulations may be grounds for termination of this grant.

II. Financing and Insurance

- A. The Grantee shall arrange for financing of the total cost of the project provided for in this Agreement.
- B. Insurance shall be provided by the Grantee and proof of bonding and insurance must be retained on file by the Grantee. In its agreements for professional and non-professional services, the Grantee shall require the provisions of public liability insurance and every such policy shall include the Grantee and State as additional insured.

III. Indemnification

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The Grantee shall be solely responsible for and shall keep, save, and hold the State of New Jersey harmless from all claims, loss, liability, expense, or damage resulting from all mental or physical injuries or disabilities, including death, to its employees or recipients of the Grantee's services or to any other persons, or from any damage to any property sustained in connection with the delivery of the Grantee's services that results from any acts or omissions, including negligence or malpractice, of any of its officers, directors, employees, agents, servants or independent contractors, or from the Grantee's failure to provide for the safety and protection of its employees, whether or not due to negligence, fault, or default of the Grantee. The Grantee's responsibility shall also include all legal fees and costs that may arise from these actions. The Grantee's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

IV. Assignability

The Grantee shall not assign any of the work or services covered by this grant, nor shall any interest be assigned or transferred except as may be provided for in this grant or with the express written approval of the Department.

V. Availability of Funds

The Recipient shall recognize and agree that both the initial provision of funding and the continuation of such funding under the Agreement is expressly dependent upon the availability to the Department of funds appropriated by the State Legislature from State revenue or such other funding sources as may be applicable. A failure of the Department to make any payment under this Agreement or to observe and perform any condition on its part to be performed under the Agreement as a result of the failure of the Legislature to appropriate shall not in any manner constitute a breach of the Agreement by the Department or an event of default under the Agreement and the Department shall not be held liable for any breach of the Agreement because of the absence of available funding appropriations. In addition, future funding shall not be anticipated from the Department beyond the duration of the grant award period set forth in the Grant Agreement and in no event shall the Agreement be construed as a commitment by the Department to expend funds beyond the termination date set in the Grant Agreement.

VI. Special Grant Conditions For "High Risk" Grantees

- A. A Grantee award may be considered "high risk" if the Department determines that a Grantee:
1. Has a history of unsatisfactory performance.
 2. Is not financially stable.
 3. Has a financial management system which does not meet the standards set forth in Paragraph VIII.
 4. Has not conformed to terms and conditions of previous grant awards.
 5. Is otherwise not responsible.
- B. If the Department determines that grant award will be made to high risk Grantee, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the grant award. These conditions may include the following and will be guided by N.J.A.C. 16:20A, N.J.A.C. 16: 20B:
1. Payment on a reimbursement basis.

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2. Withholding authority to proceed to the next phase until receipt or evidence of acceptable performance within a given funding period.
 3. Requiring additional, more detailed financial reports.
 4. Additional project monitoring.
 5. Requiring the Grantee to obtain technical or management assistance.
 6. Establishing additional prior approvals.
- C. If a Department decides to impose such conditions, the Department official will notify the Grantee as soon as possible, in writing, of:
1. The nature of the special conditions/restrictions.
 2. The reason(s) for imposing the special conditions.
 3. The corrective actions that must be taken before the special conditions will be removed by the Department and the time allowed for completing the corrective actions.
 4. The method of requesting reconsideration of the conditions/restrictions imposed.

VII. Financial Management System

- A. The Grantee shall be responsible for maintaining an adequate financial management system and will immediately notify the Department when the Grantee cannot comply with the requirements established in this Section of the grant.
- B. The Grantee's financial management system shall provide for:
1. Financial Reporting:

Accurate, current, and complete disclosure of the financial results of each grant in conformity with generally accepted principles of accounting, and reporting in a format that is in accordance with the financial reporting requirements of the grant.
 2. Accounting Records:

Records that adequately identify the source and application of funds for Department supported activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures and income.
 3. Internal Control:

Effective internal and accounting controls over all funds, property and other assets. The Grantee shall adequately safeguard all such assets and assure that they are used solely for authorized purposes.
 4. Budget Control:

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Comparison of actual expenditures or outlays with budgeted amounts for each grant. Also, the relationship of the financial information with performance or productivity data, including the development of unit cost information required by the Department.

