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STANDARD TERMS AND CONDITIONS OF AGREEMENT

BETWEEN

STATE AND CONSULTANT

ARTICLE 1

LEGAL JURISDICTION

This Agreement shall be construed and shall be governed in accordance with the Constitution and laws of the State of New Jersey.

The STATE in entering into this Agreement does not waive its Sovereign Immunity except as provided in the New Jersey Contractual Liability Act, NJSA 59:13-1 et seq. ("Act"). The rights or benefits provided the CONSULTANT in this Agreement which exceed those provided under the Act and the obligations established under this Agreement which vary from those under the Act are contractual in nature and shall not be deemed to expand the waiver of Sovereign Immunity as set forth in that Act.

ARTICLE 2

LAWS TO BE OBSERVED

The CONSULTANT shall keep fully informed of all Federal, State, and local laws, ordinances, and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Project, or which in any way affect the conduct of the work. It shall at all times observe and comply with, and shall cause its agents, subcontractors and employees to observe and comply with, all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the STATE and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by itself or its agents, subcontractors or employees. If any discrepancy or inconsistency is discovered between the Agreement and any such law, ordinance, regulation, order or decree, the CONSULTANT shall immediately report the same to the STATE in writing.

ARTICLE 3

PERMITS, LICENSES AND TAXES

The CONSULTANT shall procure all permits, grants and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful performance of the work, except that where the STATE has procured permits, grants or licenses relating to the performance of the work, the CONSULTANT will be relieved of the above obligation to the extent provided by the terms of such permit, grant or license. However, the CONSULTANT shall advise the issuing agency or party of its proposed operations and obtain their cooperation and such supplemental permission as may be necessary. The CONSULTANT shall obtain from the STATE all available information on the permits, grants and licenses it has obtained. Charges for permits, grants and licenses in connection with the work, that are not obtained by the State, shall be paid by the CONSULTANT and shall be included as allowable direct costs for itemized expenses on Cost Plus Fixed Fee agreements. On Fixed Price agreements such costs shall be deemed to be included in the Fixed Price.

ARTICLE 4

PATENTED DEVICES, MATERIALS AND PROCESSES

If the CONSULTANT employs any design, device, material, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The CONSULTANT shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work. The CONSULTANT shall defend, indemnify and save harmless the STATE, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the STATE for any costs, expenses and damages which it may be obliged to pay by reason of an infringement, at any time during the prosecution of or after the acceptance of the work.

ARTICLE 5

INDEPENDENT CONTRACTOR

The relationship of the CONSULTANT to the STATE is that of an independent contractor, and said CONSULTANT, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the STATE by reason hereof. The CONSULTANT will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE, including but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

ARTICLE 6

THIRD PARTY BENEFICIARY CLAUSE

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to make the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Agreement.

It is the further intent of the STATE and the CONSULTANT in executing this Agreement that no individual, firm, corporation, or any combination thereof, which supplies materials, labor, services or equipment to the CONSULTANT for the performance of the work becomes thereby a third party beneficiary of this Agreement. The STATE and the CONSULTANT understand that such individual, firm, corporation, or combination thereof, has no right to bring an action in the courts of this State against the STATE, by virtue of its lack of standing and also by virtue of the provisions of the New Jersey Contractual Liability Act, NJSA 59:13-1 et seq., which allows suit against the STATE in contract only on the basis of express contracts or contracts implied in fact.

ARTICLE 7

ASSIGNMENT OF FUNDS AND CLAIMS

The CONSULTANT shall not transfer or assign to any person any funds, due or to become due, under this Agreement, or claims of any nature it has against the STATE, without the written approval of the STATE having first been obtained. The STATE in its sole discretion, considering primarily the interests of the STATE, may grant or deny such approval.

ARTICLE 8

PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the Agreement, or in exercising any power or authority granted to them by or within the scope of the Agreement, there shall be no liability upon the Commissioner, or other State officers or employees of the STATE, either personally or as officials of the STATE, it being understood that in all such matters they act solely as agents and representatives of the STATE.

ARTICLE 9

RECOVERY OF MONIES BY THE STATE

Whenever it is provided that the STATE withhold or deduct money from the monies due or to become due the CONSULTANT, or that the CONSULTANT is to pay or return monies to the STATE for any reason, or that the STATE can charge against the CONSULTANT certain costs, assessments or fines, or that the STATE can recover any sum for any reason from the CONSULTANT, it is understood that the STATE has available to it all monies due or to become due the CONSULTANT under this Agreement as well as under other agreements between the CONSULTANT and the STATE. Such other agreements shall include joint ventures in which the CONSULTANT is a participant, but only to the extent of its participation. The right to recover against the CONSULTANT as herein provided is in addition to and does not affect the right of the STATE to seek recovery against the CONSULTANT as otherwise allowed by law.

ARTICLE 10

NO WAIVER OF LEGAL RIGHTS

Notwithstanding any other provision of this Agreement, for a period of 3 years after final acceptance all estimates and payments made pursuant to the Agreement, including the Final Payment, shall be subject to correction and adjustment for clerical or other errors in the calculations involved in the determination of quantities and payments. The CONSULTANT and the STATE agree to pay to the other any sum due under the provisions of this Article, provided, however, if the total sum to be paid is less than $100, no such payment shall be made.

A waiver on the part of the STATE of any breach of any part of the Agreement shall not be held to be a waiver of any other or subsequent breach.

The CONSULTANT, without prejudice to the terms of the Agreement, shall be liable to the STATE at any time both before and after completion of the work and final payment for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the STATE’s rights under any warranty or guaranty.

ARTICLE 11

LIMITATIONS OF LIABILITY

In no event, whether under the provisions of this Agreement, as a result of breach hereof, tort (including negligence) or otherwise, shall the STATE be liable to the CONSULTANT for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, cost of capital, or interest of any nature.

ARTICLE 12

INDEMNIFICATION

The CONSULTANT shall defend, indemnify, protect, and save harmless the STATE, its agents, servants, and employees from and against any and all suits, claims, losses, demands or damages of whatever kind or nature arising out of or claimed to arise out of any negligent act, error, or omission of the CONSULTANT, its agents, servants, employees and subcontractors in the performance of this Agreement. The CONSULTANT shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim or incurred in connection therewith. If any judgment shall be rendered against the STATE for which indemnification is provided under this paragraph, the CONSULTANT shall at its own expense satisfy and discharge the same.

The STATE shall, as soon as practicable after a claim has been made against it, give written notice thereof to the CONSULTANT along with full and complete particulars of the claim. If suit is brought against the STATE or any of its agents, servants, and employees, the STATE shall expeditiously forward or have forwarded to the CONSULTANT every demand, complaint, notice, summons, pleading, or other process received by the STATE or its representatives.

It is expressly agreed and understood that any approval by the STATE of the services performed and/or reports, plans or specifications provided by the CONSULTANT shall not operate to limit the obligations of the CONSULTANT assumed in this Article or in the other provisions of this Agreement. It is further understood and agreed that the STATE assumes no obligation to indemnify or save harmless the CONSULTANT, its agents, servants, employees and subcontractors from and against any claim which may arise out of their performance of this Agreement. Furthermore, the CONSULTANT expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the CONSULTANT’s obligations assumed in this Agreement, nor shall they be construed to relieve the CONSULTANT from any liability, nor preclude the STATE from taking any other actions available to it under any other provisions of this Agreement or otherwise in law.

ARTICLE 13

INSURANCE

(revised 02-10-20)

The CONSULTANT shall procure and maintain at its own expense, until at least one year after the completion of all work performed under this Agreement and any modification hereto, liability insurance for damages imposed by law and assumed under this Agreement, of the kinds and in the amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey. The CONSULTANT expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit the CONSULTANT’s obligations assumed in this Agreement, and shall not be construed to relieve the CONSULTANT from liability in excess of such coverage, nor shall it preclude the STATE from taking such other actions as are available to it under any other provisions of this Agreement or otherwise in law.

Such coverage must be purchased and maintained from insurance companies authorized to transact the business of insurance in the State of New Jersey and are rated \*A-VIII\* or better by A. M. Best Company. In each policy, the Contractor shall have incorporated a provision, in accordance with the laws of New Jersey, requiring written notice to the Authority at least thirty (30) Days prior to cancellation or non-renewal of any insurance coverage required under this Section. The Contractor warrants if the insurer, or coverage, is not subject to statutory or other provisions requiring thirty (30) Day prior notification of cancellation or non-renewal, it will, in any event, provide notice, in writing, to the Authority immediately upon receipt of any cancellation or non-renewal of any insurance coverage required under this Section.

1. The types and minimum amount of insurance are as follows:

(a) Comprehensive General Liability Insurance

The minimum limits of liability for this insurance shall be as follows:

Bodily Injury Liability

Each Occurrence Aggregate

$1,000,000 $2,000,000

Property Damage Liability

Each Occurrence Aggregate

$1,000,000 $2,000,000

The above required Comprehensive General Liability Insurance shall name the STATE as an additional insured. The coverage to be provided under this policy shall be at least as broad as the standard, basic un-amended and unendorsed comprehensive general liability policy and shall include contractual liability coverage. The aggregate limits may be increased by the STATE, in its sole discretion, in order to provide adequate protection to the STATE.

# (b) Comprehensive Automobile Liability Insurance

The Comprehensive Automobile Liability policy shall cover owned, non-owned and hired vehicles with minimum limits as follows:

Bodily Injury Liability

Each Person Each Occurrence

$500,000 $1,000,000

Property Damage Liability

Each Occurrence

$250,000

# (c) Workers’ Compensation and Employers’ Liability

Workers’ Compensation Insurance shall be provided in accordance with the requirements of the laws of this State and shall include an endorsement to extend coverage to any State which may be interpreted to have legal jurisdiction. Employers’ Liability Insurance shall be provided with a limit of liability of not less than $100,000 for each accident.

# (d) Professional Liability Insurance

The CONSULTANT shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance sufficient to protect the CONSULTANT from any liability arising out of professional obligations performed pursuant to the requirements of this Agreement. This insurance shall be in the minimum amount of $1,000,000 and in such policy form as shall be approved by the STATE. Should the Consultant change carriers during the term of this Agreement, the CONSULTANT shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

2. The CONSULTANT shall, prior to commencement of the services required under this Agreement, provide the STATE with valid Certificates of Insurance as evidence of the CONSULTANT’s insurance coverage in accordance with the foregoing provisions. Such certificates of insurance shall specify that the insurance provided is of the types and is in the amounts required in 1(a), (b), (c) and (d) above.

The Certificates submitted to the STATE shall clearly set forth all exclusions and deductible clauses. The STATE, in its sole discretion, may allow certain deductible clauses which it does not consider excessive, overly broad or harmful to the interest of the STATE. Standard exclusions will be allowed provided they are not inconsistent with the requirements set forth in 1a., b., c., and d. above. Allowance of any additional exclusions will be in the discretion of the STATE. Regardless of the allowance of exclusions or deductions by the STATE, the CONSULTANT shall be responsible for the deductible limit of the policy and all exclusions consistent with the risks he assumes under this Agreement and as imposed by law.

