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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**

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:

<u>Bodily Injury Liability</u>	
Each Occurrence	Aggregate
\$1,000,000	\$2,000,000

<u>Property Damage Liability</u>	
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 unamended 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:

<u>Bodily Injury Liability</u>	
Each Person	Each Occurrence
\$500,000	\$1,000,000

<u>Property Damage Liability</u>	
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 forwarded to the New Jersey Department of Transportation, Division of Procurement, Bureau of Professional Services, F&A Building, PO Box 605, Trenton, NJ 08625-0605.

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

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 Subconsultants

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 04-7-2009



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.

h. The Consultant and each subconsultant will be required to provide monthly employment and wage data to the Department via a web based application and on line electronic Form CC-257R, "Monthly Employment Utilization Report". All consultants and subsubconsultants must file employment and wage data reports no later than 10 calendar days following the end of the reporting month. All employment and wage data must be verified as correct and accurate in corroboration with the certified payroll records. Consultants are responsible for insuring that their subconsultants comply with these reporting requirements. Failure to provide the requested employment and wage data may impact your current Pre-Qualification contract rating with the New Jersey Department of Transportation.

i. This Contract is funded in whole or in part with funding provided under the American Recovery and Reinvestment Act of 2009 (ARRA). The Consultant is responsible for complying with the applicable provisions of the ARRA which are incorporated herein by reference.

Section 902 of ARRA requires that the U.S. Comptroller General has the authority to:

1. Examine records of the Consultant or its subconsultant, or State or local government agency administering such contract that directly pertain to, and involve transactions relating to, the Contract or subcontract.
2. Interview officers or employees of the Consultant or its subconsultant, or of State or local government agency administering the Contract, regarding such transactions.

Nothing in this section is to be interpreted to limit or restrict the existing authority of the U.S. Comptroller General.

Section 1515(a) of the ARRA requires that the Inspector General has the authority to:

1. Examine records of the Consultant or its subconsultants
2. Interview the Consultant's or its subconsultants's employees or officers working on this Contract.

Nothing in this section is to be interpreted to limit or restrict the existing authority of the Inspector General.

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  
*Modified 5-22-13*

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

As used in this Agreement, the term "**calendar day**" means each and every day shown on the calendar.

As used in this Agreement, the term "**work**" means 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 Task Order Agreement.

**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 Agreement 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 Agreement, 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.

**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) (last revised 02-18-2010)**

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 :

- Request geodetic control criteria from NJDOT Geodetic Control Unit. Evaluate the Geodetic Survey information and incorporate into the field survey work. Research and recover the Geodetic survey monumentation.
- 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. This preliminary data submission shall be faxed with cover to Geodetic Survey (609-530-3689) for control reports, and to the appropriate Regional Survey Office (North-973-770-5151; Central-732-431-3335; South-856-486-6777) for 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)" or its most recent revision. Pertinent supplemental publications for GPS related positioning to be used to complement the aforementioned publication are "Geometric Geodetic Accuracy Standards and Specifications for Using GPS Relative Positioning Techniques," Version 5.0, dated May 11, 1988, reprinted with corrections, August 1, 1989 and "Guidelines for Establishing GPS-derived ellipsoid heights (Standards: 2 cm and 5 cm)," NOAA Technical Memorandum NOS NGS-58, version 4.3, November 1997, or most recent revisions.

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 benchruns 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 National Spatial Reference System (NSRS) formerly known as the National Geodetic Reference System (NGRS) database that is maintained by National Geodetic Survey (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 National Geodetic Vertical Datum (NGVD) 1929 or the North American Vertical Datum of 1988 (NAVD88).

