

**Request for Proposals (RFP) to
Develop a Guidance Document and Scope of Services for Municipal Land Use Plan and
Environmental Sustainability Master Plan Elements, Including a Municipal Climate
Change Related Hazard Vulnerability Assessment**

**RFP Issued: July 19, 2021
Question & Answer Cut-off Date: August 19, 2021.
Submittal Deadline: 5 p.m. September 20, 2021.**

I. Request for Proposals

The New Jersey Highlands Water Protection and Planning Council (Highlands Council) is soliciting proposals consisting of a Statement of Qualifications, Technical Proposal, and Rate Schedule & Budget from consultants with varied expertise in municipal land use and master planning, climate change, and climate change hazard vulnerability assessments. The Highlands Council seeks to develop a guidance document that will assist its municipalities in gaining full compliance with Section 19, subsections b(2) (f), (g) and (h) of the New Jersey Municipal Land Use Law (MLUL), P.L.1975, c.291 (C.40:55D-28). The subsections require that communities incorporate smart growth, storm resiliency, environmental sustainability, electric vehicle charging infrastructure planning, and climate change related hazard vulnerability assessments into the land use plan element of the municipal master plan.

II. Background

The Highlands Region is a physiographic area of northern New Jersey, comprised of 88 municipalities within parts of 7 counties. The Highlands contains a diverse landscape with both rural and densely developed areas. The geographic boundaries of the region are established in the Highlands Water Protection and Planning Act, see N.J.S.A. §§ 13:20-1 *et seq.* (Highlands Act), which also created the Highlands Council. The Highlands Act sets forth a number of goals that the Highlands Council is responsible for achieving. The overarching goal is protection of the Region's natural resources, with an emphasis on protection of water.

The Highlands Act charged the Highlands Council with developing a master plan for the Region built on these water and resource protection goals, which the Council successfully completed and adopted in 2008, known as the Highlands Regional Master Plan (RMP). The Highlands Act also created the Highlands Protection Fund and authorized the Highlands Council to develop a grant program to provide municipalities with funding for the reasonable expenses incurred in revising local master plans, development regulations, or other regulations as needed to conform to the Highlands RMP. The Highlands Council's Plan Conformance Grant Program is used to fund municipal Plan Conformance activities for lands within the Preservation Area where conformance is mandatory, as well as in the Planning Area where conformance is voluntary.

Climate Resiliency

On October 29, 2019, Governor Murphy issued Executive Order 89 (EO-89) finding there is overwhelming consensus that increasing atmospheric greenhouse gases from human activities are causing the earth to warm and contributing to an increase in the frequency and intensity of severe weather. Among other actions, EO-89 authorizes the Chief Resilience Officer and the Interagency Council on Climate Change to call upon any State agency to supply it with information or

assistance necessary. Additionally, EO-89 orders the State Planning Commission to incorporate climate change considerations as a mandatory requirement of Plan Endorsement.

Environmental Justice

On April 20, 2018, Governor Murphy issued Executive Order No. 23 (EO-23), acknowledging that, “historically, New Jersey’s low-income communities and communities of color have been exposed to disproportionately high and unacceptably dangerous levels of air, water, and soil pollution, with the accompanying potential for increased health impacts” and that “these communities continue to be disproportionately affected by environmental degradation, health risks, housing challenges, and inadequate access to resources that affect their quality of life.” Recognizing this history and the continued need to address environmental justice, EO-23 emphasizes that residents of all communities should “receive fair and equitable treatment in decision-making that affects their environment, communities, homes, and health.”

EO-23 establishes that all branches of state government must incorporate environmental justice considerations into agency responsibilities, official actions, and standard practices. It directs the NJ Department of Environmental Protection (NJDEP) to develop guidance for all state agencies on how to accomplish this task, which the NJDEP released in October 2020 under the title, “Furthering the Promise: A Guidance Document for Advancing Environmental Justice Across State Government.”

On September 18, 2020, Governor Murphy also signed legislation (S232) requiring NJDEP to evaluate the environmental and public health impacts of certain facilities on overburdened communities in review of permit applications. Per the Office of Environmental Justice, this law made New Jersey “the first state in the nation to require mandatory permit denials if an environmental justice analysis determines a new facility will have a disproportionately negative impact on overburdened communities.”

Environmental Sustainability

In 2008, 2017, and 2021, legislative amendments to the MLUL added environmental sustainability, climate change and resiliency planning to the components of the municipal master plan. Specifically Sections 16 and 19, subsections b(2) (f), (g) and (h) of P.L.1975, c.291 (C.40:55D-28) now require municipalities to incorporate smart growth, storm resiliency, environmental sustainability, electric vehicle charging infrastructure planning, and climate change related hazard vulnerability assessments in various master plan elements.

Project Purpose: Goals & Intent

At present, limited guidance is available to municipalities to assist in development of effective master plan amendments that meet all of the above-listed requirements. It is the intent of this proposal, “the project” to address that need. The Highlands Council seeks a guidance document that municipalities may follow to address each of the required land use plan element components, including all background studies/assessments as necessary to produce a rational, responsive, and implementable “Land Use and Environmental Sustainability Master Plan Element(s)” for the community. Guidance material must be consistent with and developed in the context of the aforementioned legal/policy documents, which together provide the framework for this project: the MLUL, the RMP, EO-89, EO-23 and NJDEP’s “Furthering the Promise...”

Subject to availability and Highlands Council approval, all conforming Highlands municipalities will be eligible for grant funding to develop a Land Use and Environmental Sustainability Master Plan Element(s) in accordance with the proposed guidance document. Consistency with the referenced legal/policy framework is essential to ensuring that master plan elements are eligible for Highlands Council grant funding. To assist municipalities in submitting requests to the Highlands Council for such funding, the guidance document must also include a model “Scope of Work” (SOW). The model SOW should outline and briefly describe the tasks required to develop each component of the Land Use Plan and Environmental Sustainability Plan Elements, provide for task completion timelines, and include a section for the municipality’s proposed budget, with a break-down by task.

III. Scope of Services

The objective of the project is to develop a guidance document for use by Highlands municipalities in developing Land Use Plan and Environmental Sustainability Master Plan Elements, as described and consistent with the legal/policy framework enumerated above.