The Certificates shall provide for thirty (30) days notice in writing to the STATE prior to any cancellation, expiration, or non-renewal during the term the insurance is required in accordance with this Agreement. The CONSULTANT shall further be required to provide the State with valid certificates of renewal of the insurance upon the expiration of the policies. The CONSULTANT shall also, upon request, provide the STATE with copies of each policy required under this Agreement certified by the agent or underwriter to be true copies of the policies provided to the CONSULTANT. All certificates and copies of insurance policies shall be emailed to the New Jersey Department of Transportation, Division of Procurement, Bureau of Professional Services, [**DOT-PSPD.Insurance@dot.nj.gov**](mailto:DOT-PSPD.Insurance@dot.nj.gov) . Hard copies and/or originals of any certificates or insurance policies required by this Agreement shall also be provided to the STATE upon request.

In the event that the CONSULTANT provides evidence of insurance in the form of certificates of insurance valid for a period of time less than the period during which the CONSULTANT is required by the terms of this Agreement to maintain insurance, said certificates shall be acceptable, but the CONSULTANT shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance from time to time, so that the STATE is continuously in possession of evidence of the CONSULTANT’s insurance in accordance with the foregoing provisions.

3. In the event the CONSULTANT fails or refuses to renew any of its insurance policies, or any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this Agreement, the STATE may refuse to make payment of any further monies due under this Agreement or refuse to make payment of monies due or coming due under other agreements between the CONSULTANT and the STATE. The STATE, in its sole discretion, may use monies retained under this paragraph to renew the CONSULTANT’s insurance for the periods and amounts referred to above. During any period when the required insurance is not in effect, the STATE may, at its option, either suspend work under this Agreement, or proceed to default the CONSULTANT and thereby terminate this Agreement.

ARTICLE 14

NOTICE

“Written notice” shall be sufficiently given when delivered or sent by United States mail to the CONSULTANT’s project representative at his address, as shown in the Agreement, or to the STATE’s coordinator, respectively.

ARTICLE 15

TIME OF THE ESSENCE

All time limits as stated in the Agreement are of the essence.

ARTICLE 16

TECHNICAL AND ADMINISTRATIVE CONTROL DIRECTIVES

Copies of all technical and administrative control directives pertaining to services required under this Agreement are in the possession of the CONSULTANT, and the STATE will provide the CONSULTANT with copies of applicable future directives.

ARTICLE 17

CONSULTANT

The term “CONSULTANT” means the person, firm, or corporation which will perform the work. The term is used collectively to include the CONSULTANT and all other persons, firms, or corporations employed or contracted with by the CONSULTANT in connection with this Agreement.

ARTICLE 18

SUBCONTRACTING

(revised 11-2017)

When the CONSULTANT intends to subcontract any work under this Agreement, the subcontract must be consented to by the STATE prior to the CONSULTANT entering into the subcontract. It is understood, however, that consent of the STATE for the subcontracting of any work under this Agreement in no way relieves the CONSULTANT from its full obligations under the Agreement. The CONSULTANT shall at all times give personal attention to the fulfillment of this Agreement and shall keep the work under its control. Consent to the subcontracting of any part of the work shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of the CONSULTANT’s request for the making of a subcontract between the CONSULTANT and its chosen subcontractor. The CONSULTANT shall be responsible for all work performed by the subcontractor, which shall conform to the provisions of this Agreement. The CONSULTANT may not withhold retainage from Sub-consultants.

The Consultant agrees to comply with all applicable federal and state prompt payment requirements, including but not limited to, 49 CFR 26.29 and N.J.S.A. 2A:30A-1

ARTICLE 19

CONSULTANT’S PROJECT REPRESENTATIVE

The CONSULTANT shall assign to the work a competent project representative who shall coordinate all phases of the work, including additions and revisions thereto, until final acceptance of the work. The project representative’s educational background and job experience shall be submitted to the STATE for review. The representative shall be approved by the STATE in writing. The representative shall be available to the State at all reasonable times and all correspondence from the STATE to the CONSULTANT relative to the Project shall be directed to him or her.

ARTICLE 20

REMOVAL OF CONSULTANT PERSONNEL

The CONSULTANT shall not remove any project representative, consulting engineer, specialist or other person whose name is submitted to the STATE as part of the CONSULTANT’s Expression of Interest or Proposal, without the STATE’s prior approval. The CONSULTANT acknowledges that the STATE relied on Project participation by all persons named in the Expression of Interest and Proposal in entering into this Agreement with the CONSULTANT. The STATE reserves the right to have such person replaced if, in the judgment of the STATE, any such person proves unsatisfactory.

ARTICLE 21

STATE’S RIGHT TO WITHHOLD PAYMENTS

The STATE shall have the right to withhold from payments due the CONSULTANT such sums as are necessary to protect the STATE against any loss or damage which may result from negligence or unsatisfactory work by the CONSULTANT, failure by the CONSULTANT to perform its obligations, or claims filed against the CONSULTANT or the STATE relating to the CONSULTANT’s work or resulting therefrom.

ARTICLE 22

MONITORING OF WORK BY STATE

The CONSULTANT shall allow representatives of the STATE to visit the office(s) of the CONSULTANT periodically, without notice, in order to monitor work being performed under this Agreement.

ARTICLE 23

OWNERSHIP OF DOCUMENTS

(Revised 10-8-14)

Documents of every nature prepared under or as a result of this Agreement, including, but not limited to, all basic notes, sketches, drawings, specifications, computations, test data, survey results, models, photographs and renderings are the property of the STATE. They shall be delivered to the STATE in good condition and properly indexed prior to final payment. The STATE may use these documents without reservation.

The CONSULTANT may retain and use copies of all such documents. The CONSULTANT will not be responsible for another party’s application of the information contained in such documents other than that for which the information was intended. All technical data in regard to this Agreement, whether existing in the office of the CONSULTANT or existing in the offices of the STATE, shall be made available to either party to this Agreement without expense to the other party.

The CONSULTANT shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request

ARTICLE 24

MONTHLY REPORTING

(revised 04-07-2009; 11-2017; 04-26-2021)

The CONSULTANT shall submit the following on a monthly basis to the STATE for its approval:

#### 1. Monthly Progress Reports are required regardless of billing activity. They shall include the following:

a. A narrative description of the work performed during the reporting period and, if necessary, a discussion of any difficulties or delays encountered;

b. A comparison, by task, of work performed to the baseline schedule including a narrative which clearly depicts the percentage completed by task;

c. A comparison, by task, of costs incurred with amounts budgeted (not applicable to Fixed Price Agreements);

d. The percentage of work completed to date;

e. A list indicating those submissions for which the CONSULTANT is awaiting a response.

Note: Monthly Progress reports will not be required on Construction Inspection Agreements or when notified by the Department.

2. Invoices:

a. The CONSULTANT shall prepare and submit two original company invoices for payment for work performed under this Agreement on Payment Voucher (PV-C) forms supplied by the STATE.

b. The CONSULTANT shall submit a separate company invoice for each billing under this Agreement which includes a grand summary and supporting summaries for each Consultant Agreement Modification for Extra Work and sub-consultant work. If the agreement is a Term Agreement, supporting summaries for individual task orders are required, and must also detail sub-consultant work. A grand summary for the overall Term Agreement is not required.

c. Each invoice shall contain, but is not limited to, the following:

i. The Agreement number and, when applicable, the Consultant Agreement Modification or Task Order number.

ii. The Consultant Agreement date and Contract Id#.

iii. The billing period covered by the invoice for the prime and Sub-consultant.

iv. The amount of the current billing and the amount for the items listed as follows:

a. For Cost Plus Fixed Fee Agreements:

1. Salary Expense

2. Payroll Burden & Overhead

3. Non-Salary Direct Expense

4. Sub-consultant Expense

5. Proportional amount of Fixed Fee

b. For Fixed Price Agreements Plus Direct Non-Salary Expense Agreements:

1. Fixed Price Prime
2. Fixed Price- Sub-consultant Expense
3. Direct Non-Salary Expense (detailed by line item)

c. For Fixed Price Agreements

1. Fixed Price-Prime

2. Fixed Price-Sub-consultant

v. Other items as determined by the State and communicated to the Consultant in writing.

d. Receipts are not required to be submitted with an invoice for direct expenses unless noted within the contract, or requested by the contract manager. The consultant is required to retain receipt and supportive documentation for presentation at the time of audit.

e. The CONSULTANT shall prepare the Final Invoice in accordance with the Agreement.

f. The STATE will not process any invoice for payment without accompanying monthly progress reports for the corresponding reporting periods.

g. The STATE will not process for payment any monthly invoice that shows the total amount payable to be less than $2,000.00 for agreements with maximum project amounts in excess of $100,000.00 or less than 2% of the maximum project amount for all other agreements, unless the CONSULTANT’s written justification for such a payment is approved by the STATE. In no event however, will the CONSULTANT be precluded from submitting an invoice in a lesser amount if there has been no project work performed in at least three months and the STATE has been so notified.

ARTICLE 25

PUBLIC EMPLOYEES

The CONSULTANT shall not engage on this Project, either on a full or part time basis, without written consent from the STATE, any professional or technical personnel who are, or have been at any time during the period of this Agreement, in the employ of the U.S. Department of Transportation or the highway or transportation organization of any state, county, or municipality, except regularly retired employees, unless the written consent of the public employer of such person is obtained first.

ARTICLE 26

CHANGES - CONSULTANT AGREEMENT MODIFICATIONS AND ADDENDA

The STATE reserves the right to make such alterations, deviations, additions to or omissions from the work to be performed under this Agreement or from the provisions of the Agreement affecting performance of the work including the right to increase or decrease all or any portion of the work or to omit all or any portion of the work, as may be deemed by the STATE to be necessary or advisable. The STATE may also require such Extra Work as the STATE may determine to be necessary for proper completion of the contemplated Project. Such increases or decreases, alterations and omissions shall not invalidate the Agreement, and the CONSULTANT agrees to accept the work as changed, the same as if it had been a part of the original Agreement.

All changes, extensions of time and adjustments to compensation deemed appropriate by the STATE will be formalized by Consultant Agreement Modification. The STATE may direct the CONSULTANT to proceed with a desired change by written notice issued prior to formalization of the change in a Consultant Agreement Modification, and the CONSULTANT shall comply. In such cases, the STATE will, as soon as practicable, issue an appropriate Consultant Agreement Modification.

Extra Work that constitutes a new phase of work as determined under Part II-Compensation in the original agreement will be formalized by Consultant Agreement Addendum. Subject to appropriations and the availability of funds, the STATE, at its sole discretion, may authorize the CONSULTANT to proceed with such work by an Extra Work Consultant Agreement Addendum.

The CONSULTANT shall not proceed with work which it believes or claims involves a change without prior written notice from the STATE authorizing the work. In such event the CONSULTANT shall give written notice to the STATE advising the STATE of its claim. If it is determined pursuant to Article 27 that the work does, in fact, constitute a change, an appropriate Consultant Agreement Modification will be issued. However, if the determination made pursuant to Article 27 is that the work does not constitute a change, then the STATE will give written notice to the CONSULTANT to proceed with the work in accordance with the Agreement.

The CONSULTANT shall not be reimbursed for Consultant Agreement Modifications, Consultant Agreement Addenda or for work of any nature made necessary because of errors or omissions attributable to the CONSULTANT.

ARTICLE 27

DISPUTES

In the event a dispute arises concerning the meaning of any term used in this Agreement, or the work and services required to be performed under this Agreement, or as to compensation under this Agreement, the dispute shall be decided by the Commissioner of Transportation or his duly authorized representative.

