ADDITIONAL TERMS AND CONDITIONS OF AGREEMENT

BETWEEN

STATE AND CONSULTANT

This Agreement made this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_ in the year Two Thousand \_\_\_\_\_\_\_\_\_\_ between the State of New Jersey, Department of Transportation, hereinafter “STATE” and **Full Name, Address of Consultant**, hereinafter “CONSULTANT”;

For the following Project:

# Project Name

# And

# Description

I. The STATE and the CONSULTANT agree as set forth below.

A. This Agreement is comprised of both the Additional Terms and Conditions of Agreement Between State and Consultant (“Additional Terms and Conditions”) contained herein and the Standard Terms and Conditions of Agreement Between State and Consultant (Articles 1 through 60) (“Standard Terms and Conditions”) dated **09/24/2024**, which can be obtained from the Department’s website at:

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

The Term “Agreement” shall at all times be construed to encompass both the Additional Terms and Conditions and the Standard Terms and Conditions, unless expressly stated otherwise.

B. The CONSULTANT shall provide professional services for the Project in accordance with the Standard Terms and Conditions and these Additional Terms and Conditions.

C. The CONSULTANT shall electronically provide in Adobe Acrobat or other format identified by the STATE, at the STATE’S direction, various project related reports, studies, and other documentation which may be utilized to solicit Expressions of Interest for other phases of the Project. Reports, studies and other documentation may include, but not be limited to: Conceptual Studies, Feasibility Reports, Environmental Studies, Traffic Studies, Corridor Studies, sketches, drawings, maps and plans.

D. The CONSULTANT shall submit a Quality Management Plan to the Department in accordance with the “Quality Management Plan Procedure” for approval. Obtaining approval of a Quality Management Plan from the STATE is a pre-requisite of the CONSULTANT prior to execution of this AGREEMENT with the STATE.

The CONSULTANT shall establish and maintain a Quality Management Plan approved by the STATE, which sets forth both the CONSULTANT's policy for quality control and procedures for implementing that policy during the performance of work on the Project. All work performed by the CONSULTANT shall be in conformity with the Quality Management Plan approved by the STATE. Approval of the Quality Management Plan by the STATE does not relieve the CONSULTANT of any liability for any deficiency in the work. The STATE, by approving the Quality Management Plan, does not accept any liability therefore or for any deficiency or error in the work performed by the CONSULTANT. If after approval by the STATE of the Quality Management Plan, the STATE determines that the CONSULTANT has not conformed with the approved Quality Management Plan, the STATE will so notify the CONSULTANT in writing and require the submission of a corrective action plan within 30 days of the date of the non-conformity notice. Failure of the CONSULTANT to provide a timely corrective action plan deemed satisfactory by the STATE may be considered a material breach of this Agreement.

E. The CONSULTANT warrants that the engineering services shall be performed or approved by an engineer licensed by the New Jersey Board of Professional Engineers and Land Surveyors to practice in the State of New Jersey.

The CONSULTANT warrants that the field survey services shall be performed or approved by a surveyor licensed by the New Jersey Board of Professional Engineers and Land Surveyors to practice in the State of New Jersey.

F. If the CONSULTANT offers to provide engineering and/or land surveying services in New Jersey and the CONSULTANT is a corporation, but not a corporation established pursuant to the Professional Service Corporation Act (N.J.S.A. 14A:17-1 et. seq.), the CONSULTANT hereby warrants that it is currently authorized by the New Jersey Board of Professional Engineers and Land Surveyors to provide such engineering and/or land surveying services.

G. To the extent that it is not inconsistent with the terms of this Agreement, the CONSULTANT’s proposal of **date here** is made a part of this Agreement as if set forth herein.

1. COMPENSATION

This is a Fixed Price Agreement. The STATE shall compensate the CONSULTANT in the amount of **$ total prime and sub cost here**  for satisfactorily performing all work and completing the project. The total compensation payable to the CONSULTANT includes payment for all work performed by the CONSULTANT and all subconsultants and is limited in accordance with the compensation ceilings established in paragraphs II.A and II.D below. The CONSULTANT agrees that all funds are subject to appropriations and the availability of funds.

