ADDITIONAL TERMS AND CONDITIONS OF AGREEMENT

BETWEEN

STATE AND CONSULTANT

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

For the following Project:

# Project Name and Description

In accordance with the terms and conditions of this Agreement, the CONSULTANT shall provide statewide services, as defined in Section IV, if and when directed by the STATE.

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.

1. 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.

1. The CONSULTANT warrants that all 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.
2. The CONSULTANT warrants that all 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.

G. If the CONSULTANT is required by the Professional Service Corporation Act (N.J.S.A. 14A:17-1 et seq.) to be authorized by the New Jersey Board of Professional Engineers and Land Surveyors to provide engineering and/or land surveying services, the CONSULTANT hereby warrants that it is currently so authorized and that it will retain its authorization by the New Jersey Board of Professional Engineers and Land Surveyors until completion of all work under this Agreement.

H. To the extent that it is not inconsistent with the terms of this Agreement, the CONSULTANT's **technical proposal OR cost proposal**, dated **date here** is made a part of this Agreement as if set forth herein. Notwithstanding the above, however, all payment and compensation provisions of the proposal or expression of interest are superseded by the terms of this Agreement, whether or not there is conflict or inconsistency between such provisions and such terms.

II. COMPENSATION.

A. This is a Fixed Price Term Agreement. The STATE has evaluated and selected the CONSULTANT based on its ability to perform a maximum of **$ max ceiling** worth of engineering services during the term of this Agreement. As of the date of this Agreement, **$start up amount** of the **$ max ceiling** of the maximum total has been appropriated to accomplish work under this Agreement. Under no circumstance will the STATE issue individual project assignments that cumulatively exceed **$start up amount** in value unless and until additional funds sufficient to fully cover the work of each subsequent assignment have been appropriated or otherwise made available. The CONSULTANT agrees that all funds are subject to appropriations and the availability of funds.

No more than **$1,000,000** can be expended on an individual project, inspection, or study. This can be accomplished either in one task order or in multiple task orders not to cumulatively exceed **$1,000,000** for an individual project, inspection, or study.

The total compensation payable to the CONSULTANT includes payment for all work performed by the CONSULTANT and all subcontractors. This Agreement does not create for the CONSULTANT any right to provide any services which are not authorized by written Task Order. The STATE reserves the right to perform any services detailed in Section IV of this Agreement with its own forces or to contract with third parties for said services.

For satisfactorily performing the work of each individual project assigned by the STATE, the STATE shall pay the CONSULTANT the fixed price established for that assignment. Payments shall be made upon receipt by the STATE of properly drawn monthly invoices for the percentage of the assigned project completed during the one-month period shown on the accompanying Monthly Progress Report. The total compensation payable to the CONSULTANT shall include payment for all work performed by the CONSULTANT and all subconsultants. Where there is disagreement between the STATE and the CONSULTANT concerning the percentage of the assigned project completed during any given one month period, that dispute shall be resolved in accordance with Article 27 of the Standard Terms and Conditions.

B. Adjustments to the Agreement or Task Order

Subsequent funding may be added by approved Department Actions (Form AD-12) to Term Agreements that are not fully funded at the time of execution. Such additional funding, however, shall not cause the total compensation payable pursuant to the Agreement to exceed the maximum compensation ceiling established in Part II, COMPENSATION, at the time of execution of the Agreement. Term Agreements may not be modified or amended to increase either the funding ceiling established in Part II, COMPENSATION, or to extend the duration of the Agreement as stated in Part III, TIME. If the STATE orders a change to either the scope or cost ceiling of an individual Task Order, adjustments resulting therefrom shall be made by a subsequent Task Order.

C. Payment of Subconsultants

1. All payments for work and Extra Work subcontracted by the CONSULTANT, if any, shall be made to the CONSULTANT upon properly submitted invoices. All work performed by subconsultants of the Project shall be treated as being performed by the CONSULTANT. The CONSULTANT shall remain responsible for satisfactory performance of all work.