### 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
  - a. Purpose - Describe the purpose for which the survey was conducted.
  - b. 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.
- c. Accuracy Standards - Provide the accuracy standards (vertical and horizontal) specified for the project.
  - d. Signature and seal of the surveyor in responsible charge.
  - e. 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
- a. 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.
  - b. 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.
  - c. 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.
  - d. 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.
- b. Rejected Data - Specify any data which was rejected and re-surveyed. Include the reasons why the data from a particular field day were rejected.
- c. 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.
- d. 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.
- e. The above data, supporting data, and final survey report will be provided in a digital format (pdf or doc read only files) on a CD that will be 100% compatible with NJDOT computer systems. .

V. Attachments and Enclosures

- a. The Consultant will provide a survey report including an alignment plan for all projects.
- b. 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.
- c. Station List - Include a table, which lists the station name, coordinates, elevation and station type for all stations surveyed.
- d. 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.
- e. Digital photo/ rubbings of monuments (control stations) shall be included in survey report.
- f. Field Logs - Provide dated copies of field survey notes and record books.
- g. Quality Control Checklists- Geodetic & General Report- (formats in Survey Manual Appendix C)
- h. 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.

**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.
  - a. As-built “white set” of plans

- b. As-built Summary (DC-104) (Retain a copy)
- c. 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.
  - h. 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-building 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
  - b. Landscape
  - c. 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

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 Department of Transportation (Title 49. Code of Federal Regulations, Part 21 through Appendix H, and Title 23CFR Part 710.405(b), hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Agreement.
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

The parties to this Agreement understand that the provisions of (L. 1975, C. 127 (N.J. A.C. 17:27), as amended and supplemented) dealing with Affirmative Action Rules on public contracts, and the rules and regulations promulgated pursuant thereto, are a part of this Agreement and are binding on them.

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, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action 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 apprenticeship. 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, sex, affectional or sexual orientation. The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act 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 the regulations promulgated by the Treasurer pursuant to P.L.1975, c. 127 as amended and supplemented from time to time and the Americans with Disabilities Act. The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975,c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the treasurer pursuant to p.. 1975,c.127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, 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. 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, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions. The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office 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 Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

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  
NJDOT CODE OF ETHICS FOR VENDORS

1. No vendor\* shall employ any NJDOT officer or employee in the business of the Vendor or professional activity in which the vendor is involved with the Department officer or employee.
2. No vendor shall offer or provide any interest, financial or otherwise, direct or indirect, in the business of the vendor or professional activity in which the vendor is involved with the Department officer or employee.
3. No vendor shall cause or influence, or attempt to cause or influence any NJDOT employee or officer 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.
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.
5. No vendor shall offer any NJDOT officer or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonable inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. In addition, employees or officers of NJDOT will not be permitted to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events or any other item which could be construed as having more than nominal value.

NOTE: This section would permit an NJDOT employee or officer to accept food or refreshments of relatively low monetary value provided during the course of a meeting, conference or other occasion where the employee is properly in attendance (for example—coffee, danish, tea or soda served during a conference break). Acceptance of unsolicited advertising or promotional materials of nominal value (such as inexpensive pens, pencils or calendars) would also be permitted.

Any questions as to what is or is not acceptable or what constitutes proper conduct for a Departmental employee or officer should be referred to the Department's Ethics Liaison Officer or his or her designee.

6. This code is intended to augment, not to replace, existing administrative orders and the current Departmental Code of Ethics.
7. This code shall take effect immediately upon approval of the N.J. Executive Commission on Ethical Standards and adoption by the NJDOT.

\* Vendor is defined as any general contractor, subcontractor, consultant, person, firm, corporation or organization engaging in or seeking to do business with NJDOT.

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 subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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)  
(last revised 01-2008)

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 Requirements and Media Requirements detailed near the end of this Article. If it is specified in the original Agreement that 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 Metric or 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 7.x; SelectCAD INROADS 8.2; 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:

Metric Projects - Adherence to DOT CADD Metric Standards Manual is mandatory.

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

The Control Codes for the Bentley Systems SelectCAD Survey product and the NJDOT Metric Feature/Preference Codes.