In addition to the ***(PICK ONE)*** Preliminary Engineering OR Final Design services covered by this Agreement, the STATE has also evaluated and selected the CONSULTANT based upon the CONSULTANT’S ability to perform ***(PICK ONE OR MORE)*** Final Design and/or Construction Engineering Services for the project. Subject to the appropriation and 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.

A. The STATE shall make partial payments to the CONSULTANT towards a fixed price ceiling of **$ prime only total cost here** for the CONSULTANT’s own work effort on the Project. The payments shall be made upon the receipt of properly drawn monthly invoices for the percentage of work completed during the one month period as shown on the accompanying Monthly Progress Report. Where there is disagreement between the STATE and the CONSULTANT concerning the percentage of work completed during any given one month period that dispute shall be resolved in accordance with Article 27 of the Terms and Conditions.

1. If the STATE orders a change in the work which is not within the original scope or limits of the work or if the STATE orders a change in the work which necessitates the revision of approved completed work, the cost of such change shall be paid for by the STATE as Extra Work. Compensation for Extra Work will be negotiated between the parties and included in an appropriate Modification for Extra Work, which shall have separate ceilings from this Agreement and other Consultant Contract Modifications, and will be invoiced separately from this Agreement and other Consultant Contract Modifications for Extra Work. A cost accumulation date must be established before costs can be incurred.

The CONSULTANT shall perform no Extra Work without having received written notice from the STATE authorizing such Extra Work.

1. If the STATE orders a change in the work which decreases or eliminates in part the work to be performed, either as set forth in the original scope or limits of the work or as set forth in a Consultant Contract Modification, the compensation to be paid the CONSULTANT shall be adjusted as provided in this paragraph. The reduction in the Fixed Price will be either the cost for the eliminated work as contained in the CONSULTANT’s cost proposal, which is part of this Agreement, or if such cost is not specifically identified, the reduction in the Fixed Price will be in the same ratio as the work eliminated or decreased is to all the work, as modified by any prior Consultant Contract Modifications. In addition, the Commissioner may make such additional adjustments in the Fixed Price as the Commissioner deems just and proper, where the ratio established in comparing the decreased or eliminated work with the original work does not properly reflect the impact of that decrease in the work or elimination of part of the work on the whole work effort.

D. The CONSULTANT will be paid a fixed price for each subconsultant’s work as follows:

**Subconsultant** **Fixed Price**

**Sub 1 Name here sub 1 total amount here**

**Sub 2 Name here sub 2 total amount here**

The fixed price for each subconsultant’s work shall not be included in the fixed price listed in paragraph II.A. above, for the CONSULTANT’s own work effort, but shall be included in the total compensation payable to the CONSULTANT in paragraph II, above. All work performed by subconsultants on the Project shall be treated as being performed by the CONSULTANT. The CONSULTANT shall remain responsible for satisfactory performance of all work.

All payments for work and extra work subcontracted by the CONSULTANT, if any, shall be made to the CONSULTANT upon properly submitted invoices. Partial payments of the fixed price of each subconsultant’s work shall be made on monthly invoices submitted by the CONSULTANT based upon the percentage of subcontracted work completed as shown in the CONSULTANT’s Monthly Progress Reports. The CONSULTANT may not withhold retainage from Subconsultants.

E. Payment of Overpayment

In the event of overpayment to the CONSULTANT repayment by the CONSULTANT to the STATE shall be made in the manner set forth in subparagraph G.5, below.

F. Retention of Records

1. The CONSULTANT shall retain and make available all records, papers, documents, books, and other supporting evidence pertaining to the costs incurred during the performance of work under this Agreement and during the preparation of proposals (“retained records”) to satisfy Contract/Agreement negotiation, administration, audit and inspection requirements of the State during the Agreement period and for a minimum of five (5) years after final payment or termination of the Agreement.

Additionally, all records involved with disputes, litigation or settlement of claims arising under or related to the Agreement shall be retained and made available until such disputes, litigation or claims are finally disposed of. No retained records or records involved with disputes, litigation or settlement of claims shall be destroyed by the CONSULTANT without the prior written approval of the STATE.

1. FAR Subpart 4.7 - Contractor Records Retention (Apr. 1984) (48 C.F.R. 4.700 et. seq.) And FAR 52.215.1 (Apr. 1984) (48 C.F.R. 52.215-1) are hereby made a part of this Agreement by reference as if set forth fully herein.