ARTICLE 28

ASSIGNMENT

At the option of the STATE, this Agreement shall bind the heirs, representatives, successors, or assigns of the CONSULTANT. Any purported transfer or assignment of this obligation without written approval or consent by the STATE shall be void, unless the STATE subsequently gives written approval or consent.

ARTICLE 29

SPECIAL PROCUREMENTS

If the CONSULTANT desires to procure any goods, services, or documents for which reimbursement will be sought, and which were not specifically itemized in this agreement or in the CONSULTANT’s proposal as revised and approved by the STATE, it shall obtain the STATE’s written approval prior to the procurement. In addition, the CONSULTANT shall recommend, for the STATE’s consideration, the specific requirements or specifications. Upon securing approval for both the reimbursement and the specific requirements or specifications, the CONSULTANT shall proceed with the procurement. No claim for delay shall be made for the time involved in securing the STATE’s approval.

ARTICLE 30

SOLICITATION

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the STATE shall have the right either to annul this Agreement without liability, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or consideration.

ARTICLE 31

BUY AMERICAN

This Agreement shall comply with NJSA 52:32-1 and NJSA 52:33-1 et seq., which, except as expressly provided therein, prohibit on any public work the use of farm products or materials produced or manufactured outside the United States.

ARTICLE 32

WORK BY OTHERS

The STATE reserves the right to employ other architects, engineers, and consultants in connection with the work.

ARTICLE 33

INFORMATION CONCERNING PROJECT

The CONSULTANT will not divulge information concerning this Project to anyone (including, for example, information in applications for permits, variances, etc.) without prior approval or direction of the STATE. It will obtain similar agreements from persons and firms employed by it. The STATE reserves the right to release all information as well as to time its release, form and content. This requirement shall survive the expiration of the Agreement.

ARTICLE 34

EXTENT OF AGREEMENT

This Agreement represents the entire and integrated agreement between the STATE and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written “Consultant Agreement Modification” signed by both STATE and CONSULTANT.

ARTICLE 35

SCOPE REVIEW

The scope of the Project as specified in the Additional Terms and Conditions of the Agreement will be reviewed by the STATE and the CONSULTANT at, as a minimum, three (3) month intervals, beginning three (3) months from the date of the Agreement. The reviews shall be in the form of an exchange of letters initiated by the CONSULTANT. If any change in the scope of the Project is required the CONSULTANT will be notified by the STATE.

ARTICLE 36

SCOPE MODIFICATION

The CONSULTANT shall modify the scope of work to be performed under this Agreement upon written direction from the STATE, and negotiate appropriate increases or decreases in compensation with the STATE based on the increases or decreases of the work involved. A Consultant Agreement Modification will be entered into to incorporate the change in scope into the Agreement.

ARTICLE 37

SCHEDULING

Before beginning the work, the CONSULTANT shall submit for the STATE’s approval a schedule setting forth its plan for completing the work in accordance with the Agreement. Following approval by the STATE, the CONSULTANT shall complete all work in accordance with the approved schedule. It shall coordinate and advance all work items in this Agreement and any Consultant Agreement Modification efficiently and economically consonant with the scheduled completion date. If any phase of the work cannot be completed as scheduled, the CONSULTANT shall submit a written request for a reasonable extension of time. All such requests shall include a statement as to the cause of the delay and be provided to the STATE at the time that the need becomes apparent, but at least 15 days prior to the scheduled completion date of that particular phase of the work. A revised schedule shall also be submitted. The CONSULTANT shall make regular submissions to the STATE in accordance with the STATE’s scheduling and review procedures and at any other time requested by the STATE.

ARTICLE 38

DEFINITIONS

When the following terms are used in the Agreement, the meaning is as follows.

**Calendar day** – Each and every day shown on the calendar.

**Work** – The furnishing of all labor, equipment, services, materials, supplies and other incidentals necessary or convenient to the successful completion by the Consultant of the Project described in the Agreement and the carrying out of all duties and obligations imposed by the Agreement on the Consultant.

**Task Order** – The written authorization issued by the STATE to the CONSULTANT to perform assigned work under this Agreement. A Task Order shall include a proposal, a completion date, funding limits, and further conditions, limitations, and procedures that apply to the work authorized by the Task Order. The Task Order and the underlying Task Order Agreement which it incorporates are the contract between the CONSULTANT and the STATE for the work assigned by the Task Order. More than one Task Order may be executed with reference to the same Term Agreement.

**Extra Work** – Work clearly outside the scope of those services listed in the Agreement or in addenda/modifications.

**Extra Work Addenda/Modifications –** Provides funding for new or different work efforts not previously covered in the scope of an existing study or design (not an extension of time to complete an on-going effort).

**Additional Work –** More work on studies or designs contained in a previously approved Extra Work Addendum/Modification for which the scope was previously developed, and the Fixed Fee previously negotiated. When there is no change to the scope of the previously negotiated work efforts and through no fault of the STATE or the CONSULTANT, it will take longer than anticipated to complete the work, this shall be considered as eligible for Additional Work. The cost of the Additional Work is at the discretion of the contract manager and if the project is Federally funded, the Federal Highway Administration (“FHWA”) may not participate in the cost for Additional Work. Refer to Cost Plus Fixed Fee model agreement Section II, Paragraph C for fixed fee adjustment criteria to Additional Work.

ARTICLE 39

REVIEW

The CONSULTANT shall perform its obligation under this Agreement with the understanding that the STATE [and the Federal Government]\* has [have]\* the right to review, and must find acceptable, the Project and all documents produced by the CONSULTANT pertaining to the Project.

ARTICLE 40

UNACCEPTABLE WORK

If the STATE determines that any document prepared by the CONSULTANT under this Agreement is unacceptable due to errors, omissions or failures to comply with requirements of this Agreement, the CONSULTANT shall correct and revise the unacceptable document in accordance with directions received from the STATE at no cost to the STATE. The corrected and revised document shall be resubmitted for STATE approval.

The STATE shall give written notice to the CONSULTANT as soon as practicable after it becomes aware of a negligent error or omission by the CONSULTANT. CONSULTANT shall be liable to the STATE for all damages to the STATE caused by CONSULTANT’s negligent errors and omissions. The CONSULTANT shall reimburse the STATE for the full costs it has incurred as a result of such negligent errors and omissions, including interest and other expenses.

ARTICLE 41

STOP WORK

The CONSULTANT shall stop all work promptly, if so directed in writing by the STATE.

ARTICLE 42

TERMINATION

The STATE may terminate the CONSULTANT’s services under this Agreement upon seven (7) days written notice. In such event, and where the CONSULTANT’s performance is satisfactory, the CONSULTANT shall be paid in accordance with the method of compensation under Part II of the Additional Terms and Conditions of Agreement Between State and Consultant as follows:

Cost Plus Fixed Fee Agreements: 1) allowable direct and indirect costs incurred in the performance of its work up to and including the date that the CONSULTANT receives notice of termination, together with allowable direct costs incurred in closing out the Project in accordance with the notice to terminate; 2) a percentage of the Fixed Fee based on the percentage of the Project completed up to and including the date that the CONSULTANT receives notice of termination.

Fixed Price Agreements: A percentage of the Fixed Price based on the percentage of the Project completed up to and including the date that the CONSULTANT receives notice of termination. A Consultant Agreement Modification shall be negotiated to compensate the CONSULTANT for costs incurred in closing out the Agreement, if any, including work performed following the date on which the CONSULTANT received the notice of termination in order to close out the project.

Cost Times Multiplier Agreement: Allowable direct costs incurred in the performance of its work up to and including the date that the CONSULTANT receives notice of termination, together with allowable direct costs incurred in closing out the Project in accordance with the notice to terminate.

If the STATE has terminated the Agreement due to failure of the CONSULTANT to perform in a satisfactory manner as determined by the STATE, the STATE may, at the option of the STATE, in accordance with the method of compensation under Part II the Additional Terms and Conditions of Agreement Between State and Consultant make the following adjustments:

The STATE shall make no further payment to the CONSULTANT under this Agreement and may require the CONSULTANT to repay all or a portion of the monies already paid. In addition, the STATE shall make no payment of any close-out costs which the CONSULTANT may incur at the direction of the STATE.

Nothing herein shall limit the right of the STATE to recover any and all costs and damages resulting from the CONSULTANT’s failure to perform the work in a satisfactory manner.

The CONSULTANT shall have no right to, nor shall it make any claim for, damages or additional compensation of any type whatever by reason of termination regardless of fault.

All documents begun or completed as the result of this Agreement shall be immediately turned over to the STATE upon termination consistent with the provisions of Article 23.

Notwithstanding any other provision herein, in the event the CONSULTANT does not submit invoices/billings for a period of three (3) years, the STATE shall deem this Agreement as inactive and the consultant services complete as of the date of the last submitted invoice/billing. The STATE shall thereafter terminate this Agreement with no further obligations to the CONSULTANT. In turn, the CONSULTANT, including subconsultant(s) of any tier, would be deemed to have released and given up all claims, past, present or future, against the STATE, its officers, agents and employees, arising out of any and all obligations assumed and work performed under this Agreement, including claims for Extra or Additional Work.

ARTICLE 43

SUSPENSION

The STATE may, in its sole discretion, suspend the work. Compensation for a suspension or delay shall be allowed only as provided in this Article.

If the STATE determines that the work of this Agreement has been suspended or delayed for a period cumulatively totaling 365 calendar days, and if the STATE determines that the suspension or delay has resulted from no fault of the CONSULTANT, then a Consultant Agreement Modification covering the remaining work to be done shall be executed. The compensation terms of the Consultant Agreement Modification for that remainder shall be as follows for Cost Plus Fixed Fee agreements:

1. Upon resumption of work by the CONSULTANT, an updated schedule of wage rates, subject to review and approval by the STATE, shall be submitted by the CONSULTANT. These wage rates shall be applied to the unused portion of the work hours developed by the CONSULTANT in the proposal, and approved by the STATE. A revised total amount for allowable direct or indirect costs shall then be established by Consultant Agreement Modification.

2. The new Fixed Fee shall be in the same ratio as the original Fixed Fee to the original estimate of allowable direct and indirect costs, multiplied by the revised amount for allowable direct and indirect costs as determined in 1. above.

For Fixed Price Agreements, a Consultant Agreement Modification shall be executed between the STATE and the CONSULTANT providing an equitable adjustment to the CONSULTANT which the Commissioner deems proper after reviewing submissions by the CONSULTANT relating to increased costs which the CONSULTANT has actually incurred as a direct result of the suspension or delay.

None of the above provisions shall negate any other terms of this Agreement.

For both types of agreements, where such suspension or delay is determined by the STATE to be the fault of the CONSULTANT, the STATE may, at its option, suspend all payments to the CONSULTANT after the established completion date. Payment shall be reinstated by the STATE upon completion of the work in accordance with other provisions stated herein. In the case of such delay by the CONSULTANT, there shall be no upward adjustment in direct or indirect costs or Fixed Fee or in the amount of Fixed Price. Alternately, the STATE may terminate the Agreement consistent with Article 42.