The deliverables will be the files produced by the SelectCAD Survey product (.FWD) resulting from input from RW5 format field files.

The original and edited field files (RW5 format) will be provided to the Department as records of the survey.

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 to the Project Manager, with copies to the NJDOT Geodetic Survey Office or appropriate Regional Survey Office. 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 1:300 for Metric or 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 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.

**V. Minimum CADD File Requirements: (updated 01-2008)**

- 1) Graphics files must be Microstation (.dgn) format
- 2) Metric Working Units:
  - Master Units = m
  - Sub-Units = mm
  - 1000 sub-units/master unit
  - 10 positional Units/sub-unit
 English Standard Working Units:  
 (Microstation Version 7 format)
  - Master Units = ‘
  - Sub-Units = “
  - 12 sub-units/master unit
  - 254 positional units/sub-unit
 (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:
  - Metric or English 2D file: 0, 0
  - Metric 3D file: 0, 0, -214000
  - English 3D file: 0, 0, -700,000
- 4) All drawings should be done at full scale (i.e. 1 meter or 1 foot in the design file equals 1 meter or 1 foot in the field.)
- 5) Supply written documentation of level structure, element symbology, cell names etc.
- 6) Supply plotting instructions and pen tables

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 Minimum 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, standard 3-1/2 diskettes, or the Internet thru Email or 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 them 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 thereto, 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 subconsultants 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 subconsultants 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 P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision 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, within fifteen (15) State business days of receiving notice of its selection, proof of its and all subconsultants' 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 P.L. 2001, c.134 (N.J.S. 52:32-44).

A copy of the Business Registration Certificate (BRC) must be submitted by the firm at the time of technical proposal submittal for 100% State funded solicitations. A copy of the BRC need not be provided with the technical proposal for Federally funded projects, but shall continue to be provided by the selected firm prior to agreement execution. Failure by a firm to submit a copy of a valid BRC with its proposal for any solicitation which is 100% State funded will result in the proposal not being evaluated by the Department.

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 subconsultant first provides proof of valid business registration. The NJDOT will not consent to any proposed subconsultant unless the Consultant forwards the required proof of the subconsultant's valid business registration, which is required prior to agreement execution.

ARTICLE 55  
PUBLIC WORKS CONTRACTOR REGISTRATION FOR WORK  
COVERED BY N.J. PREVAILING WAGE ACT

To the extent that work performed by the Consultant or any subconsultant 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. 34:11-56.48 et seq.), the Consultant shall provide to the NJDOT proof of the Consultant's and/or subconsultant's valid, current registration with the New Jersey Department of Labor as a "Public Works Contractor" prior to the start of such work.

ARTICLE 56  
PUBLIC LAW 2005, CHAPTER 51  
(FORMERLY KNOWN AS EXECUTIVE ORDER 134)  
SPECIAL PROVISIONS  
100% STATE FUNDED PROFESSIONAL SERVICE CONTRACTS

A. PURPOSE OF PUBLIC LAW 2005, CHAPTER 51 (EXECUTIVE ORDER 134)

Executive Order 134 ("EO 134") was signed on September 22, 2004, in order to safeguard the integrity of State government procurement by imposing restrictions to insulate that process from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof. Pursuant to the requirements of EO 134, the terms and conditions set forth in this section are material terms of this contract.

B. DEFINITIONS

For the purpose of this section, the following shall be defined as follows:

1) Contributions means a contribution reportable by the recipient under of "New Jersey Campaign Contributions and Expenditures Reporting Act." P.L. 173, c. 83 (C.10:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19-25-7 and N.J.A.C. 19:25-10.1 et seq. Currently, contributions in excess of \$400.00 during a reporting period are deemed "reportable" under these laws.

2) Business Entity means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. It also includes (i) all principals who own or control more than

10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under 26 U.S.C.A. 527 that is directly or indirectly controlled by the business entity other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing therewith.