- **Context:** Establish understanding of project context and legal/policy framework based on MLUL provisions, Executive Orders 89 and 23, NJDEP’s EO-23 Guidance, the Highlands RMP, and Highlands Grant Program SOW requirements (samples to be provided) discussed above.
- **Research:** Conduct background research on Environmental Sustainability Element components; review existing plans and data.
 - Review guidance materials available through NJ State Planning Commission
 - Conduct a review of other states/regions for similar municipal master planning work.
 - Consider Hazard Assessment/Mitigation Plans developed by NJ Counties.
 - Assess need for and identify available data to support the development of the plan element.
- **Stakeholder Outreach:** Prepare and conduct a stakeholder outreach program to determine the scope and goals of an environmental sustainability plan element. Outreach should include at minimum, the NJDEP, Office of Planning Advocacy (OPA), Highlands municipalities and counties, and associated non-profit organizations.
- **Guidance Document:** Develop Land Use Plan and Environmental Sustainability Plan Element Guidance Document. This shall be a detailed guide on how to develop the plan and meet all legal/policy framework requirements. It shall include at minimum, the following:
 - Identification of data collection/background study requirements, specifically including use of existing materials such as Highlands Council Municipal Build-Out analyses (e.g., to identify ‘developable’ areas at high risk of climate change-related hazards)
 - Guide to development of vulnerability assessments
 - Guide to the development and implementation of a public input/outreach component
 - Guide to establishment of municipal goals

- Guide to development of environmental sustainability plans
- Template Document/Example. This should include a number of templates/examples for differing types of municipalities.
- Mapping Templates
- Data Sources
- Model SOW (scope of services) including proposed tasks, timelines, and budget (with break-down by task), for completion of the Land Use Plan and Environmental Sustainability Plan Element, including the climate change related hazard vulnerability assessment. The Model SOW is intended for municipal use in both seeking professional services to prepare the Element(s) and requesting Highlands Council Plan Conformance grant funding to cover the associated costs.

Deliverables:

The final Guidance Document, including the model SOW, mapping templates, and all other attachments, exhibits and addenda, and all supporting documentation utilized by Consultant in developing the Guidance Document, shall be the property of the Highlands Council and shall be provided in an electronic format acceptable to the Highlands Council. Final deliverables shall include:

- 1) Hard copy and digital version of Guidance Document in an editable format acceptable to the Highlands Council
- 2) Stakeholder Outreach Program
- 3) Presentation to Highlands Council and Plan Conformance Committee
- 4) Municipal workshop (or several depending upon scheduling/level of interest) to present Guidance Document (may be online)

Timeframe:

The Council anticipates that the timeframe to complete the project will be six (6) to nine (9) months. The Consultant shall prepare regular progress reports for Highlands Council review.

The Consultant’s ability to devote sufficient resources to these tasks in the expected timeframe should be reflected in its detailed schedule (see Section IV, B.2), although Consultants may propose alternative timeframes that achieve a reasonable completion of the Scope of Services in an expedited manner. The Highlands Council will consider the Consultant’s proposed timeframe in awarding the proposal.

IV. RFP Submittal Requirements

A. Proposals must include the following items:

1. Contact Information: Provide the name and address each of the Consultant members, name, telephone number, facsimile number, and electronic mail address of the individual(s) responsible for preparation of the proposal who may be contacted in the event of questions or notification, and the location of the office, if other than that shown above at which the services to be provided hereunder will be performed.

2. Understanding of the Scope of Services: A statement of the Consultant's understanding of the project described in the Scope of Services and the Highlands Council's needs and commitment that the Consultant is able to perform the Scope of Services within the required timeframe.
3. Technical Approach and Proposed Work Plan: A detailed description of the Consultant's approach for satisfactorily completing the Scope of Services set forth in Section III above, including any alternate suggestions for implementation. Include a detailed schedule that includes a description of all tasks and activities, significant milestones, and anticipated deliverables.
4. Statement of Qualifications: Provide the following:
 - a. Type of business (e.g. corporation, limited liability company, 501(c)(3));
 - b. Number of years in business and number of years providing relevant services;
 - c. Type of services provided;
 - d. Description of your firm's past experience that is most relevant to this project;
 - e. Detailed organizational chart; and
 - f. Explanation of the experience of each member of the Consultant team assigned to perform the Scope of Services, including experience on similar projects, key personnel qualifications, and relevant experience. Resumes of all qualified professionals who will be responsible for assisting with or completing assigned tasks shall be provided.
5. Work Examples: Provide at least three (3) examples of previous projects, work product, publications, and reports, demonstrating direct experience with the type of work outlined in the Scope of Services in Section III above. For each of these examples, provide the following information:
 - a. Name and address of client;
 - b. Year(s) during which work was performed;
 - c. Contract amount; and
 - d. Details of work performed.
6. Staffing Plan: Provide an organizational structure (flow chart), showing all personnel who will work on executing the Scope of Services, including the identity of any alternate personnel, sub-consultants, or sub-contractors the Consultant intends to utilize to perform the Scope of Services.
7. Staffing Matrix: Provide a staffing matrix that graphically depicts the key personnel identified in Paragraph IV.A.6 above, who worked on the example projects listed in Paragraph IV.A.5 above, and what his/her role was with respect to each example project. Also list the roles and responsibilities each of those personnel will have with respect to the proposed project outlined in the Scope of Services in Section III above.