2. The CONSULTANT shall be paid a fixed price for the work of a subconsultant. The fixed price set forth in the Task Order authorizing the work shall be considered full compensation for all work performed by the subconsultant pursuant to that Task Order. Payment of the fixed price shall be made on the basis of monthly invoices submitted by the CONSULTANT based upon the percentage of the subcontracted work completed, as shown in the CONSULTANT’S Monthly Progress Reports. The CONSULTANT may not withhold retainage from Subconsultants.

3. The work of all subconsultants shall be subject to all limitations and conditions imposed by this Agreement and the specific Task Order authorizing the work.

**List Subconsultant(s):**

D. 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 Part II, section F.5, below.

E. 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.

2. 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.

F. 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.

2. Audits shall be performed in accordance with Article 58 of the Standard Terms and Conditions.

1. The STATE may at their option, perform audits throughout the retained records period and may, at their 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 so notify the STATE in writing. 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 to 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 No. 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) day period for repayment or deduction shall commence upon the mailing of the written notice to the CONSULTANT.

6. Should this Agreement be terminated prior to its term, the procedures set forth in Part II, section F.4, above shall be followed to close out the Agreement.

G. Subconsultants.

The CONSULTANT shall require its subconsultants, if any, to comply with the provisions of Part II, sections E and F, above by placing equivalent provisions in subcontracts.

III. TIME

1. After execution of this Agreement, the STATE may issue individual project assignments to the CONSULTANT. The STATE’s representative shall notify the CONSULTANT of said assignments in writing or by telephone. All telephone notifications will be followed immediately with written documentation. Within five working days of the initial notification, the CONSULTANT shall submit a proposal to the STATE setting forth the time frame in which the individual assignment will be accomplished and the fixed price for completing the work.

B. The CONSULTANT shall not begin work on any individual assignment until it is in receipt of an executed Task Order. Work must begin within five working days of receipt of the executed Task Order and be completed in accordance with all requirements of this Agreement and the Task Order.

C. This Agreement expires **three (3)** years from the date first written above or upon the expenditure of the maximum project amount of **$max ceiling,** whichever is earlier.

1. No Task Order will be executed more than **three (3)** years from the date first written above. However, any assignment authorized prior to the expiration of the **three (3)** year period shall be completed even if the completion date extends beyond this expiration date. In such event, all terms and conditions of this Agreement shall continue to apply.

2. No Task Order will be executed unless the work of the Task Order can be fully accomplished at a price that will not cause the aggregate price of all Task Orders executed under this Agreement to exceed **$ max ceiling.**

3. This Agreement does not create for the CONSULTANT any right to provide any services other than those previously authorized by an executed Task Order. The STATE reserves the right to perform any services needed to complete a work task with its own forces or to contract with other parties for performance of said services.

IV. STATEMENT OF CONSULTANT'S WORK AND SERVICES

A. Work to be performed by the CONSULTANT pursuant to Task Orders may include, but is not limited to, any or all of the following services:

**(Identify scope of work here or refer to attached scope of work)**

B. In addition, the CONSULTANT shall, 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 project construction and the construction contract documents.

C. This Agreement does not create for the CONSULTANT any right to provide the engineering services detailed above. The STATE reserves the right to perform such services with its own forces, or to contract with other parties for the performance of such services, or to elect not to have such services performed during the term of this Agreement.

## D. 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 100% State funded contracts

The Consultant hereby commits to make a good faith effort to **(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.

V. 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 and email**

The STATE may designate another coordinator at any time, 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

The name and telephone number of CONSULTANT's Project representative is:

**Name**

**phone here**

**email**

The CONSULTANT may designate another Project representative after receiving prior written approval of the change from the STATE, in accordance with Articles 19 and 20 of the Standard 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:

A. Is not currently under suspension, debarment, voluntary exclusions or determination of ineligibility by any federal, state or local government agency;

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

C. Does not have a proposed debarment pending; and

D. Has not been indicted, convicted, nor had a civil judgment rendered against (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")

VIII. 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.

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| --- | --- |
| 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**  Department 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 |