**C. PROHIBITED CONDUCT**

The DEPARTMENT will not enter into a contract for professional services with any Business Entity where the value of the contract exceeds \$17,500, if the Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor, or to any State or county political party committee during certain time periods as specified in EO 134 and the EO 134 Certification form provided by the DEPARTMENT.

**D. CERTIFICATION AND DISCLOSURE REQUIREMENTS**

**1) Requirements Prior to Contract Execution**

Prior to the execution of the contract by the DEPARTMENT, a Business Entity shall submit to the DEPARTMENT an EO 134 Certification and an EO 134 Disclosure of Political Contributions on forms provided by the DEPARTMENT. Separate forms must be submitted for each Business Entity as defined in paragraph B.2 above. The forms shall be signed by a duly authorized representative of the Business Entity and shall certify that the Business entity has made no contributions prohibited by EO 134 and shall report all contributions made by the Business Entity since October 15, 2004, to any political organization organized under 26 U.S.C. 527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The DEPARTMENT will not enter into a contract with any Business Entity which fails to submit the required Certification and Disclosure.

**2) Continuing Obligations of the Business Entity After Contract Execution to Comply with EO 134.**

The Business Entity shall on a continuing basis disclose and report to the DEPARTMENT any contributions made during the term of the contract by the Business Entity on forms provided by the DEPARTMENT at the time it makes the contribution.

**E. STATE TREASURER REVIEW**

The State Treasurer or his designee shall review the Disclosures submitted by the Business Entity pursuant to these Special Provisions as well as any other pertinent information concerning the contributions or reports thereof prior to contract execution and on a continuing basis during the term of the contract. If the State Treasurer determines that any contribution or action of the Business Entity constitutes a breach of contract or conflict of interest pursuant to these special provisions or the terms EO134, the State Treasurer shall disqualify the business entity from entering into this contract or future contracts pursuant to the terms of EO 134.

**F. BREACH OF CONTRACT**

It shall be a breach of the terms of the contract for the Business Entity to (i) make or solicit a contribution in violation of EO 134, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;(v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself would subject that entity to the restrictions of EO 134; (vi) fund contributions made by third parties including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of EO 134; or (viii) directly or indirectly through or by any other person or means, do any action which would subject that entity to the restrictions of EO 134.

ARTICLE 57  
 WORK TO BE PERFORMED WITHIN UNITED STATES  
 (Effective 08-03-2005, for 100% State-funded Contracts)

Pursuant to P.L. 2005, c.92, 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  
 (effective 04-01-2008, revised 07-01-2008)

All Consultants and Sub-consultants **not classified** as “Exempt”: Consultants registered as an NJDOT Emerging Small Business Enterprise (less than \$6.5 Million in annual Gross Revenues), or State of New Jersey Small Business Enterprise Categories 1 & 2 (less than \$5 Million in annual Gross Revenues), **shall engage** a qualified auditor to conduct Overhead and Direct Cost Audits (O/D) for those prior years unaudited contract costs, if there is \$50,000.00 or more of NJDOT related Direct Labor in any one fiscal year on Cost Plus Fixed Fee contracts. A qualified auditor is defined as an independent CPA, an agency of the Federal government, and/or State Transportation Agency. 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 (GAGAS referred to as “Yellow Book” revised 2007) for financial and compliance audits.
- Code of Federal Regulations, Title 48, Federal Acquisition Regulations (FAR) Part 31.0, 31.1, 31.2.
- State of New Jersey Current Circular Letters regarding Travel Regulations and Automobile Mileage Reimbursement.
- Department Policy 336 for Travel Regulations.

All Consultants and Sub-Consultants **classified** as “Exempt”: Consultants registered as an NJDOT Emerging Small Business Enterprise (less than \$6.5 Million in annual Gross Revenues), or State of New Jersey Small Business Enterprise Categories 1 & 2 (less than \$5 Million in annual Gross Revenues), **will not** be required to engage a qualified independent CPA firm to conduct the necessary Overhead and Direct Cost audits for those prior years’ unaudited costs. Exempted 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. NJDOT-hired CPA firms may continue to audit companies that are classified as “Exempt”, or those Non-Exempt firms that have incurred less than \$50,000.00 in Direct Labor for any one fiscal year on a Cost Plus Fixed Fee contract, 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 may also continue to audit any contracted Utility and Rail firms.