Personnel	Role	Example Project	Example Project	Example Project
Jane A. Smith	Chief Planner	X		X
Joe A. Smith	Sustainability Professional		X	X
Jane A. Doe	Municipal Planner		X	

8. Sub-contractors: If applicable, submit a statement of the Consultant’s intent to sub-contract. If sub-contractors, sub-consultants, or any alternate personnel are to be utilized in the performance of the Scope of Services, list each sub-contractor, and identify responsibilities, tasks, schedule, and costs and provide resumes of key personnel. All sub-contractors must be approved by the Highlands Council prior to utilization of the sub-contractor. The Consultant is fully responsible for any sub-contractor.
 9. Statement of Availability: Provide an affirmative statement detailing the Consultant’s availability over the established timeframe and ability during that time to work interactively with Highlands Council staff (either on-line, or if circumstances of the current health emergency allow, at our offices in Chester, NJ).
 10. Litigation/Disciplinary Action: If any member of the Consultant, or any principal therein (in his or her official capacity with the Consultant), has been engaged in any litigation as a defendant involving a sum of \$100,000 or more and/or subject to any professional disciplinary action over the last three years, provide a description of the litigation and/or disciplinary action.
 11. References: Provide no less than three (3) references, including at least two (2) clients for whom services have been provided within the past three years regarding efforts similar to those outlined in the Scope of Services in Section III above. Provide the contact names, positions, and phone numbers for representatives of each entity listed as a reference. The Highlands Council reserves the right to contact references for information that may be used in the evaluation process.
 12. N.J. Business Registration Certificate. Pursuant to N.J.S.A. 52:32-44, the Consultant must provide proof of valid business registration with the Division of Revenue in the Department of Treasury.
 13. Acceptance of Contract Terms. A statement certifying that the Consultant has no existing or foreseen conflicts to perform the services requested by the Highlands Council as envisioned under the above Scope of Services and accepts the Council’s Contract Standard Terms and Conditions attached as Appendix D.
 14. Certifications/Disclosures. The Consultant must provide certification and disclosure documents in compliance with Public Law 2005, Chapter 51; Public Law 2005, Chapter 271; and Executive Order 129 (codified as P.L. 2005, c. 92). Certification forms relating to these provisions are attached hereto as Appendices A, B, and C respectively.
- B. Technical Proposals must include the following items:

1. A detailed approach for achieving satisfactory results regarding the Scope of Services of Section III above; and
 2. A detailed schedule and flow chart of tasks for completion of the Scope of Services.
- C. Cost Proposal, Rate Schedule & Budget: The Proposal must include in a separate sealed envelope (please mark as confidential):
1. A rate schedule that details fully loaded project hourly rates, which includes all overhead and profit that may be incurred in performing the project;
 2. An overall project budget and detailed fixed fee proposal broken out by task based on the Scope of Services;
 3. Note: All direct expenses shall be billed at cost.
- D. Submittal Requirements: Three (3) hard copies of the complete Proposal, including Statement of Qualifications, Technical Proposal, Rate Schedule & Budget, and all certifications must be received no later than **5:00 p.m. EST on September 20, 2021**. Proposals must be mailed or delivered to: New Jersey Highlands Council, 100 North Road (Route 513), Chester, New Jersey 07930, attention: Gabrielle Gallagher, Senior Counsel. The complete Proposal shall also be provided electronically via USB flash drive enclosed with the hard copies of the Proposal or by e-mail to Ms. Gabrielle Gallagher (gabrielle.gallagher@highlands.nj.gov). Late Proposals will not be considered.

V. Restrictions on Communications with Highlands Council Staff

Any questions regarding this RFP must be submitted in writing to Gabrielle Gallagher, Senior Counsel, NJ Highlands Council, 100 North Road, Chester, NJ 07930, or email to: gabrielle.gallagher@highlands.nj.gov. Note that all questions regarding this RFP must be submitted in writing no later than August 19, 2021. Respondents to this RFP are instructed not to communicate in any other manner than as set forth immediately above with any other representatives of the Highlands Council during the submission process, and not to communicate with any representatives of the Highlands Council during the selection process for this contract, unless such communication was initiated by a representative of the Highlands Council in connection with any request for clarification to a response. In the event that any Addenda or clarifying communication arises out of a question submitted by a respondent or Consultant, the said clarification and response or Addendum shall be issued to all respondents. Only the interpretations and/or corrections issued as a written Addendum to the RFP by a representative of the Highlands Council shall be binding. No other source is authorized to give information regarding any explanation or interpretation of the RFP.

VI. General Requirements and Information

- A. If submitted by a corporation (joint venture, associated consultants, etc.), the Proposal shall be signed by a corporate officer authorized to do so. If submitted by an individual, that individual shall sign the Proposal. If the Consultant is a general partnership, one or more of the partners shall sign. If a limited partnership, the managing partner(s) or general partner(s) shall sign.
- B. The Highlands Council reserves the right to require the submission of additional information regarding experience and qualifications as it may deem necessary and may consider any available evidence on the financial, technical, or other qualifications and abilities of the Consultant.

- C. This RFP does not commit the Highlands Council to award a contract to any respondent or Consultant or to pay any costs incurred in the preparation or mailing of the Proposal.
- D. The Highlands Council reserves the right to reject all Proposals, or abandon all or part of this Project, prior to award of any contracts, pursuant to N.J.S.A. 13:20-1 et seq. Proposals may be rejected for any or all of the following reasons:
 - Not responsive to this RFP;
 - Consultant is not authorized to do business in the State of New Jersey;
 - Failure to include any required information with the submittal; and/or,
 - Failure to disclose any existing or potential conflict of interest.
- E. The Highlands Council reserves the right to waive any and all irregularities and informalities in the Proposals and to request clarification of qualifications prior to qualifying a Consultant.
- F. The selected Consultant must provide certification and disclosure documents in compliance with Public Law 2005, Chapter 51; Public Law 2005, Chapter 271, and Executive Order 129 (codified as P.L. 2005, c. 92) prior to the award of any contract. Certification forms relating to these provisions are attached hereto as Appendices A, B, and C, respectively.
- G. Pursuant to N.J.S.A. 52:32-44, the selected Consultant must provide proof of valid business registration with the Division of Revenue in the Department of Treasury prior to the award of any contract.
- H. If awarded the contract, the selected Consultant shall be required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1.1 et seq. regarding affirmative action.
- I. After the receipt of proposals, the Highlands Council reserves the right to negotiate with any number of Consultants it chooses in its discretion prior to awarding a contract.
- J. Documents/information submitted in response to this RFP generally shall be available to the public except as permitted by the common law, and State law, including the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