G. Examination/Audit of Records

1. The CONSULTANT shall make available at its office at all times requested retained records and records involved with disputes, litigation, or settlement of claims for examination, audit, and/or reproduction by the STATE without conditions of any type.
2. Audits shall be performed in accordance with Article 58 of the Standard Terms and Conditions.

3. The STATE may, at its option, perform audits throughout the retained records period and may, at its option, reaudit all or parts of costs previously audited.

4. Final Payment

When in the opinion of the CONSULTANT all work required by the Agreement has been completed, it shall notify the STATE in writing of this. The STATE shall then, at its option, either perform an audit of costs of the Project or defer this audit for later scheduling to conform with its ongoing audits of CONSULTANT. Upon completion of this audit or concurrence of the STATE’s audit manager that an audit will be performed at a later date, the STATE will notify the CONSULTANT that it shall submit a final invoice which shall include the following release clause: “In consideration of the requested final payment, the CONSULTANT hereby releases and gives up any and all claims the CONSULTANT may have, now or in the future, against the State of New Jersey, its officers and employees, arising out of any and all obligations assumed and work performed under **Agreement XXXXXXXXX**, including claims for Extra or Additional Work.” If this invoice is accepted by the STATE, the STATE will then make final payment to the CONSULTANT. It is understood that this release does not waive the CONSULTANTS’s rights to recover underpayments determined by any audit performed subsequent to the submission of the release clause, but reimbursement is restricted by the requirement that all costs may not exceed the maximum Project amount noted in Part II. If this invoice is accepted by the STATE, the STATE will then make final payment to the CONSULTANT. It is expressly understood and agreed that this final payment shall not waive any rights of the STATE to adjust and collect overpayments disclosed by subsequent audits.

5. Repayment by Consultant

When audits disclose overpayments to CONSULTANT, the STATE may, at its option, either require the CONSULTANT to repay the overpayment within thirty (30) days of demand for repayment by the STATE or deduct the amount of overpayment from monies due the CONSULTANT under this Agreement or under any other contract between the STATE and the CONSULTANT. Any overpayments not repaid through actual repayment by deduction within thirty (30) days of notice to CONSULTANT shall be charged interest at ten percent (10%) per annum. The thirty (30) days notice of repayment or deduction shall commence upon mailing of written notice to the CONSULTANT.

6. Should the Agreement be terminated prior to completion of all work, the procedures set forth in paragraph (4), above, shall be followed to close out the agreement.

H. Subcontractors

The CONSULTANT shall require its subcontractors, if any, to comply with the provisions

of paragraphs F and G above by placing equivalent provisions in subcontracts.

1. TIME

The STATE and CONSULTANT agree in accordance with the Terms and Conditions of this

Agreement that:

1. Work under this Agreement shall begin within ten (10) calendar days of the CONSULTANT’s receipt of written notice from the STATE to proceed and be completed within **(XX) # of months** of the CONSULTANT’s receipt of said notice to proceed.
2. Extra Work shall begin within ten (10) calendar days of receipt by the CONSULTANT of a copy of an executed Consultant Contract Modification authorizing such Extra Work and be completed by the date established for the completion of the work under paragraph A, unless a Consultant Contract Modification establishes a new completion date for all work under this Agreement or for the specific Extra Work in question.

IV. STATEMENT OF CONSULTANT’S WORK AND SERVICES

The following description of the work to be performed under this Agreement establishes the scope. Only work specified as being performed by a subconsultant may be subcontracted. All other work must be performed by the CONSULTANT.

A. The CONSULTANT shall:

1. Perform the work tasks described in the proposal dated **date here** attached hereto and made a part hereof.
2. At no cost to the STATE give general advice, revise completed contract documents,

and make visits to the construction site as required, to correct all errors and omissions

in the plans or specifications, and to discuss the conformity between the project

construction and construction contract documents.

3. Only work specified as being performed by a subconsultant may be subcontracted. All other work must be performed by the CONSULTANT.