ARTICLE 44

STANDARDS AND PROCEDURES

(As applicable)

(revised 02-18-2010 and 03-07-2017)

Consultants will access information about the Department’s activities through the internet. The Department’s web page can be found at : <http://www.state.nj.us/transportation>

All services provided to NJDOT shall conform to the procedures located within the Department’s Capital Project Delivery website which can be found at: <http://www.state.nj.us/transportation/capital/pd/>

**A. SURVEY REPORT**

**1. A survey report must be submitted for each project that requires survey work.**

General:

A. Prior to commencing any field work the Consultant and/ or Sub-Consultant /Designer /Surveyor Must:

* Evaluate the Geodetic Survey information and incorporate into the field survey work. Research and recover the Geodetic survey monumentation. The National Geodetic Survey (NGS) National Spatial Reference System (NSRS) database (<https://www.ngs.noaa.gov/>) shall be utilized as the primary source for project control data. Secondary requests for supplemental data can be addressed to the NJDOT Geodetic Control Unit for any additional information.
* Contact the Regional Survey Office(s) for information that is available for existing alignment, monumentation and Right of Way plans and survey information.
* Contact the Engineering Document Unit in the Main Complex in Ewing, NJ should be contacted for additional documentation.
* Provide copies of Article 44, NJDOT Policy and Procedure Manual, NJDOT Survey Manual related, BDCs, CANs, NJDOT Photogrammetric Guidelines (if applicable), and materials related to the Survey portion of the work to the Sub-contractor. The Survey Team Leader and crew chief must have a copy of Article 44 and be made aware of the content.

B. Immediately after collecting field data the Consultant and /or Sub-Consultant /Designer/Surveyor Must:

* Furnish to the NJDOT, before the submission and acceptance of base maps, and survey control schematic plans, a list and description of the location and coordinate values of each control survey point, a copy of the original field notes showing the horizontal distance, angular measurements, and vertical measurements and a copy of the original computations for the adjustment of horizontal distance, angular measurements, and vertical measurements for proper closure of each control survey and level loop or line.
* Fax or email the preliminary Global Navigation Satellite System (GNSS) data submission with cover to Geodetic Survey (609-530-3689) for control reports.
* Forward terrestrial survey data to the appropriate Regional Survey Office (North-973-770-5151; Central-732-431-3335; South-856-486-6777) for terrestrial general survey reports.

C. Include all survey control, baseline, and ROW monumentation in the Survey Report that was used. Prior to submittal, it must be field verified by the Consultant, and discrepancies shall be addressed in the report.

D. Prior written approval needs to be received from the Survey Services Manager in order to utilize the North American Datum of 1927 (NAD27), and the National Geodetic Vertical Datum of 1929 (NGVD29).

E. All data, supporting data, and final survey report will be provided in a digital format (CD) that will be 100% compatible with NJDOT computer systems. PDF or DOC extensions are suitable for use in a “read only” format.

**2. Projects based on the New Jersey State Plane Coordinate System (NJSPCS).**

The CONSULTANT shall provide PROJECT SURVEY CONTROL based on the classification standards for Horizontal Control, Second Order, Class II accuracy and Vertical Control, Second Order, Class I accuracy. The standards of accuracy shall meet the requirement of the Federal Geodetic Control Committee publication “Standards and Specifications for Geodetic Control Networks (September 1984)” (<https://www.ngs.noaa.gov/FGCS/tech_pub/1984-stds-specs-geodetic-control-networks.htm>) or its most recent revision. Pertinent supplemental publications, or most recent revisions thereof, for GNSS related positioning to be used to complement the aforementioned publication are:

* National Geodetic Survey “Geometric Geodetic Accuracy Standards and Specifications for Using GPS Relative Positioning Techniques”, Ver. 5.0, May 11,1988, Reprinted with Corrections: August 1, 1989: (<http://docs.lib.noaa.gov/noaa_documents/NOS/NGS/Geom_Geod_Accu_Standards.pdf>)
* “Guidelines for Establishing GPS-derived ellipsoid heights (Standards: 2 cm and 5 cm),” NOAA Technical Memorandum NOS NGS-58, version 4.3, November 1997: (<https://www.ngs.noaa.gov/PUBS_LIB/NGS-58.html>)
* “National Geodetic Survey Guidelines for Real Time GNSS Networks”, v 2.2, dated December 2013, Chap. VI. “RTN User Guidelines”: (<http://www.ngs.noaa.gov/PUBS_LIB/NGSGuidelinesForRealTimeGNSSNetworks.pdf>)
* “User Guidelines for Single Base Real Time GNSS Positioning”, Version 3.1, dated April 2014 for Class RT1 surveys (Primary Control) having a relative accuracy of 0.01 m- 0.02 m horizontal and 0.02 m - 0.03 - 0.05 m vertically and RT2 surveys (Photo Control) having a relative accuracy of 0.02 m -0.04 m horizontal and 0.040 m vertical at the 95% confidence level: (<http://www.ngs.noaa.gov/PUBS_LIB/UserGuidelinesForSingleBaseRealTimeGNSSPositioningv.3.1APR2014-1.pdf>)

The horizontal datum will be the New Jersey State Plane Coordinate System of 1983 (NJSPCS 1983), which is based on the North American Datum of 1983 (NAD83) latest adjustment tag. The NJSPCS of 1927, which is based on the North American Datum of 1927 (NAD27), shall no longer be utilized unless prior written approval has been received from the Survey Services Manager.

The vertical datum will be the North American Vertical Datum of 1988 (NAVD88) or its most recent revision. The previous datum, National Geodetic Vertical Datum of 1929 (NGVD29), has been superseded by NAVD88 and shall no longer be utilized unless prior written approval has been received from the Survey Services Manager.

The survey traverse and the level bench runs shall originate and terminate on existing monuments and/or benchmarks that meet or exceed Second Order, Class I, classifications and were directly established from and/or are part of the NSRS that is maintained by NGS. These permanent monuments have been previously established by US Coast and Geodetic Survey, National Geodetic Survey, National Ocean Survey, N.J. Geodetic Survey and other approved agency or private Contractor.

Leveling runs not otherwise specified shall comply with requirements in the Federal Geodetic Control Committee publication for Third Order Geodetic Leveling. The PROJECT SURVEY CONTROL shall be tied to the New Jersey State Plane Coordinate System. The above standards apply to projects which require the establishment, determination or reestablishment of ground control, horizontal and vertical, which are based or tied into the N.J. State Plane Coordinate System.

**3. Projects based on other systems.**

Projects which do not require the establishment of horizontal and vertical control, such as Safety Improvements, Maintenance projects, Guide Rail Installations, and Street Intersection Improvement, are not required to meet the N.J. State Plane Coordinate System standards. Guide Rail projects may require horizontal and vertical Control. Survey provider should contact the Prime Consultant/Designer to determine if it is required. These projects should eliminate any reference to the N.J. State Plane Coordinate System. In projects such as street improvements, resurfacing, road widening and bridge rehabilitation, a local or assumed system may be used.

The local system shall meet the following requirements:

A. Position Closure 1:20,000 Minimum after adjustment

B. Angles Accurate to 5 Seconds or less

C. Azimuth Closure (8 Seconds) times (Sqrt of N), where N is the number of angle stations

The local control survey traverse shall be established and measured by accepted National Geodetic Survey methods with proper consideration of tape calibration, all equipment and instrumentation calibration, and all corrections. The error in position closure after distribution of azimuth errors will not exceed 1:20,000. The bench level runs will not exceed 0.05 of a foot times the square root length of the runs in miles or will not exceed 12 millimeters times the square root length of the run in kilometers. All bench runs should be based on NAVD88, or with prior authorization, on NGVD29.

**4. Survey Report Content and Preparation**

A survey report must be submitted for each project that requires survey work. There are **four** times during the project that a report or modification to the existing report may be needed.

* Aerial control portion,
* Project control portion (including how the existing baseline(s) was reestablished),
* Topographic survey portion
* Supplemental survey portion.

The following format shall be used:

I. Introduction

1. Purpose - Describe the purpose for which the survey was conducted.
2. Point of Contact - Supply the name, phone number, and mailing address of the point of contact within the submitting organization, and the Professional Licensed Surveyor in responsible charge of the work. Supply the same information for all organizations that participated in the survey.
3. Accuracy Standards - Provide the accuracy standards (vertical and horizontal) specified for the project.
4. Signature and seal of the surveyor in responsible charge.
5. Prime Consultant certifies in writing that the report was reviewed and found to meet project requirements.

II. Location - Indicate briefly the geographic location and scope of the project in general terms.

III. Field Work

1. The Consultant shall describe the work performed to sufficiently research information to recover the existing monumentation on the highway project. Describe and delineate the existing baseline, right of way and center line monumentation and how it is tied into the project traverse and adjusted into the project survey network. The Consultant shall describe how the existing right of way line, and baseline were established.
2. Chronology - Give a brief description of the progression of the project. A narrative detailing the methodology utilized to establish all existing Baselines and ROW lines within the project limits is required.
3. Instrumentation - Describe the make, model and serial number of each instrument, and accessory equipment such as tripods, tribrachs, leveling rods, etc., age of all equipment, condition of equipment, and date of last calibration, collimation or repair work used on the project.

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1. Deviation from instructions - Describe any deviation from the procedures and specifications stated in the project instructions.

IV. Data Processing Performed - Describe the data processing that was performed. Include tasks such as transferring of data to different storage media, data quality checking, station descriptions, baseline determinations and closure computations.

Complete the following sections as appropriate:

a. Software Used - Specify all software by program name and version number which was used to acquire, manage, reduce, adjust, and submit field data. If the project data were reduced or acquired with different versions of a program, specify which version was used with which block of data.

1. Rejected Data - Specify any data which was rejected and re-surveyed. Include the reasons why the data from a particular field day were rejected.
2. Adjustment - Discuss in detail the type of adjustment performed. Indicate weighting technique used, and stations constrained. All analyses shall be reviewed and analyzed by the Licensed Professional Surveyor in responsible charge.
3. Closures - Tabulate the results of all loop mis-closure computations performed. Include the baselines used, base line length, maximum closure in each component, and average closure error in each component. Tabulate closure component error in terms of Cartesian coordinates and in terms of the local terrestrial system. Tabulate comparisons of repeat base lines observed indicating base line length, and maximum and average closure for each base line component. Closures will be stated in feet and parts per million including any scale factor applied.
4. Four Required GNSS Final Coordinate Values in Tabular Format With Column Headers:

GEOGRAPHIC POSITIONS (Latitude, Longitude and Ellipsoidal Heights in Meters)

NJSPC METRIC (State Plane Coordinates in Meters)

NJSPC U.S. SURVEY FEET (State Plane Coordinates in U.S. Survey Feet)

LOCAL (Project/Ground/Modified) (Ground Coordinates in U.S. Survey Feet)

V. Attachments and Enclosures

1. The Consultant will provide a survey report including an alignment plan for all projects.
2. The Consultant shall include the previously furnished list and description of the location and coordinate values of each control survey point, the original field notes showing the horizontal and angular measurements, and vertical measurements and the original computations for the adjustment of horizontal and angular measurements, and vertical measurements for proper closure of each control survey and level loop or line.
3. Station List - Include a table, which lists the station name, coordinates, elevation and station type for all stations surveyed.
4. Field Project Sketch - Attach a copy of the project sketch. If there are multiple copies of the sketch showing different data, attach a copy of each. The project sketch shall include the following:

1. All stations occupied during survey.

2. A border drawn around the edge with grid ticks for latitude and longitude.

In addition to the stations surveyed, the sketch should show other stations of the existing network located within or near the project area. Indicate in the survey report whether any attempt was made to recover these stations. The report and/or recovery notes must indicate why the recovered stations were not surveyed. To indicate a station that was not recovered use “NR” next to that station’s symbol.