VII. Consultant Selection Process

- A. Based upon the Proposals, taking into consideration staff's recommendation, and its own determination as to which proposal is most advantageous to the needs of the Highlands Council, the Council may issue a contract award. In selecting the most qualified Consultant for the services of this RFP, the Highlands Council will consider the following:
 1. The background, qualifications, skills, and experience of the Consultant and its staff;
 2. The Consultant's degree of expertise concerning the area at issue;
 3. The Consultant's proposed technical approach to the issues raised in the project description or specifications;
 4. The Consultant's capacity to meet the requirements of the project at issue within the timeframe established by the Highlands Council;
 5. The rate or price to be charged by the Consultant;

6. The Highlands Council's prior experiences with the Consultant;
 7. The Consultant's familiarity with the work, requirements, and systems of the Highlands Council;
 8. The Consultant's references;
 9. Interviews with prospective Consultants;
 10. Geographical location of the Consultant's offices; and
 11. Familiarity with all applicable State and federal laws and regulations.
- B. Upon selection of the qualified Consultant, the Highlands Council and the Consultant will execute a professional services contract, on a time and materials basis on a "total costs not to exceed" basis. The professional services contract will include the Highlands Council's Professional Services Contract Standard Terms and Conditions, which are attached hereto as Appendix D.

VIII. Term and Termination

- A. The initial term of the professional services contract shall be for a period of twelve (12) months from when it is formally entered into by the parties and may be extended upon agreement by both parties that the detailed Scope of Work requires additional time for effective completion.
- B. The Highlands Council may, at any time, terminate the professional services contract in whole or in part for the Highlands Council's convenience and without cause when the Highlands Council determines in its sole discretion that termination is in the public interest. Upon receipt of an order of termination for convenience, the Consultant shall not proceed with any item of work, unless specifically authorized to do so in writing. In such a case, unless mutually agreed to by the parties, the Consultant will not be entitled to payment for any services provided after the effective date of such termination.

If there are any questions regarding this Request for Proposals, please contact Ms. Gallagher in writing to NJ Highlands Council, 100 North Road, Chester, NJ 07930 or by e-mail at gabrielle.gallagher@highlands.nj.gov.

NEW JERSEY HIGHLANDS COUNCIL



Lisa J. Plevin
Executive Director
Dated: 7/16/2021

APPENDIX A

INFORMATION AND INSTRUCTIONS

For Completing the “Two-Year Vendor Certification and Disclosure of Political Contributions” Form

Background Information

On September 22, 2004, then-Governor James E. McGreevey issued E.O. 134, the purpose of which was to insulate the negotiation and award of State contracts from political contributions that posed a risk of improper influence, purchase of access or the appearance thereof. To this end, E.O. 134 prohibited State departments, agencies and authorities from entering into contracts exceeding \$17,500 with individuals or entities that made certain political contributions. E.O. 134 was superseded by Public Law 2005, c. 51, signed into law on March 22, 2005 (“Chapter 51”).

On September 24, 2008, Governor Jon S. Corzine issued E.O. 117 which is designed to enhance New Jersey’s efforts to protect the integrity of procurement decisions and increase the public’s confidence in government. The Executive Order builds upon the provisions of Chapter 51.

Two-Year Certification Process

Upon approval by the State Chapter 51 Review Unit, the Certification and Disclosure of Political Contributions form is valid for a two (2) year period. Thus, if a vendor receives approval on January 1, 2014, the certification expiration date would be December 31, 2015. Any change in the vendor’s ownership status and/or political contributions during the two-year period will require the submission of new Chapter 51/Executive Order 117 forms to the State Review Unit. **Please note that it is the vendor’s responsibility to file new forms with the State should these changes occur.**

State Agency Instructions: Prior to the awarding of a contract, the State Agency should first send an e-mail to CD134@treas.nj.gov to verify the certification status of the vendor. If the response is that the vendor is NOT within an approved two-year period, then forms must be obtained from the vendor and forwarded for review. If the response is that the vendor is within an approved two-year period, then the response so stating should be placed with the bid/contract documentation for the subject project.

Instructions for Completing the Form

NOTE: Please refer to pages 3 and 4 “USEFUL DEFINITIONS for the purposes of Chapter 51 and Executive Order 117” for guidance when completing the form.

Part 1: BUSINESS ENTITY INFORMATION

Business Name – Enter the full legal name of the vendor, including trade name if applicable.

Address, City, State, Zip and Phone Number -- Enter the vendor's street address, city, state, zip code and telephone number.

Vendor Email – Enter the vendor’s primary email address.

Vendor FEIN – Please enter the vendor’s Federal Employment Identification Number.

Business Type - Check the appropriate box that represents the vendor's type of business formation.

Listing of officers, shareholders, partners or members - Based on the box checked for the business type, provide the corresponding information. (A complete list must be provided.)

Part 2: DISCLOSURE OF CONTRIBUTIONS

Read the three types of political contributions that require disclosure and, if applicable, provide the recipient's information. The definition of "Business Entity/Vendor" and "Contribution" can be found on pages 3 and 4 of this form.

Name of Recipient - Enter the full legal name of the recipient.

Address of Recipient - Enter the recipient's street address.

Date of Contribution - Indicate the date the contribution was given.

Amount of Contribution - Enter the dollar amount of the contribution.

Type of Contribution - Select the type of contribution from the examples given.

Contributor's Name - Enter the full name of the contributor.

Relationship of the Contributor to the Vendor - Indicate the relationship of the contributor to the vendor. (e.g. officer or shareholder of the company, partner, member, parent company of the vendor, subsidiary of the vendor, etc.)

NOTE: If form is being completed electronically, click "Add a Contribution" to enter additional contributions. Otherwise, please attach additional pages as necessary.

Check the box under the recipient information if no reportable contributions have been solicited or made by the business entity. **This box must be checked if there are no contributions to report.**

Part 3: CERTIFICATION

Check Box A if the representative completing the Certification and Disclosure form is doing so on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity.

(No additional Certification and Disclosure forms are required if BOX A is checked.)