B. The CONSULTANT agrees to ensure that Emerging Small Business Enterprises (ESBEs), as defined in NJDOT Disadvantaged Business Enterprise Program, and the Disadvantaged Business Program as defined in 49 CFR, Part 26, Subpart B and FTA Circular 4716.1A, or the State Small Business Program (SBE’s I, II, III, IV, V) criteria, set forth in (N.J.A.C. 17:13) have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds or 100% State funds. For this Agreement, the DBE or ESBE goal (Federal Aid Contracts), or SBE goal (100% State funded contracts), as established by the STATE, shall be at minimum:

**PICK ONE**

**Goal at time of posting** percent ESBE/DBE for Federal Aid contracts

**Goal at time of posting** percent SBE for State funded contracts

The Consultant hereby commits to make a good faith effort to achieve **(pick one)** an ESBE/DBE goal of **???%** (Federal funded project), **OR** **??%** SBE goal (State funded project) under this Agreement.

Failure to achieve or make a good faith effort to meet the established goal may result in sanctions under paragraph 5 of Article 45 of the Standard Terms and Conditions. However, when there are no established goals, the CONSULTANT is still encouraged to assign work to ESBE’s, DBE’s or SBE’s.

1. The STATE’s coordinator for this Project, to whom the CONSULTANT shall address all correspondence, is:

**Name here**

He/she may be reached at the following address, telephone number, and email:

**New Jersey Department of Transportation**

**1035 Parkway Avenue**

**Trenton, NJ 08625**

**Phone**

**email**

The STATE’s coordinator, address and telephone number may be changed by the STATE upon written notification to the CONSULTANT.

VI. The office of the CONSULTANT for the coordination of work involved in this Project and for service of any legal process related to this Project is located at:

**address here (must be a NJ address or a legal representative with a NJ address)**

The CONSULTANT’s project representative is:

**Name here**

He/she may be reached at the following telephone number and email:

**Phone and email here**

The CONSULTANT’s project representative, address and telephone number may be changed by the CONSULTANT upon written notification and approval by the STATE in accordance with Articles 19 and 20 of the “Terms and Conditions.”

VII. CERTIFICATION OF CONSULTANT ELIGIBILITY

The CONSULTANT’s signatory hereby certifies, under penalty of perjury under the laws of the United States, that except as noted below, the company or any person associated therewith in the capacity of owner, partner, director, officer, principal, project director, manager, auditor, or any position involving the administration of federal or state funds:

1. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal, state or local government agency;

2. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal, state or local government agency within the past 3 years;

3. does not have a proposed debarment pending; and

4. has not been indicted, convicted, or had a civil judgment rendered against he/she/it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

(Insert Exceptions - For any exception noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. If no exceptions, insert “None”.)

1. EXECUTION

Corporate consultants shall attach a corporate resolution by the Secretary/Treasurer authorizing the President/Vice President to execute this Agreement and bind the CONSULTANT; the Secretary shall attest to the execution and affix the corporate seal. Partnership consultants shall have all partners sign the Agreement or have the Agreement signed by one partner, provided documents are attached which authorize that one partner to bind all partners; all signatures shall be witnessed. For sole proprietorships, the sole proprietor shall execute this Agreement with the execution notarized; notarization to be attached. Joint Venture consultants shall follow the execution procedure applicable to each of the joint venturers. This Agreement shall not become binding on either party until it is executed by or on behalf of the Commissioner of Transportation.

This Agreement executed as of the day and year first written above, each party having caused it to be signed, attested/witnessed/sealed.

|  |  |
| --- | --- |
| Attest/Witnessed/Sealed: | **(FIRM’S NAME – IN ALL CAPS)** |

|  |  |  |  |
| --- | --- | --- | --- |
|  | (Seal) | By: |  |
| **Name**  **Title** | | **Name**  **Title** | |

|  |  |
| --- | --- |
| Attest/Witnessed/Affix Seal: | THE STATE OF NEW JERSEY |
|  | DEPARTMENT OF TRANSPORTATION |

|  |  |  |
| --- | --- | --- |
|  | By: |  |
| **Name**  Secretary  New Jersey |  | **Name**  Assistant Commissioner  New Jersey |
| Department of Transportation |  | Department of Transportation |

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| --- |
| Approved as to form: |
|  |
|  |
| Name  Deputy Attorney General |
|  |
|  |
| DATE |