Survey points will be shown in an inset sketch when they are too closely together to be depicted clearly on the network sketch.

1. Digital photo/ rubbings of monuments (control stations) shall be included in survey report, as necessary.
2. Field Logs - Provide dated copies of field survey notes and record books.
3. Quality Control Checklists- Geodetic & General Report- (formats in Survey Manual Appendix C)
4. Quality Assurance Checklist- Geodetic and General Reports- (formats in Survey Manual Appendix C)

**5. Right of Inspection.**

The STATE reserves the right to inspect at any time during or after the control survey each or any field or office phase of the work and to check each or any operation in the field or the office.

**6. Survey Crews.**

The CONSULTANT shall perform all field survey work in accordance with the latest NJDOT Safety Manual. Special attention shall be paid to the proper placement of traffic control devices and flag persons and the need for retro reflective vests. Perform all field survey services in accordance with the NJDOT “Design Manual, Roadway”, as revised and the NJDOT “Survey Manual”.

**B. GEOTECHNICAL ENGINEERING**

Perform geotechnical engineering services in accordance with the NJDOT Capital Project Procedures.

**C. DRAINAGE DESIGN**

1. Delineate drainage area tributaries and determine runoff in accordance with the NJDOT “Design Manual Roadway” as revised.

2. Design proposed drainage systems and determine runoff in accordance with NJDOT “Drainage Design Manual”, as revised.

**D. UTILITY ENGINEERING**

Provide utility engineering services in accordance with the NJDOT Capital Project Procedures.

**E. RIGHT‑OF‑WAY DOCUMENTS**

Provide services in accordance with the NJDOT Capital Project Procedures and attachments, as revised.

**F. CONSTRUCTION CONTRACT DOCUMENTS**

Unless otherwise stated in the proposal, construction contract documents shall be complete and accurate and submitted for review and acceptance by the STATE in accordance with the NJDOT Capital Project Procedures. The construction plans shall be prepared on media for reproduction in accordance with standard STATE practices and accompanied by Special Provisions as directed under “Specifications” on the Department website [www.nj.gov/transportation/eng](http://www.nj.gov/transportation/eng) - construction plans shall be prepared in accordance with “Sample Plans, 2007”.

**G. ELECTRICAL SYSTEMS**

Design the lighting and traffic signal systems in accordance with Sections 11 and 12 of the NJDOT “Design Manual Roadway”, as revised.

**H. JURISDICTIONAL LIMIT MAPS AND AGREEMENTS**

Process jurisdictional limit maps and agreements in accordance with the NJDOT Capital Project Procedures.

**I. FIELD CONDITION AND APPRAISAL SURVEY REPORTS**

Field condition and Appraisal Survey Reports of existing bridges shall be prepared in accordance with Section 8, of the NJDOT “Design Manual for Bridges & Structures”.

**J. BRIDGE DECK EVALUATION SURVEY REPORTS**

Deck Condition Evaluation Survey Reports of existing bridges shall be prepared in accordance with Section 9C of the NJDOT “Design Manual for Bridges & Structures”.

**K. SOIL EROSION AND SEDIMENT CONTROL DESIGN REPORTS**

Soil Erosion Sediment Control Design Reports for land disturbances equal to or greater than 5000 square feet shall be prepared in accordance with All Design Units Memorandums dated June 1, 1990 and November 30, 1992.

**L. COMMUNITY RELATIONS**

Community relations shall be provided in accordance with the NJDOT Capital Project Procedures. These can be found at the link below.

https://www.nj.gov/transportation/capital/pd/phase.shtm

**M. AS-BUILT PLANS**

**Resident Engineer**

1. Forward the following to the appropriate Design Consultant with a copy of the letter of transmittal to the Regional Construction Engineer, Construction Field Manager and Project Manager.

* 1. As-built “white set” of plans
  2. As-built Summary (DC-104) (Retain a copy)
  3. Original surveyor’s certification of the As-built location of all constructed or reset monuments on the project to the appropriate Regional Survey Office with a copy of the certification to the Design Consultant for the inclusion in the As-built plans.

**Design Consultant**

2. Contact the Engineering Document Control Unit of Quality Management Services to obtain the original project mylars.

3. Once the project mylars are received, transfer all the information as marked by the Resident Engineer onto the mylars in red ink using lettering boards where possible. When the use of lettering boards is not possible, the Project Manager may permit the information to be transferred using free hand drafting. The following details shall be observed:

a. “AS-BUILT” should be inked in large letters to the left of “PLANS OF…” on the Key Sheet.

b. The “Certification” statement, signed by the Resident Engineer on the front of the “white set”, should be inked onto the Key Sheet mylar.

c. The as-built quantities listed on the DC-104 form should be checked against those listed on the “white set” Estimate of Quantities sheet and any discrepancies resolved with the Resident Engineer.

d. As-built quantity totals for original plan items and items resulting from change orders will be shown only on the “Estimate of Quantities” sheet(s). The as-built columns on the “Distribution of Quantities” sheet(s) and in the “To be constructed” box on each plan sheet will no longer be completed. (Note: It’s not necessary to do these columns even if the “white set” comes through with them filled in).

e. All changes made by Construction forces as marked on the “white set” that affect the accuracy of the plans, must be neatly transferred in red-ink to the as-built plan mylars. Some examples of these changes would be the change in location of an item, additional or deleted items, permanent “If and where Directed” items, or geometric changes such as extension of guiderail or driveway revisions.

f. Any addendum mylar(s) should be placed in front of the original plan sheet it was made from. Any completely new plan sheet mylar that is part of an addendum should be placed in the final set nearest the plan sheet it pertains to. As-built information should be drafted directly on the addendum mylars.

g. Any Change of Plan sheet mylar(s) should be placed directly behind the original plan sheet it pertains to. Any completely new Change of Plan sheet mylar(s) should be placed in the final set nearest the plan sheet it pertains to. As-built information should be drafted directly on the Change of Plan mylars.

1. After the plan set is completely assembled, the sheets should then be numbered accordingly. Addendum and Change of Plan sheet mylar(s) that revise existing plan sheets shall be given the same sheet number as originally assigned with a letter suffix. Plan sets containing completely new addendum or Change of Plan sheet mylars shall be numbered sequentially. Incorrect page numbers should be crossed out and corrected and the correct total inserted for the bottom number. The “Index of Sheets” should then be corrected to agree with the final page numbers. (This would be the case if item “f” or “g” applies).

4. Once as-builting is completed, a certification statement shall be made attesting that the original project mylars have been as-built in accordance with the established procedure. This statement shall be included on the Key Sheet mylar and shall be signed and dated by the firm’s Project Manager. (See sample statement below)

“I CERTIFY THAT THIS PROJECT HAS BEEN AS-BUILT IN ACCORDANCE WITH THE ESTABLISHED PROCEDURES AND THAT THE INFORMATION CONTAINED HEREIN ACCURATELY REFLECTS THE AS-BUILT INFORMATION PROVIDED BY THE RESIDENT ENGINEER.”

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Firm's Project Manager |  | Date |

5. Forward the Key Sheet mylar to the Resident Engineer for signature.

Resident Engineer

6. Sign and date the “Certification” statement (provided as per step 3b) on the Key Sheet mylar and return it to the Design Consultant with a copy of the letter of transmittal to the Regional Construction Engineer, Field Manager and Project Manager.

Design Consultant

7. Make one quality set of vellum or sepia copies of all as-built plan sheets except the following:

a. Distribution of Quantities

1. Landscape
2. Method of Cross-Section & Cross-Section Sheets

d. Construction Details (unless there is a new special detail included in the plans)

e. Bridge Plans except the estimates

f. Traffic Control Plans & Traffic Signs

8. Return the original As-Built project mylars to the Engineering Document Control Unit with a copy of the letter of transmittal to the Regional Construction Engineer, Field Manager and Project Manager.

9. Forward the marked-up as-built “white set” and the sepia or vellum copies to the appropriate Regional Survey Office with a copy of the letter of transmittal to the Regional Construction Engineer, Field Manager and Project Manager.

**N. TRAFFIC COUNT DATA**

Upon completion of the work, submit all traffic count data in electronic format to the Bureau of Transportation Data Development. The data can be submitted in any form except binary data. If the traffic count collection time range is 48 hours or longer, comply with the requirements of the guidelines described in the FHWA Traffic Monitoring Guide.

**O. SOFTWARE**

All software developed shall become the property of the NJDOT. All source code shall be provided in electronic format and include licenses, and any developmental components and libraries necessary to compile the source code into a useable application.

ARTICLE 45

NONDISCRIMINATION

(revised 11-2017)

During the performance of this Agreement, the CONSULTANT, for itself, its assignees and successors in interest (hereinafter referred to as the “CONSULTANT”), agrees as follows:

1. Compliance with Regulations: The CONSULTANT will comply with Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49. Code of Federal Regulations, Part 21 through Appendix C, and 23 USC 140 hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Agreement.

The CONSULTANT shall comply with all antidiscrimination provisions set forth in N.J.S.A. 10:2-1 including, but not limited to, the following:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of $50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

2. Nondiscrimination: The CONSULTANT, with regard to the work performed by it after award and prior to completion of the work, will not discriminate on the basis of race, color, age, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The CONSULTANT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurement of materials or equipment, such potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT’s obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, age, sex or national origin.

4. Information and Reports: The CONSULTANT will provide all information and reports required by the Regulations, or orders and instructions 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 STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, the CONSULTANT shall so certify to the State or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the CONSULTANT’s noncompliance with the nondiscrimination provisions of this contract, the STATE shall impose such sanctions as are appropriate and available under the laws of the STATE.

6. Incorporation of Provisions: The CONSULTANT will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instructions, issued pursuant thereto.

7. This Agreement is subject to all federal, state, and local laws, rules, and regulations, including, but not limited to, those pertaining to non-discrimination in employment and affirmative action for equal employment opportunity.

8. If at any time following the execution of this Agreement, the CONSULTANT intends to sublet any additional portion(s) of the work or intends to purchase materials or lease equipment not contemplated during the original proposal preparation, the CONSULTANT shall:

a. Notify the project initiator, in writing, of the type and approximate value of the work which the CONSULTANT intends to accomplish by such subcontract, purchase order or lease.

b. Give DBE firms equal consideration with non-minority firms in negotiations for any such subcontracts, purchase orders or leases.

ARTICLE 46

STATE OF NEW JERSEY

AFFIRMATIVE ACTION RULES FOR PROFESSIONAL SERVICE CONTRACTS

(revised 11-2017)

**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

**N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127)**

**N.J.A.C. 17:27 et seq.**

**GOODS, GENERAL SERVICES, AND PROFESSIONAL SERVICES CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affection- al or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up- grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprentice- ship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J .S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J .A.C. l7:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, col- or, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expres- sion, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

* Letter of Federal Affirmative Action Plan Approval;
* Certificate of Employee Information Report; or
* Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division’s website at: http:// [www.state.nj.us/treasury/contract\_compliance](http://www.state.nj.us/treasury/contract_compliance)

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J .A.C. 17:27-1.1 et seq.