Check Box B if the representative completing the Certification and Disclosure form is doing so on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity with the exception of those individuals and/or entities that submit their own separate form. For example, the representative is not signing on behalf of the vice president of a corporation, but all others. The vice president completes a separate Certification and Disclosure form. **(Additional Certification and Disclosure forms are required from those individuals and/or entities that the representative is not signing on behalf of and are included with the business entity's submittal.)**

Check Box C if the representative completing the Certification and Disclosure form is doing so on behalf of the business entity only. **(Additional Certification and Disclosure forms are required from all individuals and/or entities whose contributions are attributable to the business entity and must be included with the business entity submittal.)**

Check Box D when a sole proprietor is completing the Certification and Disclosure form or when an individual or entity whose contributions are attributable to the business entity is completing a separate Certification and Disclosure form.

Read the five statements of certification prior to signing.

The representative authorized to complete the Certification and Disclosure form must sign and print her/his name, title or position and enter the date.

Public Law 2005, Chapter 51 and Executive Order 117 (2008)

State Agency Procedure for Submitting Form(s)

The State Agency should submit the completed and signed Two-Year Vendor Certification and Disclosure forms either electronically to: cd134@treas.nj.gov or regular mail at: Chapter 51 Review Unit, P.O. Box 230, 33 West State Street, Trenton, NJ 08625-0230. Original forms should remain with the State Agency and copies should be sent to the Chapter 51 Review Unit.

Business Entity Procedure for Submitting Form(s)

The business entity should return this form to the contracting State Agency.

The business entity can submit the Certification and Disclosure form directly to the Chapter 51 Review Unit only when:

- The business entity is approaching its two-year certification expiration date and is seeking certification renewal;
- The business entity had a change in its ownership structure; OR
- The business entity made any contributions during the period in which its last two-year certification was in effect, or during the term of a contract with a State Agency.

Questions & Information

Questions regarding the interpretation or application of Public Law 2005, Chapter 51 (N.J.S.A. 19:44A-20.13) or E.O. 117 (2008) may be submitted electronically through the Division of Purchase and Property website at: <https://www.state.nj.us/treas/purchase/eo134questions.shtml>

Reference materials and forms are posted on the Political Contributions Compliance website at: <http://www.state.nj.us/treasury/purchase/execorder134.shtml>

USEFUL DEFINITIONS for the purposes of Chapter 51 and Executive Order 117

- **“Business Entity/Vendor”** 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. The definition also includes (i) if a business entity is a for-profit corporation, any officer of the corporation and any other person or business entity that owns or controls 10% or more of the stock of the corporation; (ii) if a business entity is a professional corporation, any shareholder or officer; (iii) if a business entity is a general partnership, limited partnership or limited liability partnership, any partner; (iv) if a business entity is a sole proprietorship, the proprietor; (v) if the business entity is any other form of entity organized under the laws of New Jersey or any other state or foreign jurisdiction, any principal, officer or partner thereof; (vi) any subsidiaries directly or indirectly controlled by the business entity; (vii) 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 (viii) with respect to an individual who is included within the definition of “business entity,” that individual’s civil union partner and any child residing with that person.¹
- **“Officer”** means a president, vice president with senior management responsibility, secretary, treasurer, chief executive officer or chief financial officer of a corporation or any person routinely performing such functions for a corporation. Please note that officers of non-profit entities are excluded from this definition.
- **“Partner”** means one of two or more natural persons or other entities, including a corporation, who or which are joint owners of and carry on a business for profit, and which business is organized under the laws of this State or any other state or foreign jurisdiction, as a general partnership, limited partnership, limited liability partnership, limited liability company, limited partnership association, or other such form of business organization.

¹Contributions made by a spouse, civil union partner or resident child to a candidate for whom the contributor is eligible to vote or to a political party committee within whose jurisdiction the contributor resides are permitted.

USEFUL DEFINITIONS for the purposes of Chapter 51 and Executive Order 117

- **“Contribution”** is a contribution, including an in-kind contribution, in excess of \$300.00 in the aggregate per election made to or received by a candidate committee, joint candidates committee, or political committee; or per calendar year made to or received by a political party committee, legislative leadership committee, or continuing political committee or a currency contribution in any amount.
- **“In-kind Contribution”** means a contribution of goods or services received by a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee, which contribution is paid for by a person or entity other than the recipient committee, but does not include services provided without compensation by an individual volunteering a part of or all of his or her time on behalf of a candidate or committee.
- **“Continuing Political Committee”** includes any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least \$4,300 to aid or promote the candidacy of an individual, or the candidacies of individuals, for elective public office, or the passage or defeat of a public questions, and which may be expected to make contributions toward such aid or promotion or passage or defeat during a subsequent election, provided that the group, corporation, partnership, association or other organization has been determined by the Commission to be a continuing political committee in accordance with N.J.S.A. 19:44A-8(b).
- **“Candidate Committee”** means a committee established by a candidate pursuant to N.J.S.A. 19:44A-9(a), for the purpose of receiving contributions and making expenditures.
- **“State Political Party Committee”** means a committee organized pursuant to N.J.S.A. 19:5-4.
- **“County Political Party Committee”** means a committee organized pursuant to N.J.S.A. 19:5-3.
- **“Municipal Political Party Committee”** means a committee organized pursuant to N.J.S.A. 19:5-2.
- **“Legislative Leadership Committee”** means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly, or the Minority Leader of the General Assembly pursuant to N.J.S.A. 19:44A-10.1 for the purpose of receiving contributions and making expenditures.
- **“Political Party Committee”** means:
 1. The State committee of a political party, as organized pursuant to N.J.S.A. 19:5-4;
 2. Any county committee of a political party, as organized pursuant to N.J.S.A. 19:5-3; or
 3. Any municipal committee of a political party, as organized pursuant to N.J.S.A. 19:5-2



State of New Jersey
Department of the Treasury

Division of Purchase and Property

Two-Year Chapter 51/Executive Order 117 Vendor Certification and
Disclosure of Political Contributions

FOR STATE AGENCY USE ONLY

Solicitation, RFP, or Contract No. _____ Award Amount _____

Description of Services _____

State Agency Name _____ Contact Person _____

Phone Number _____ Contact Email _____

Check if the Contract / Agreement is Being Funded Using FHWA Funds

Please check if requesting
recertification

Part 1: Business Entity Information

Full Legal Business Name _____
(Including trade name if applicable)

Address _____

City _____ State _____ Zip _____ Phone _____

Vendor Email _____ Vendor FEIN (SS# if sole proprietor/natural person) _____

**Check off the business type and list below the required information for the type of business selected.
MUST BE COMPLETED IN FULL**

- Corporation: LIST ALL OFFICERS and any 10% and greater shareholder
- Professional Corporation: LIST ALL OFFICERS and ALL SHAREHOLDERS
- Partnership: LIST ALL PARTNERS with any equity interest
- Limited Liability Company: LIST ALL MEMBERS with any equity interest
- Sole Proprietor

Note: "Officers" means President, Vice President with senior management responsibility, Secretary, Treasurer, Chief Executive Officer or Chief Financial Officer of a corporation, or any person routinely performing such functions for a corporation.