5. Allowable Cost:

Procedures for determining reasonableness, allowability, and allocability of costs generally consistent with the provisions of State requirements.

6. Source Documentation:

Accounting records that are supported by source documentation.

7. Cash Management:

Procedures to minimize the time elapsing between the advance of funds from the Department and the disbursement by the Grantee, whenever funds are advanced by the Department.

C. The Department may require the submission of a Statement of Adequacy of the Accounting System.

D. A Department may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-grant award review or at any time subsequent to the grant award. If the Department determines that the Grantee's accounting system does not meet the standards described in paragraph B above, additional information to monitor the grant may be required by the Department upon written notice to the Grantee, until such time as the system meets with Department approval. Failure to comply with any requirements imposed by the Department may result in termination or suspension as in paragraph XXII.

VIII. Method of Payment

A payment will be made to the Grantee in a manner determined by the Department and in accordance with N.J.A.C. 16:20A, N.J.A.C. 16: 20B, upon receipt by the Department of a properly executed copy of this grant.

IX. Allowable Costs

A. Limitation on Use of Funds

1. The Grantee hereby certifies that all allotted funds shall only be spent on eligible costs for the approved project(s) as described in N.J.A.C. 16:20A, N.J.A.C. 16: 20B. The Department participation in cost will be guided as outlined in N.J.A.C. 16:20A, N.J.A.C. 16: 20B.

X. Matching and Cost Sharing

The Grantee shall be required to account to the satisfaction of the Department for matching and cost sharing requirements of the grant in accordance with State requirements.

XI. Interest

A. Charges for Unresolved Audit Findings

An interest charge on unallowable costs that are not repaid by the Grantee shall begin to accrue 30 days from the date the Grantee is notified of the debt. The interest shall continue to accrue while any appeal of the audit findings is underway. In the event the Grantee is successful in its appeal, the accrued interest will

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be eliminated. The Department shall establish the applicable rate of interest at a time the GRANTEE is notified of the debt.

B. Interest Earned on Advanced Payments

Grantees must deposit advances of State grants and State Aid payments in interest bearing accounts.

In accordance with the Terms and Conditions of the grant award, interest earned on advanced payments shall be reported.

XII. Audit Requirements

This grant is covered by the audit requirements of the Department of the Treasury Circular Letter 04-04-OMB, Single Audit Policy for Recipients of State Grants and State Aid - N.J.A.C. 16:20A, N.J.A.C. 16: 20B.

XIII. Budget Revision and Modification

- A. This Section sets forth criteria and procedures to be followed by the Grantee in reporting deviations from the approved budget and in requesting approvals for budget revisions and modification. Revisions and modifications to this grant must be requested by the Grantee and approved by the Department in writing.
- B. Grantee shall request approval in writing from the district manager when there is reason to believe a revision or modification will be necessary for the following reasons: Any change in work after the award of contracts shall be documented with a Department approved change order.
 - 1. Changes in the scope, project limits timing of the project or deviations from the approved budget.
 - 2. The need for additional funding or to extend the period of availability of funds.
- C. When requesting approval for budget revisions, the Grantee shall clearly show the change in cost categories.
- D. The budget variance request must be submitted in writing by the Grantee and must include an explanation of the reasons for the variance request.

XIV. Property Management Standards

Property furnished by the Department or acquired in whole or in part with Department funds or whose cost was charged to a project supported by Department funds shall be utilized and disposed of in a manner generally consistent with State requirements.

XV. Procurement Standards

Procurement of supplies, equipment, and other services with funds provided by this grant shall be accomplished in a manner generally consistent with State requirements.