ARTICLE 47

CERTIFICATION OF CONSULTANT

In executing this Agreement the CONSULTANT’s signatory certifies on behalf of the CONSULTANT that neither he, nor any other officer, agent or employee of the CONSULTANT has:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for him or the CONSULTANT) to solicit or secure this Agreement,

2. agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement, or

3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for him or the CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; except as expressly stated in a disclosure letter to the STATE which shall accompany the Agreement after execution by the CONSULTANT on submission to the Commissioner or his designee for execution.

The CONSULTANT acknowledges that this certificate furnished to the STATE and the Federal Highway Administration, U.S. Department of Transportation, in connection with this Agreement, is subject to applicable State and Federal laws, both criminal and civil.

ARTICLE 48

CERTIFICATION OF STATE

In executing this Agreement the STATE’s signatory certifies that to the best of his knowledge, the CONSULTANT or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

1. employ or retain, or agree to employ or retain, any firm or person, or

2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as expressly stated in a disclosure letter to the Federal Highway Administration, U.S. Department of Transportation.

The STATE acknowledges that this certificate is to be furnished to the Federal Highway Administration, U.S. Department of Transportation, in connection with agreements involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

ARTICLE 49

CONFLICTS OF INTEREST AND NJDOT CODE OF ETHICS

(revised 11-2017 and 10-10-18)

The CONSULTANT agrees to abide by all applicable State and Federal laws concerning conflicts of interest including, but not limited to, the requirements set forth by 23 C.F.R. 1.33 and 23 C.F.R. 172.7(4). The CONSULTANT shall further abide by the NJDOT’s Code of Ethics for Vendors, as set forth more fully below:

The New Jersey Department of Transportation (NJDOT) considers the maintenance of public trust and confidence essential to its proper functioning. Vendors must be notified of their responsibilities concerning their relationship with Special State Officers or employees and State officers or employees. Executive Order 189 (Kean 1988). Accordingly, NJDOT has adopted this Code of Ethics for Vendors.

“Vendor” means any general contractor, subcontractor, consultant, supplier, lessor, person, firm, corporation, association or organization providing goods and/or services or seeking to do business with the NJDOT. Vendors who supply goods or services, or are seeking to provide goods and services, to NJDOT, must adhere to the standards set forth in this Code of Ethics to avoid conflicts of interest.

This Code of Ethics, originally adopted on December 16, 1987, is based upon the principles established in Executive Order 189 (Kean 1988), the Conflict of Interest Law, and the Uniform Ethics Code and has been established pursuant to the authority of N.J.S.A. 27:1A, et seq. The Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq., and [Uniform Ethics Code](http://www.state.nj.us/ethics/docs/ethics/uniformcode.pdf) which, while not strictly applicable to contractors, prohibit certain actions by State officers or employees and Special State officers or employees when interacting with vendors.

This Code of Ethics is included in each Request for Proposal (RFP) promulgated by the NJDOT and incorporated by reference in every contract and agreement to which the NJDOT is a party. It shall be distributed to all parties who presently do business with NJDOT and posted on the NJDOT’s website.

1. No vendor shall employ any NJDOT officer or employee who performs purchasing functions for NJDOT. N.J.A.C. 16:44-11.1(b)(3); [Executive Order 189 (Kean 1988)](http://nj.gov/infobank/circular/eok189.htm).
2. No vendor shall sell or provide any interest in the business of the vendor to any NJDOT officer or employee who performs purchasing functions for NJDOT. N.J.A.C. 16:44-11.1(b)(3); [Executive Order 189 (Kean 1988).](http://nj.gov/infobank/circular/eok189.htm)
3. No vendor shall cause or influence, or attempt to cause or influence, any NJDOT officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that NJDOT officer or employee. N.J.A.C. 16:44-11.1(b)(5); [Executive Order 189 (Kean 1988).](http://nj.gov/infobank/circular/eok189.htm)
4. No vendor shall cause or influence, or attempt to cause or influence, any NJDOT officer or employee to use or attempt to use his or her official position to secure any unwarranted privileges or advantages for that vendor or for any other person. N.J.A.C. 16:44-11.1(b)(6); [Executive Order 189 (Kean 1988).](http://nj.gov/infobank/circular/eok189.htm)
5. No vendor shall offer any NJDOT officer or employee, his/her spouse, immediate family member, partner or associate any gift, favor, service or other thing of value related in any way to the State official’s public duties. N.J.S.A. 52:13D-24; N.J.A.C. 16:44-11.1(b)(1); [Uniform Ethics Code,](http://www.state.nj.us/ethics/docs/ethics/uniformcode.pdf) Section III, page 6; [Executive Order 189 (Kean 1988)](http://nj.gov/infobank/circular/eok189.htm). This includes, but is not limited to, meals, discounts on goods and services, tickets to events, and clothing.

There exist certain narrow exceptions to the State of New Jersey’s zero tolerance policy on the acceptance of gifts. A NJDOT officer or employee may accept the following items of minimal or nominal value.

1. Snacks of minimal monetary value, such as coffee or donuts, provided during the course of a meeting, conference or other occasion where the officer or employee is properly in attendance.
2. Unsolicited small items of nominal value such as pens, pencils, or other trivial logo items that are offered to the general public.
3. A trophy, plaque or certificate.
4. Vendors who violate this code may be subject to debarment procedures set forth at N.J.A.C. 16:44-11.1 et seq.

This Code of Ethics shall supplement, not replace, [Executive Order 189 (Kean 1988)](http://nj.gov/infobank/circular/eok189.htm), N.J.S.A. 52:13D-12, et seq., N.J.A.C. 19:61-1.1, et seq.; and [Uniform Ethics Code (February 2011).](http://www.state.nj.us/ethics/docs/ethics/uniformcode.pdf)

Please also see the New Jersey Department of the Treasury’s “Business Ethics Guide” (<http://www.state.nj.us/treasury/purchase/ethics_guide.shtml>) which provides a guide to ethical conduct for persons and/or entities doing business with the State. To the extent that there is any conflict between the NJDOT Code of Ethics for Vendors and Treasury’s Business Ethics Guide, the latter shall govern.

Viewable online at:

<http://www.state.nj.us/transportation/business/procurement/ethics.shtm>

<http://njdotintranet.dot.state.nj.us/policy/ethics/pdf/vendcode.pdf>

Firms are advised to be aware of Post Employment restrictions for ex-NJDOT employees who are utilized for work under this Agreement. Failure to comply with this may result in disqualification from the Project.

Employ workers that have sufficient skill and experience to properly perform the work assigned to them. Do not engage or employ current Department employees or workers that would cause the worker to be in violation of N.J.S.A. 52:13D-17.  Do not engage or employ any former federal, state, or municipal worker who has been personally or individually debarred or subject to a forfeiture of public office pursuant to N.J.S.A. 2C:51-2.

Refer to NJSA 52:13D-17, which states:

No State officer or employee or special State officer or employee, subsequent to the termination of his office or employment in any State agency, shall represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, or agree to represent, appear for, negotiate on behalf of, or provide information not generally available to members of the public or services to, whether by himself or through any partnership, firm or corporation in which he has an interest or through any partner, officer or employee thereof, any person or party other than the State in connection with any cause, proceeding, application or other matter with respect to which such State officer or employee or special State officer or employee shall have made any investigation, rendered any ruling, given any opinion, or been otherwise substantially and directly involved at any time during the course of his office or employment. Any person who willfully violates the provisions of this section is a disorderly person, and shall be subject to a fine not to exceed $1000.00 or imprisonment not to exceed six months, or both.

ARTICLE 50

CERTIFICATION OF RESTRICTIONS ON LOBBYING

In executing this Agreement, the CONSULTANT’s signatory certifies on behalf of the CONSULTANT that to the best of his/her knowledge and belief:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

ARTICLE 51

COMPUTER AIDED DRAFTING & DESIGN (CADD)

(revised 03/07/2017)

This specification addresses the submission of digital CADD files to the NJDOT. When the submission of CADD files is not a requirement of the Agreement and the Department later determines that such a submission is necessary, then the Consultant’s submitted CADD files must comply with the Minimum CADD Standards and Media Requirements detailed near the end of this Article. If digital CADD files will be exchanged with the NJDOT, then all of the following requirements apply.

I. CADD Deliverables:

Engineering plans (drawings) shall be submitted in ‘.dgn’ format as produced by Bentley Systems Microstation product, and shall be in accordance with the applicable English NJDOT CADD STANDARDS MANUAL, as published on the Internet at the NJDOT Web page. This document may be downloaded. The Web page also contains custom portions of the NJDOT CADD system, which may be downloaded. The files will greatly facilitate the provision of CADD files by others in accordance with DOT standards.

All support files will reside in the same directory (without subdirectories), and reference files shall be attached without device or directory specifications. Files shall be compressed using the Microstation “compress design” command before transfer to media, in order to remove deleted elements. All files (graphic and ASCII) necessary for accurate plan presentation shall be included. Hard copies of all electronic files and documentation shall be provided.

Any submitted file that does not conform to the NJDOT CADD Standards will be returned for correction, without additional compensation or schedule allowance. All CADD design files provided to the Department shall be compatible with the latest version of CADD software in use by the Department. Automated translations from a different graphics format are often incomplete, and do not result in fully compatible graphics files. The consultant is responsible to ensure and verify that the required information has been translated correctly and completely for the intended purpose.

II. File Format Requirements

Only files in standard file format(s) for the particular application used by the DOT CADD system (i.e. Microstation 8.x; INROADS 8.5; etc.) currently in use will be accepted. The Bentley format may also include those survey data files that serve as input to the engineering application, which is currently the Bentley InRoads product.

Geometry files for baselines and surfaces will be submitted in the current version in use at the NJDOT. The present formats are in the InRoads ‘.ALG’ and ‘.DTM’ formats respectively. Any input files used to produce the final files will also be provided. ASCII files may be provided as approved through consultation with the CADD Development Unit staff of the NJDOT.

The file formats and applications are subject to change as updates to the software are a normal industry occurrence. The consultant is expected to review the CADD pages on the NJDOT Website for any updates to formats and procedures. Contacting the NJDOT CADD Unit at the commencement of work is encouraged and recommended.

III. Survey File Requirements:

Where field survey information is to be submitted for the Department’s use, strict adherence to the standards shown in the following formats as required by project scope of work is expected:

English Projects – Adherence to DOT CADD English Standards is mandatory.

When English survey data is required, it will be collected electronically utilizing:

The Control Codes for the current Survey application in use at the NJDOT and the NJDOT English Feature/Preference Codes.

The deliverables will be the files produced by the current Survey application in use at the NJDOT resulting from data capture from Field Surveys.

The original and edited field files will be provided to the Department as records of the survey.

In the event that some other software is used to produce the engineering or survey data for a project, the Department may choose to accept data in ASCII format. The NJDOT CADD Development Unit should be contacted for direction and approval in this regard. Responsibility for correcting any file errors rests with the file provider.

IV. Aerial Photogrammetry Requirements:

When base mapping for engineering is produced from aerial photogrammetry, any survey information will be provided to the Department in the specified formats previously mentioned. This includes all control points, traverses, baselines, or other information that is used in conjunction with producing the photogrammetric information.

A detailed survey report shall also be submitted and approved by the NJDOT Geodetic Survey Office or appropriate Regional Survey Office. The approved Survey Report copies must be submitted to the Project Manager. This report shall document the ground control used, the method of determining GPS coordinates, and the data reduction/software processes used. The design files with this information will be separate from the actual mapping files. The mapping files themselves will be drawn to the standards of the particular discipline requesting the mapping.