All Officers of a Corporation or PC

**10% and greater shareholders of a corporation
or all shareholder of a PC**

All Equity partners of a Partnership

All Equity members of a LLC

If you need additional space for listing of Officers, Shareholders, Partners or Members, please attach separate page.

IMPORTANT NOTE: You must review the definition of "contribution" and "business entity" on the Information and Instructions form prior to completing Part 2 and Part 3. The Information and Instructions form is available at: <http://www.state.nj.us/treasury/purchase/forms.shtml#eo134>

Part 2: Disclosure of Contributions by the business entity or any person or entity whose contributions are attributable to the business entity.

1. Report below all contributions solicited or made during the 4 years immediately preceding the commencement of negotiations or submission of a proposal to any:

Political organization organized under Section 527 of the Internal Revenue Code and which also meets the definition of a continuing political committee as defined in N.J.S.A. (See Information and Instructions form.)

2. Report below all contributions solicited or made during the 5 ½ years immediately preceding the commencement of negotiations or submission of a proposal to any:

Candidate Committee for or Election Fund of any Gubernatorial or Lieutenant Gubernatorial candidate
State Political Party Committee
County Political Party Committee

3. Report below all contributions solicited or made during the 18 months immediately preceding the commencement of negotiations or submission of a proposal to any:

Municipal Political Party Committee
Legislative Leadership Committee

Full Legal Name of Recipient _____
Address of Recipient _____
Date of Contribution _____ Amount of Contribution _____
Type of Contribution (i.e. currency, check, loan, in-kind) _____
Contributor Name _____
Relationship of Contributor to the Vendor _____
If this form is not being completed electronically, please attach additional contributions on separate page. Click the "Add a Contribution" tab to enter additional contributions.
<input type="button" value="Remove Contribution"/>
<input type="button" value="Add a Contribution"/>

Check this box only if no political contributions have been solicited or made by the business entity or any person or entity whose contributions are attributable to the business entity.

Part 3: Certification

- (A) I am certifying on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity as listed on Page 1 under **Part 1: Vendor Information**.
- (B) I am certifying on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity as listed on Page 1 under **Part 1: Vendor Information**, except for the individuals and/or entities who are submitting separate Certification and Disclosure forms which are included with this submittal.
- (C) I am certifying on behalf of the business entity only; any remaining persons or entities whose contributions are attributable to the business entity (as listed on Page 1) have completed separate Certification and Disclosure forms which are included with this submittal.
- (D) I am certifying as an individual or entity whose contributions are attributable to the business entity.

I hereby certify as follows:

1. I have read the Information and Instructions accompanying this form prior to completing the certification on behalf of the business entity.
2. All reportable contributions made by or attributable to the business entity have been listed above.

3. The business entity has not knowingly solicited or made any contribution of money, pledge of contribution, including in-kind contributions, that would bar the award of a contract to the business entity unless otherwise disclosed above:

- a) Within the 18 months immediately preceding the commencement of negotiations or submission of a proposal for the contract or agreement to:
 - (i) A candidate committee or election fund of any candidate for the public office of Governor or Lieutenant Governor or to a campaign committee or election fund of holder of public office of Governor or Lieutenant Governor; OR
 - (ii) Any State, County or Municipal political party committee; OR
 - (iii) Any Legislative Leadership committee.
- b) During the term of office of the current Governor or Lieutenant Governor to:
 - (i) A candidate committee or election fund of a holder of the public office of Governor or Lieutenant Governor; OR
 - (ii) Any State or County political party committee of the political party that nominated the sitting Governor or Lieutenant Governor in the last gubernatorial election.
- c) Within the 18 months immediately preceding the last day of the sitting Governor or Lieutenant Governor's first term of office to:
 - (i) A candidate committee or election fund of the incumbent Governor or Lieutenant Governor; OR
 - (ii) Any State or County political party committee of the political party that nominated the sitting Governor or Lieutenant Governor in the last gubernatorial election.

4. During the term of the contract/agreement the business entity has a continuing responsibility to report, by submitting a new Certification and Disclosure form, any contribution it solicits or makes to:

- (a) Any candidate committee or election fund of any candidate or holder of the public office of Governor or Lieutenant Governor; OR
- (b) Any State, County or Municipal political party committee; OR
- (c) Any Legislative Leadership committee.

The business entity further acknowledges that contributions solicited or made during the term of the contract/agreement may be determined to be a material breach of the contract/agreement.

5. During the two-year certification period the business entity will report any changes in its ownership structure (including the appointment of an officer within a corporation) by submitting a new Certification and Disclosure form indicating the new owner(s) and reporting said owner(s) contributions.

I certify that the foregoing statements in Parts 1, 2 and 3 are true. I am aware that if any of the statements are willfully false, I may be subject to punishment.

Signed Name _____ Print Name _____

Title/Position _____ Date _____

Procedure for Submitting Form(s)

The contracting State Agency should submit this form to the Chapter 51 Review Unit when it has been required as part of a contracting process. The contracting State Agency should submit a copy of the completed and signed form(s), to the Chapter 51 Unit and retain the original for their records.

The business entity should return this form to the contracting State Agency. The business entity can submit this form directly to the Chapter 51 Review Unit only when it -

- Is approaching its two-year certification expiration date and wishes to renew certification;
- Had a change in its ownership structure; OR
- Made any contributions during the period in which its last two-year certification was in effect, or during the term of a contract with a State Agency.