Adherence to the standards contained in the applicable State laws and regulations does not relieve the Grantee of the contractual responsibilities arising under its procurements. The Grantee is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurement entered in support of a grant.

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XVI. Monitoring of Program Performance

- A. The Grantee must assure compliance with applicable State requirements as outlined in N.J.A.C. 16:20A, N.J.A.C. 16:20B and that performance goals are being achieved. Grantee monitoring must cover each project, function or activity to monitor performance under grant supported activities to assure time schedules and objectives are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved as applicable.
- B. The Grantee shall inform the Department of the following types of conditions which affect project objectives and performance as soon as they become known:
 - 1. Problems, delays, or adverse conditions which will materially impair the ability to attain project objectives, prevent meeting time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Department assistance required to resolve the situation.
 - 2. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated, at a lower than anticipated cost, or produces a greater benefit than originally planned.
- C. The Department may, at its discretion, make site visits to:
 - 1. Review project accomplishments and management control systems.
 - 2. Provide such technical assistance as may be required.
 - 3. Perform fiscal reviews to ensure grant funds are being properly expended in a timely manner.

XVII. Financial and Performance Reporting

- A. Not applicable to municipal grant except as it may pertain to Special Grant Conditions for "High Risk" Grantees as outlined in Paragraph VII B.
- B. Financial and performance reporting for County Aid grants will be guided by NJAC 16:20A.

XVIII. Access to Records

- A. The Grantee in accepting this grant agrees to make available to the Department, or any of its duly authorized representatives, pertinent accounting records, books, documents and papers as may be necessary to monitor and audit Grantee's operations.
- B. All visitations, inspections and audits, including visits and requests for documentation in discharge of the Department's responsibilities, shall as a general rule provide for prior notice when reasonable and practical to do so. However, the Department retains the right to make unannounced visitations, inspections, and audits as deemed necessary.
- C. The Department reserves the right to have access to records of any consultant or contractor hired by the Grantee to perform tasks in connection with grant award and requires the Grantee to provide for Department access to such records.
- D. The Department reserves the right to have access to all work papers produced in connection with audits made by the Grantee or independent certified public accountants, registered municipal accountants or licensed public accountants hired by the Grantee to perform such audits.

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XIX. Record Retention

- A. Except as otherwise provided, financial and programmatic records, supporting documents, statistical records and all other records pertinent to the grant shall be retained for a period of three years, unless Department funding statutes require longer periods or unless directed to extend the retention by the Department.
 - 1. If any litigation, claim, negotiation, action or audit involving the records is started before the expiration of the three year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular seven year period, whichever is later unless otherwise directed by the Department.
 - 2. Records for nonexpendable property acquired with Department funds shall be retained for three years after its final disposition, unless otherwise provided or directed by the Department.
- B. For State purposes (unless otherwise provided):
 - 1. General - The retention period starts from the date of submission of the final expenditure report, or for grants that are renewed annually, from the date of submission of the annual financial report.
 - 2. Real Property and Equipment - The retention period for real property and equipment records starts from the date of the disposition, replacement or transfer at the direction of the awarding Department.
- C. The Department may request transfer of certain records to its custody from the Grantee when it determines that the records possess long-term retention value and will make arrangements with the Grantee to retain any records that are continuously needed for joint use.

XX. Enforcement

A. Remedies for Noncompliance

If a Grantee materially fails to comply with the term of the grant award, whether stated in a State statute, regulation, assurance, State plan or application, a notice of award funding agreement, or elsewhere, the Department may take one or more of the following actions, as appropriate in the circumstances:

The GRANTEE may request informal meeting to discuss any proposed enforcement action by the Department.

- 1. Temporarily withhold cash payments pending correction of the deficiency by the Grantee.
- 2. Disallow all or part of the cost of the activity or action not in compliance.
- 3. Wholly or partly suspend or terminate the current grant award.
- 4. Withhold further grant awards for the program.
- 5. Request the balance of grant funds to be returned and/or seek reimbursement for funds expended that were not in compliance with the terms and conditions of the grant agreement.
- 6. Take other remedies that may be legally available.