Standard Rules for Digitized Mapping:

1) No stream digitizing is allowed.

2) There will be no scale associated with elements in the design file (scale = 1:1).

3) There will be no rotation associated with views.

4) Contour lines and their corresponding elevations shall be placed in a design file separate from the rest of the topography. The contour lines and the elevation text are to be placed on different levels as per NJDOT CADD Standards. The contours and their elevations shall be drawn in a weight and size that meets the Department’s standards when the design file is plotted at 1:30 for English.

5) All existing baseline data and traverse information with ground ties shall each be placed in separate files. Stationing, bearings and curve data must be supplied for all baseline alignments. Monument information, if included, should also be in the traverse file.

6) The coordinate system for all supplied files shall be an exact overlay to allow direct attachment of any reference file without manipulation.

7) If a graphically depicted grid system is supplied, it must be placed on a unique level or in a separate file.

8) All existing topographic features shall be placed in a separate design file as per NJDOT CADD standards.

NOTE:

The Digital Terrain Models (.dtm) files produced from aerial surveys MUST be free of any holes in the surface (except for large bodies of water or interiors of buildings). Additional ground survey may be required in obscured areas such as woods, or heavily shaded areas in order to provide a complete surface. The surveyed surfaces will be merged into the aerial survey surface as needed.

In the event that some other software is used to produce the engineering or survey data for a project, the Department may choose to accept data. The NJDOT CADD Development Unit should be contacted for direction and approval in this regard. Responsibility for correcting any file errors rests with the file provider.

V. Minimum CADD File Requirements:

See Internet website: http://www.state.nj.us/transportation/eng/CADD/v8/

|  |  |  |
| --- | --- | --- |
| 1) | Graphics files must be Microstation (.dgn) format | |
|  | English Standard Working Units:  (Microstation Version 8 Format files)  The “Units.def” file is set to US Survey Feet  Master Unit: Survey Feet Label: ‘  Sub Unit: Custom Label: “  Custom Units:  3.93700000’=3.93700787 Feet  And  47.24400000’ = 47.24409449 Inches | |
| 3) | The global origin of all files should be set as follows: | |
|  | English 2D file: 0, 0 | |
|  | English 3D file: 0, 0, -700,000 | |
| 4) | All drawings should be done at full scale (i.e. 1 foot in the design file equals 1 foot in the field.) | |
| 5) | | Supply written documentation of level structure, element symbology, cell names etc. and plotting instructions including pen tables; if those are different from NJDOT CADD standards and accepted for any specific reason. |
|  | |  |

The information depicted in the above table is current at the time of the writing of this article. The consultant is expected to review the NJDOT website for revisions to the CADD File requirements at the beginning of work for the contract. A meeting with the Department’s CADD unit is encouraged and recommended as a kick-off to the preparation of the CADD files.

VI. Media Requirements:

The accepted media for file exchange are: 650Mb CD ROM or DVD-ROM, or through Email or Internet FTP site. Media will have a label indicating the contents and how the files were loaded, and should be accompanied with a supporting letter of documentation, which describes the contents and downloading procedure. Emailed files will contain the above information. If a FTP site is used, an email or mailed documentation of the above information will be sent in conjunction with the file delivery.

NJDOT encourages the consultant community to use the Internet as the simplest and quickest option for delivering/receiving electronic files. Attaching files to E-mail and forwarding those to the appropriate addressee could accomplish this. Files that are to be transferred via the Internet should be in PKZIP compressed format, not to exceed 100 MB in size.

The delivery of the files to the NJDOT does not preclude the consultant from delivering a set of mylars as the final deliverable for a project. The deliverables as outlined in this article are for specific use of the electronic information for In-House design activities.

ARTICLE 52

AMERICANS WITH DISABILITIES ACT

Equal Opportunity for Individuals with Disabilities.

The CONSULTANT and the STATE do hereby agree that the provisions of Title II of the Americans with Disabilities Act of 1990 (the “Act”) (42 U.S.C. Sec. 12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereunto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the STATE pursuant to this contract, the CONSULTANT agrees that the performance shall be in strict compliance with the Act. In the event that the CONSULTANT, its agents, servants, employees, or sub-consultants violate or are alleged to have violated the Act during the performance of this contract, the CONSULTANT shall defend the STATE in any action or administrative proceeding commenced pursuant to this Act. The CONSULTANT shall indemnify, protect, and save harmless the STATE, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The CONSULTANT shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith.

In any and all complaints brought pursuant to the STATE’S grievance procedure, the CONSULTANT agrees to abide by any decision of the STATE which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the STATE or if the STATE incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the CONSULTANT shall satisfy and discharge the same at its own expense.

The STATE shall, as soon as practicable after a claim has been made against it, give written notice thereof to the CONSULTANT along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the STATE or any of its agents, servants, and employees, the STATE shall expeditiously forward or have forwarded to the CONSULTANT every demand, complaint, notice, summons, pleading, or other process received by the STATE or its representatives.

It is expressly agreed and understood that any approval by the STATE of the services provided by the CONSULTANT pursuant to this contract will not relieve the CONSULTANT of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the STATE pursuant to this paragraph.

It is further agreed and understood that the STATE assumes no obligation to indemnify or save harmless the CONSULTANT, its agents, servants, employees and sub-consultants for any claim which may arise out of their performance of this Agreement. Furthermore, the CONSULTANT expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the CONSULTANT’s obligations assumed in this Agreement, nor shall they be construed to relieve the CONSULTANT from any liability, nor preclude the STATE from taking any other actions available to it under any other provisions of this Agreement or otherwise at law.

ARTICLE 53

NOTICE OF ALL STATE VENDORS OF SET-OFF FOR STATE TAX

Please be advised that pursuant to N.J.S.A. 54:49-19, and notwithstanding any prevision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deductions which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c. 184 (c. 52:32-32 et seq.) to the taxpayer shall be stayed.

ARTICLE 54

BUSINESS REGISTRATION FOR PROVIDERS OF GOODS AND SERVICES TO THE STATE

The Consultant shall provide to the NJDOT, *prior to contract award,* proof of its and all of its name subcontractors valid business registration with the Division of Revenue in the New Jersey Department of Treasury. The Consultant Agreement will not be entered into by the NJDOT unless the Consultant first provides proof of valid business registration in compliance with (N.J.S.A 52:32-44).

Pursuant to the above law, the Consultant is further notified that no subcontract shall be entered into by any consultant under any contract with the NJDOT unless the sub-consultant first provides proof of valid business registration. The NJDOT will not consent to any proposed sub-consultant unless the Consultant forwards the required proof of the sub-consultant's valid business registration, which is required prior to agreement execution.

A business organization that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12-92), or that provides false information of business registration under the requirements of either of those sections, shall be liable for a penalty of $25 for each day of violation, not to exceed $50,000 for each business registration copy not properly provided under a contract with a contracting agency or under a casino service industry enterprise contract (N.J.S.A. 54:49-4.1).

ARTICLE 55

1. PUBLIC WORKS CONTRACTOR REGISTRATION FOR WORK

COVERED BY N.J. PREVAILING WAGE ACT

AND

1. DIANE B. ALLEN EQUAL PAY ACT (added 01/04/2019)

(1) To the extent that work performed by the Consultant or any sub-consultant is governed by the New Jersey Prevailing Wage Act, N.J.S. 34:11-56.25 et seq., then pursuant to P.L. 2003, c. 91 (N.J.S.A 34:11-56.48 et seq.), the Consultant shall provide to the NJDOT proof of the Consultant’s and/or sub-consultant’s valid, current registration with the New Jersey Department of Labor and Workforce Development as a “Public Works Contractor” prior to the start of such work.

**(2)** Pursuant to the DIANE B. ALLEN EQUAL PAY ACT,N.J.S.A. 34:11-56.14. a., the consultant shall provide the Commissioner of Labor and Workforce Development with a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category.

Information regarding the Diane B. Allen Equal Pay Act and its requirements may be obtained from the New Jersey Department of Labor and Workforce Development (LWD) web site at: <https://nj.gov/labor/equalpay/equalpay.html>

LWD forms may be obtained from the online web site at: <https://nj.gov/labor/forms_pdfs/equalpayact/MW-562withoutfein.pdf>

ARTICLE 56

NOT APPLICABLE.

ARTICLE 57

WORK TO BE PERFORMED WITHIN UNITED STATES

(Effective 08-03-2005, for 100% State-funded Contracts)

N.J.S.A. 52:34-13.2, all services performed under this contract or performed under any subcontract awarded under this contract shall be performed within the United States.

ARTICLE 58

REVISIONS TO AUDIT REQUIREMENTS

(Revised 07-01-2015; 12-13-16; 10-10-18; and 02-10-20)

All consultants and sub-consultants not classified as “Exempt” (which includes those registered as an NJDOT Disadvantaged or Emerging Small Business Enterprise or State of New Jersey Small Business Enterprise Categories 1 & 2 as defined by [*http://www.state.nj.us/transportation/business/civilrights/dbe.shtm)*](http://www.state.nj.us/transportation/business/civilrights/dbe.shtm)shall engage a qualified auditor to conduct an annual overhead audit, if there is $50,000 or more of NJDOT related direct labor in any one fiscal year on cost plus fixed fee contracts or $150,000 or more of NJDOT related fixed price costs in any one fiscal year. A qualified auditor is defined as an independent CPA, an agency of the Federal government, and/or State Transportation Agency. All consultant firms having any amount of direct labor performed during any one fiscal year on cost plus fixed fee contracts are also required to submit a direct cost schedule, which may be self-prepared. The Department will accept a combined package of the submitted overhead audit and direct cost “settle-up” schedule at one time. The “proposed” overhead rate(s) for the year may be used for purposes of submitting the direct cost settle-up schedule, but remain subject to NJDOT review and approval. The overhead audit is subject to a subsequent quality assurance review. The Department requires submission of both a signed overhead audit and signed direct cost schedule within 6 months following the close of the consultant's fiscal year end. Failure to timely submit a signed overhead audit or a signed direct cost “settle-up” schedule to the NJDOT within 6 months of the close of the firm’s fiscal year may result in the suspension of new contracts or Consultant Agreement Modifications (CAMs) awarded to the firm. This non-compliance status will remain effective until the required submissions are received.

The consultant’s auditors should have knowledge of the following regulations applicable to the audit of a consulting engineer’s indirect cost rates:

* [Generally Accepted Government Auditing Standards](https://www.gao.gov/yellowbook/overview) (GAGAS referred to as “Yellow Book” revised 2018) for financial and compliance audits.
* [Code of Federal Regulations](https://www.acquisition.gov/browse/index/far), Title 48, Federal Acquisition Regulations (FAR) Part 31.0, 31.1, 31.2.
* [Federal Travel Regulation reimbursement limitations as set forth by the U.S. General Services Administration (GSA). Reimbursements should be applied as set forth by State of NJ and Consultant Agreement terms.](http://www.gsa.gov/mileage)
* [State of New Jersey Circular Letters](https://www.nj.gov/infobank/circular/index.shtml) regarding Travel Regulations and Automobile Mileage Reimbursement.