Forms should be submitted either electronically to: cd134@treas.nj.gov , or regular mail at: Chapter 51 Review Unit, P.O. Box 230, 33 West State Street, Trenton, NJ 08625.

APPENDIX B



**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY**

**33 WEST STATE STREET, P.O. BOX 0230
TRENTON, NEW JERSEY 08625-0230**

**VENDOR/BIDDER CERTIFICATION AND POLITICAL CONTRIBUTION DISCLOSURE FORM
PUBLIC LAW 2005, CHAPTER 271**

CONTRACT #: _____ **VENDOR/BIDDER:** _____

At least ten (10) days prior to entering into the above-referenced Contract, the Vendor/Bidder must complete this Certification and Political Contribution Disclosure Form in accordance with the directions below and submit it to the State contact for the referenced Contract.

NOTE that the disclosure requirements under Public Law 2005, Chapter 271 are separate and different from the disclosure requirements under Public Law 2005, Chapter 51 (formerly Executive Order 134). Although no Vendor/Bidder will be precluded from entering into a contract by any information submitted on this form, a Vendor's/Bidder's failure to fully, accurately and truthfully complete this form and submit it to the appropriate State agency may result in the imposition of fines by the New Jersey Election Law Enforcement Commission.

DISCLOSURE

The following is the required Vendor/Bidder Disclosure of all Reportable Contributions made in the twelve (12) months prior to and including the date of signing of this Certification and Disclosure to: (i) any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or (ii) any entity that is also defined as a "continuing political committee" under N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.

The Vendor/Bidder is required to disclose Reportable Contributions by: the Vendor/Bidder itself; all persons or other business entities owning or controlling more than 10% of the profits of the Vendor/Bidder or more than 10% of the stock of the Vendor/Bidder, if the Vendor/Bidder is a corporation for profit; a spouse or child living with a natural person that is a Vendor/Bidder; all of the principals, partners, officers or directors of the Vendor/Contractor and all of their spouses; any subsidiaries directly or indirectly controlled by the Vendor/Bidder; and any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the Vendor/Bidder, other than a candidate committee, election fund, or political party committee.

"Reportable Contributions" are those contributions that are required to be reported by the recipient under the "New Jersey Campaign Contributions and Expenditures Reporting Act," P.L. 1973, c.83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-10.1 et seq. As of January 1, 2005, contributions in excess of \$300 during a reporting period are deemed "reportable."

Name and Address of Committee to which a Reportable Contribution was made	Date of Reportable Contribution	Amount of Reportable Contribution	Contributor's Name
<i>Indicate "NONE" if no Reportable Contribution was made.</i>			
		\$	
		\$	
		\$	
		\$	

Attach additional sheets if necessary

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor/Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of **my** agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

Signature

Date

Print Name and Title

APPENDIX C



**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY**

**33 WEST STATE STREET, P.O. BOX 230
TRENTON, NEW JERSEY 08625-0230**

SOURCE DISCLOSURE FORM

BID SOLICITATION #: _____ **VENDOR {BIDDER}:** _____

The Vendor {Bidder} submits this form in response to a Bid Solicitation issued by the State of New Jersey, Department of the Treasury, Division of Purchase and Property, in accordance with the requirements of N.J.S.A. 52:34-13.2.

PART 1

All services will be performed by the Contractor and Subcontractors in the United States. Skip Part 2.

Services will be performed by the Contractor and/or Subcontractors outside of the United States. **Complete Part 2.**

PART 2

Where services will be performed outside of the United States, please list every country where services will be performed by the Contractor and all Subcontractors. If any of the services cannot be performed within the United States, the Contractor shall state, with specificity, the reasons why the services cannot be performed in the United States. The Director of the Division of Purchase and Property will review this justification and if deemed sufficient, the Director may seek the Treasurer’s approval.

Name of Contractor / Sub-contractor	Performance Country	Location by	Description of Service(s) to be Performed Outside of the U.S.	Reason Why the Service(s) Cannot be Performed in the U.S.

Any changes to the information set forth in this form during the term of any Contract awarded under the referenced Bid Solicitation or extension thereof will be immediately reported by the Contractor to the Director of the Division of Purchase and Property.

If during the term of the Contract the Contractor shifts the location of services outside the United States, without a prior written determination by the Director, the Contractor shall be deemed in breach of Contract, and the Contract will be subject to termination for cause pursuant to the State of New Jersey Standard Terms and Conditions.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor {Bidder}, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor {Bidder} is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification to be void and unenforceable.

Signature

Date

Print Name and Title



**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY**

**33 WEST STATE STREET, P.O. BOX 230
TRENTON, NEW JERSEY 08625-0230**

OWNERSHIP DISCLOSURE FORM

BID SOLICITATION #: _____ **VENDOR {BIDDER}:** _____

PART 1

PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR THE "NO" BOX. ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO COMPLETE THIS FORM PURSUANT TO N.J.S.A. 52:25-24.2

PLEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FORM IS NOT REQUIRED.

- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. Are there any individuals, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor {Bidder}? | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>IF THE ANSWER TO QUESTION 1 IS "NO", PLEASE SIGN AND DATE THE FORM.
IF THE ANSWER TO QUESTION 1 IS "YES", PLEASE ANSWER QUESTIONS 2 – 4 BELOW.</p> | | |
| 2. Of those parties owning a 10% or greater interest in the Vendor {Bidder}, are any of those parties individuals? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Of those parties owning a 10% or greater interest in the Vendor {Bidder}, are any of those parties corporations, partnerships, or limited liability companies ? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. If your answer to Question 3 is "YES", are there any parties owning a 10% or greater interest in the corporation, partnership, or limited liability company referenced in Question 3? | <input type="checkbox"/> | <input type="checkbox"/> |

IF ANY OF THE ANSWERS TO QUESTIONS 2 - 4 ARE "YES", PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 2 BELOW.

PART 2

PLEASE PROVIDE FURTHER INFORMATION RELATED TO QUESTIONS 2 – 4 ANSWERED AS "YES".