The Department **will accept** an independent CPA firm’s **combined package** of the submitted Overhead, Direct Cost Audit and “Settle-Up Schedule” **at one time**, subject to a subsequent Quality Assurance Review.

Those “Exempt” Consultants, and those non-exempt Consultants with less than \$50,000.00 of Direct Labor in any one fiscal year, **that do not hire an independent CPA firm to prepare their Overhead Rate**, must submit their firm adjusted and prepared Overhead Rate for Bureau of Auditing review and acceptance **prior to submission** of the Direct Cost audit and “Settle-Up Schedule”. In addition, a **Compliance Certification Form must accompany** the overhead statement **certifying** that all required audit criteria were met.

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 “Settle-Up Schedule” (Exhibit A) detailing the basis for its final payment determinations and adjustments. A payment must be enclosed with the “Settle-Up Schedule” for amounts due to the Department, and a payment voucher submitted for amounts due to the Consultant.

**The Department requires submission of an O/D Audit within 9 months following the close of the Consultant’s fiscal year.** The Overhead rate will be effective the months following receipt by the Department.

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 the Department's requirements.

Oversight of Quality Assurance reviews conducted by the Department and hired CPA firms shall include evaluating the completed work program and corresponding supporting documentation. The Department's Bureau of Auditing (BOA) will retain final authority to approve or disapprove all Overhead Audit reports. BOA staff will then authorize its concurrence with the CPA firm's final determination as to the overall acceptability of the audit. 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 assure compliance with the 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:

- A. A Cognizant Agency performs or directs the work of a CPA who performs the indirect cost audit.
- B. 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.
- C. 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. The cost of Direct Cost Audits is eligible for reimbursement against the individual contracts being audited. In those instances where a direct cost audit engagement includes the audit of more than one consultant agreement, the CPA audit costs will be distributed amongst the audited agreements proportional to the total agreement expenditures to date. The Department will agree to modify consultant agreements to reflect the actual auditing cost allocable to each project.

ARTICLE 59  
CERTIFICATION OF FINAL INDIRECT COSTS  
(effective 01-01-2011)

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 Certification of Final Indirect Costs Form 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 Nonprocurement 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 a non-compliant status with NJDOT.

The Order is available on FHWA's Consultant Services web site at <http://www.fhwa.dot.gov/programadmin/consultant.cfm>.

**ARTICLE 59**  
**CERTIFICATION OF FINAL INDIRECT COSTS**

Firm Name: \_\_\_\_\_  
Indirect Cost Rate Proposal: \_\_\_\_\_  
Date of Proposal Preparation (mm/dd/yyyy): \_\_\_\_\_  
Fiscal Period Covered (mm/dd/yyyy to mm/dd/yyyy): \_\_\_\_\_

I, the undersigned, certify that I have reviewed the proposal to establish final indirect costs rates for the fiscal period as specified above and to the best of my knowledge and belief:

- 1.) All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principals of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), part 31.
  
- 2.) This proposal does not include any costs which are expressly unallowable under the cost principals of the FAR of 48 CFR 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.

I understand that this rate is: 1) subject to review and concurrence by the NJDOT Bureau of Auditing prior to application and use, 2) subject to further audit verification based on the risk assessment performed (a 'cognizant audit' would satisfy our needs and preclude any type of a risk assessment from having to be performed), and 3) any acceptance of this rate does not extend beyond contracts with the New Jersey Department of Transportation.

Signature: \_\_\_\_\_

Name of Certifying Official (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date of Certification (mm/dd/yyyy): \_\_\_\_\_