All consultants and sub-consultants classified as “Exempt” will not be required to engage a qualified independent CPA firm to conduct the necessary overhead audits. Exempt firms will be required to prepare and submit annual overhead schedules adjusted in accordance with the regulations noted herein, along with a signed compliance certification form and a self-prepared direct cost schedule. The Department requires submission of a firm certified overhead schedule and direct cost schedule within 6 months of the consultants fiscal year end.The “proposed” overhead rate(s) for the year may be used for purposes of submitting the direct cost settle-up schedule, but remain(s) subject to NJDOT review and approval. NJDOT-hired CPA firms may continue to audit companies that are classified as “Exempt”, or those Non- Exempt firms that have incurred less than $50,000 in direct labor for any one fiscal year on cost plus fixed fee contracts, based on a review of the submitted firm adjusted overhead rate, unless these firms voluntarily choose to hire a CPA firm themselves. NJDOT-hired CPA firms or the Bureau of External Audit (BEA) may also continue to audit any contracted utility and rail firms.

The consultant is responsible for the final calculation of the amount due the consultant and/or any payment due the Department from the consultant as a result of any audit findings. The consultant shall submit a completed direct cost schedule of actual costs incurred detailing the basis for its final payment determinations and adjustments.

The Department reserves the right to perform or engage independent CPA firms to conduct quality assurance reviews of all consultant-hired CPA firms to ensure compliance with Department requirements. The Department also reserves the right to perform or engage independent CPA firms to conduct on-site direct cost reviews of consultant direct costs to gain reasonable assurance that these costs are supported and allowable.

Oversight of quality assurance reviews conducted by the Department and hired CPA firms shall include evaluating the completed work program and corresponding supporting documentation. BEA will retain final authority to approve or disapprove all overhead audit reports. BEA staff will then authorize its concurrence with the CPA firm’s final determination as to the overall acceptability of the audit. Consultants must correct all deficiencies impacting overhead audits within 30 days of notice.Audits will not be accepted when standards involving independence and external quality control as mandated by GAGAS are not met. Oversight of audits performed by NJDOT - hired CPA firms of companies which fall under the thresholds noted herein will continue to include the detailed review and approval of all working papers and reports to ensure compliance with applicable regulations.

In lieu of consultant hired CPA audits, the Department will accept overhead audits which have been approved by the cognizant home State agency in accordance with Federal regulations. The cognizant home State agency refers to a Federal or State government agency located in the State where the company’s headquarters and corporate accounting records reside. For consultant firms with headquarters and corporate accounting records located in New Jersey, but operations in other States, the Department can act as the cognizant agency in approving Overhead rate audits. FHWA guidance defines a cognizant audit for the indirect cost rates as follows:

1. A Cognizant Agency performs or directs the work of a CPA who performs the indirect cost audit.
2. A Non-Home State auditor, or CPA working under the Non-Home State’s direction, issues an audit report and the Home State issues a letter of concurrence.
3. An indirect cost audit performed by a CPA hired by the firm will become a cognizant, if one of the following conditions is met:
   1. The Home State reviews the CPA’s working papers and the Home State issues a letter of concurrence with the audit report.
   2. A Non-Home State reviews the CPA’s audit work papers and issues a letter of concurrence with the CPA’s report, which is then accepted by the Home State. If the Home State does not accept the Non- Home State review, the Home State has 180 days from the receipt to complete a review of the CPA audit report and either concur with it, modify it, or reject it due to a material error requiring resubmittal; otherwise, the CPA audit report with which the Non-Home State has concurred will be cognizant for the one year applicable accounting period.

The cost of overhead audits is an eligible overhead cost and therefore billable through increased overhead billing across all contracts. Effective with consultants’ 2016 accounting period, costs associated with the preparation of direct cost schedules is no longer directly reimbursable.

ARTICLE 59

CERTIFICATION OF FINAL INDIRECT COSTS

(Revised 02-10-20)

New policy regarding indirect costs has been issued as Federal Highway Administration (FHWA) Order 4470.1A dated October 27, 2010. This policy requires contractors to certify that costs in accordance with the applicable cost principles contained in the Federal Acquisition Regulations Title 48, Code of Federal Regulations Part 31 were used to establish indirect cost rates for application to Federal-aid engineering and design-related services contracts (as defined in 23 U.S.C. 112(b) (2) (A), 23 CFR 172.3, and State/Local laws and regulations). The FHWA has directed that engineering and design-related consultant services contracts procured, awarded, or modified after January 1, 2011, should have a contractor certification of the allowability of costs used to establish the final indirect cost rate in accordance with FAR cost principles for the applicable term of the contract, or verification that this certification was previously submitted and accepted by the contracting agency. This rate will also be used for contract estimation, negotiation, administration, reporting and payment purposes.

The enclosed NJDOT [Certification of Final Indirect Costs Form](#NJDOT) must be submitted by each consultant firm with each yearly or interim overhead rate submission whether it is prepared by an independent CPA firm, or as a “firm-prepared” indirect cost rate.

A contractor found to have knowingly charged unallowable costs to a Federal-aid funded agreement is subject to suspension and debarment actions by the FHWA (as specified in FHWA Order 2000.2A, FHWA Non-procurement Suspension and Debarment Process (Federal-Aid Program) dated June 19, 2000, and 2 CFR 180). Failure to provide the completed Certification form with the annual indirect cost rate submissions will also place the firm in non-compliance status with NJDOT.

The Order is available on FHWA’s Consultant Services web site at [http://www.fhwa.dot.gov/programadmin/consultant.cfm.](http://www.fhwa.dot.gov/programadmin/consultant.cfm)

**NJDOT Article 59**

**Certification of Final Indirect Costs**

I understand the indirect cost overhead rate proposal below is:

1. Subject to review and concurrence by the NJDOT Bureau of External Audit (BEA) prior to application and use.
2. Subject to audit verification based on a risk assessment performed (a ‘cognizant audit’ would satisfy our needs and preclude any type of risk assessment from having to be performed).
3. Acceptance of this rate does not extend beyond contracts with NJDOT.

By signing, I certify that I have reviewed the proposal to establish final indirect cost overhead rates for the fiscal period as specified below and:

1. All costs included in this proposal to establish final indirect cost rates are allowable in accordance with cost principles of Federal Acquisition Regulations (FAR) Title 48, Code of Federal Regulations (CFR) Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of FAR 48 CFR 31.
3. All known material transactions or events that have occurred since the last Certification of Final Indirect Costs that affect the firm's ownership, organization, or indirect cost overhead rates have been disclosed.
4. I understand this document is mandatory and NJDOT BEA will not accept a final indirect cost certification prepared by your firm for another State DOT.

Note: The individual certifying below must be an executive of the firm at a level of Chief Financial Officer or equivalent who has authority to represent the financial information utilized to develop the indirect cost rate for use under NJDOT contracts.

|  |  |  |
| --- | --- | --- |
| Signature: |  | |
| Name of Certifying Official (Print): |  | |
| Title: |  | |
| Date of Certification (mm/dd/yyyy): |  | |
| Firm Name: |  | |
| Home Indirect Cost Rate Proposal: |  | |
| Field Indirect Cost Rate Proposal: |  | |
| Combined Indirect Cost Rate Proposal: |  | |
| FCCM Proposal(s): | Home: |  |
| Field: |  |
| Combined: |  |
| Date of Proposal Preparation (mm/dd/yyyy): |  | |
| Fiscal Period Covered (mm/dd/yyyy): |  | |

**Article 60**

**Terms Relating to All Agreements funded, in Whole or in Part, by Federal Funds Contracting**

The CONSULTANT must adhere to the following Federal Contracting Provisions as this Agreement is funded, in whole or in part, by Federal funds, as required by 2 CFR 200.317, as applicable:

1. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are lo be made the CONSULTANT shall:

* 1. Include qualified small and minority businesses and women's business enterprises on solicitation lists;
  2. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
  5. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

1. Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-13 must include the equal opportunity clause provided under 41 CFR 60-14(b}, in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 1 '246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See, 2 CFR Part 200, Appendix II, para C.

During the performance of this Agreement, the CONSULTANT agrees as follows:

* 1. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
  2. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  3. The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential Job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT’S legal duty to furnish information
  4. The CONSULTANT will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONSULTANT’S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  5. The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  6. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  7. In the event of the CONSULTANT’S noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  8. The CONSULTANT will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that ii will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work Provided, That if the applicant so participating is a Stale or local government, the above equal opportunity clause is not applicable lo any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that ii will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to tile Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect lo which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

1. Davis-Bacon Act, 40 U.S.C. 3141-3148, As Amended

When required by Federal program legislation, all prime construction contracts in excess of$ 2,000 shall be done in compliance with the Davis Bacon Act (40 USC 3141- 3144, and 3146-3148) and the requirements of 29 CFR pt. 5 as may be applicable. The CONSULTANT shall comply with 40 USC. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. CONSULTANT is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, CONSULTANTS are required to pay wages not less than once a week.

1. Copeland Anti-Kick-Back Act

Where applicable, the CONSULTANT must comply with Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

* 1. CONSULTANT. The CONSULTANT shall comply with 18 USC.§ 874, 40 U.S.C § 3145, and the requirements of 29 C.F.R. pl. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
  2. Subcontracts. The CONSULTANT or subcontractors shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
  3. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as CONSULTANT and subcontractor as provided in 29 CF R. § 5.12.

1. Rights to Inventions Made Under A Contract Or Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401 .2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

1. Debarment and Suspension (Executive Orders 12549 AND 12689)\_
   1. This contract is a covered transaction for purposes of 2 CFR. pt. 180 and 2 CF R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C F R. § 180 995) or its affiliates (defined at 2 C.F .R. § 180 905) are excluded (defined at 2 C.F.R. § 180 940) or disqualified (defined at 2 CF R. § 180 935)
   2. The contractor must comply with 2 CFR. pt. 180, subpart C and2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
   3. This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 CFR. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
   4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
2. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352

CONSULTANTS that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

1. Contract Work Hours and Safety Standards Act. 40 USC 3701-3708.

Where applicable, all contracts awarded by the non-Federal entity in excess of$ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S C 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held *by* the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.
5. Clean Air Act, 42 U.S.C. 7401-7671Q, and the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387, as amended.

Clean Air Act

1. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC.§ 7401 et seq.
2. The CONSULTANT agrees to report each violation to the STATE and understands and agrees that the STATE will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The CONSULTANT agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The CONSULTANT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The CONSULTANT agrees to report each violation to the STATE and understands and agrees that the STATE will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The CONSULTANT agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.
4. Procurement of Recovered Materials. Section 6002 of the Solid Waste Disposal Act.

Where applicable, in the performance of this Agreement, pursuant to 2 CFR 200.323, the CONSULTANT must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the CONSULTANT to provide recovered materials the scope of work or specifications are modified to require that as follows.

1. In the performance of this contract, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired-
   * + 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
       2. Meeting contract performance requirements; or
       3. At a reasonable price.
2. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.
3. The CONSULTANT also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."
4. Prohibition on Contracting for Covered Telecommunications Equipment or Services. Section 889(b)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and 2 CFR 200.216

CONSULTANT is prohibited from obligating or expending funds under this Agreement to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in *Public Law 115-232,* section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
   1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
   2. Telecommunications or video surveillance services provided by such entities or using such equipment.
   3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
4. Domestic Preference for Procurements. 41 U.S.C.S. §§ 10a-10d.

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the CONSULTANT shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

* 1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  2. "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.