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7. The Department will be guided by N.J.A.C. 16:20A, N.J.A.C. 16:20B.

B. Effects of Suspension and Termination

Costs incurred by the Grantee, resulting from obligations incurred by the Grantee during a suspension or after termination of an award, are not allowable to be applied against the grant unless the Department expressly authorizes them in the notice of suspension or termination or subsequently. Other Grantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the costs result from obligations which were properly incurred by the Grantee before the effective date of suspension or termination, and are noncancellable.

C. Relationship to Debarment and Suspension

The enforcement remedies identified in this Section, including suspension and termination, do not preclude the Grantee from being subject to State debarment and suspension procedures.

XXI. Termination and Suspension

A. The following definitions shall apply for the purposes of this Section:

1. Termination

The termination of a grant means the cancellation of assistance, in whole or in part, under a grant at any time prior to the date of completion.

2. Suspension

The suspension of a grant is an action by the Department which temporarily suspends the grant pending corrective action by the Grantee or pending a decision to terminate the grant by the Department.

3. Disallowed Costs

Disallowed costs are those charges to the grant which the Department or its representatives shall determine to be either beyond the scope of the grant, excessive, or otherwise unallowable.

B. When the Grantee has failed to comply with grant award stipulations, standards, or conditions, the Department may suspend the grant and withhold further payments; prohibit the Grantee from incurring additional obligations of grant funds pending corrective action by the Grantee; or decide to terminate the grant in accordance with paragraph C below. The Department shall allow all necessary and proper costs, which the Grantee could not reasonably avoid during the period of suspension, provided they meet State requirements.

C. The Department may terminate the grant in whole or in part whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The Department shall promptly notify the Grantee in writing of the determination and the reasons for the termination together with the effective date. Payments made to the Grantee or recoveries by the Department under the grant terminated for cause shall be in accord with the legal right and liability of the parties.

D. The Department and the Grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further

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expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and in case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

- E. In the event that the Department approves funds in an amount less than requested, the GRANTEE, at its option, 1) may either rescind this Agreement or 2) continue with the project and assume the entire difference between the total cost of the project and the allotment of State funds or 3) reevaluate the project limits or scope and submit a letter of justification to the Department for approval. In the event the GRANTEE rescinds the Agreement, the allotted funds shall revert to the source of the funding.
- F. The Department will be guided by N.J.A.C. 16:20A, N.J.A.C. 16:20B.
- G. The Grant Closeout procedures in paragraph XXIII of the grant shall apply in all cases of termination of the grant.

XXII. Grant Closeout Procedures

A. The following definitions shall apply for the purpose of this Section:

1. Grant Closeout

The closeout of a grant is the process by which the Department determines that all applicable administrative actions and all required work of the grant have been completed by the Grantee.

2. Date of Completion

The date when all activities under the grant are completed.

- B. The Grantee shall submit final expenditure and performance reports as prescribed by the Department by N.J.A.C. 16:20A, N.J.A.C. 16:20B.

The Department may permit extensions when requested in writing by the Grantee.

- C. In the event allotted funds remain after completion of the work, the remaining funds shall revert to the source of the funding and shall be re-allotted by the Department in a manner determined solely by the Commissioner of Transportation.
- D. In the event that the Department determines that it has reimbursed the Sponsor in an amount in excess of the funds actually due under this Agreement, the Sponsor shall, upon notice from the Department, make timely repayments to the State. Upon failure of the Sponsor to timely repay such funds, the State is hereby authorized by this Agreement to deduct those funds from any monies due the Sponsor under the terms of any agreement between the State, its Departments and Agencies and the Sponsor or to gain reimbursement through any other remedies available at law or equity.
- E. In the event a final audit has not been performed prior to the closeout of the grant, the Department retains the right to recover any appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.
- F. GRANTEE shall maintain the completed project in a manner satisfactory to the Department.

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