If you answered "YES" for questions 2, 3, or 4, you must disclose identifying information related to the individuals, corporations, partnerships, and/or limited liability companies owning a 10% or greater interest in the Vendor {Bidder}. Further, if one or more of these entities is itself a corporation, partnership, or limited liability company, you must also disclose all parties that own a 10% or greater interest in that corporation, partnership, or limited liability company. This information is required by statute.

INDIVIDUALS

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

Attach Additional Sheets If Necessary.

PART 2 continued
PARTNERSHIPS/CORPORATIONS/LIMITED LIABILITY COMPANIES

ENTITY NAME	_____
PARTNER NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

ENTITY NAME	_____
PARTNER NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

ENTITY NAME	_____
PARTNER NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

ENTITY NAME	_____
PARTNER NAME	_____
ADDRESS 1	_____
ADDRESS 2	_____
CITY	_____ STATE _____ ZIP _____

Attach Additional Sheets If Necessary.

In the alternative, to comply with the ownership disclosure requirement, a Vendor {Bidder} with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor {Bidder}, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor {Bidder} is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

 Signature (Do not enter vendor ID as a signature)

 Date

 Print Name and Title

 FEIN/SSN

APPENDIX D

**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL
CONTRACT STANDARD TERMS AND CONDITIONS**

Revised as of June 13, 2014

The following “Standard Terms and Conditions” shall become part of any contract(s) awarded or order(s) placed as a result of the New Jersey Highlands Council’s Request for Proposals (RFP), of which this is a part, unless specifically and expressly modified by reference in the Council RFP, or in a writing executed by the Executive Director of the Council or the designee thereof.

I. DEFINITIONS

As used in these Standard Terms and Conditions the following terms shall have the definitions set forth in this paragraph. These definitions shall also apply to the entire contract unless otherwise defined therein.

“Contract” means a mutually binding legal relationship obligating the Respondent to furnish services and the Council to pay for them, subject to appropriation where the Council derives its annual budget by means of appropriation from the State Legislature. The Contract shall consist of these Standard Terms and Conditions, the Council Request, the proposal submitted by the Contractor, the subsequent written document memorializing the agreement (if any), any amendments or modifications and any attachments, addenda or other supporting documents of the foregoing. In the event of a conflict between these documents, the following documents shall control in order of precedence from the most controlling to least: subsequent written document, if any, memorializing the agreement between the parties; Professional Services Contract Standard Terms and Conditions; Council Request; and Firm proposal.

The Contract and/or its terms cannot be modified or amended by conduct or by course of dealings. Thus, the “contract” does not include the aforementioned actions and such actions, or reliance thereon, afford no rights whatsoever to any party to the Contract.

“Contractor” or “Respondent” means the person or entity which submits a proposal in response to the Council Request (or RFP) and to whom (or which) the Contract is awarded.

“Council” means the New Jersey Highlands Water Protection and Planning Council.

“Council Request” or “RFP” means a request made by the Council for offers or proposals to provide the sought after services as specified herein.

“Designee” means the representative of the Executive Director, duly authorized by same to conduct specific activities and who also has the power to legally bind the Executive Director within the scope of the Contract. Actions taken by an unauthorized designee or which are beyond the scope of the designee’s authorization or beyond the scope of the Contract are ultra vires and have no legal or equitable effect.

“Executive Director” means the Executive Director of the New Jersey Highlands Water Protection and Planning Council or the Designee thereof.

“Project” means the initiative, enterprise, undertaking or services for which the Contractor was contracted, and which is detailed in the Request for Proposal of which this is a part.

“Shall” denotes a mandatory condition.

“State” means the State of New Jersey and its agencies.

II. APPLICABILITY AND INCORPORATION OF STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions will apply to all services contracts made by the Council. These Standard Terms and Conditions are automatically incorporated into the Contract unless the Contractor is

specifically instructed otherwise in the Council Request or in any amendment thereto. These Standard Terms and Conditions are in addition to the terms and conditions set forth in the Council Request and should be read in conjunction with same unless the Council Request specifically indicates otherwise.

III. **CONTRACTOR'S STATUS AND RESPONSIBILITIES**

- A. **CONTRACTOR'S STATUS:** The Contractor's status shall be that of an independent contractor and not that of an employee of the State.
- B. **CONTRACTOR'S CERTIFICATION AS TO ITS REPRESENTATIONS:** The Contractor certifies that all representations made by it in its proposal or other related and/or supporting materials are true, subject to penalty of law. Further, the Contractor agrees that its violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract may be cause for termination of the contract award. In addition, the Contractor's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract shall serve as a legal bar to the Contractor's enforcement of its rights under the Contract, including any and all claims at law or equity.
- C. **CONTRACTOR'S PERFORMANCE:** For professional services contracts, the Contractor, and any subcontractors engaged by Contractor, agree to perform all services in a manner consistent with that level of care and skill ordinarily exercised by other experienced professional consultants under similar circumstances, and in the geographic area(s) in which the services are to be performed, at the time of the provision of the services. For contracts for work other than professional services, the Contractor, and any subcontractors engaged by Contractor, agree to perform all services and work in a good, skillful and timely manner. To perform its services and/or work, the Contractor shall employ or engage the services of qualified persons and/or entities at its own expense except as otherwise specified in the Contract. The Contractor has an affirmative obligation to promptly notify, in writing, the Council of any changes in circumstances which might affect the Contractor's ability to be awarded or to timely perform its obligations under the Contract.
- D. **RESPONSIBILITIES OF CONTRACTOR:**
- (1) The Contractor is responsible for the quality, technical accuracy and timely completion and delivery of all deliverables and other services to be furnished by the Contractor and/or subcontractors and/or consultants under the Contract. If circumstances beyond the control of the Contractor result in a late delivery, it is the responsibility and obligation of the Contractor to make the details known immediately to the Council.
 - (2) The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services and deliverables furnished under the Contract. The approval of interim deliverables furnished under the Contract shall not in any way relieve the Contractor of fulfilling all of its obligations under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the State or the Council, of any rights under the Contract or of any cause of action arising out of the Contractor's performance of the Contract.
 - (3) The acceptance of, approval of or payment for any of the services performed by the Contractor under the Contract shall not constitute a release or waiver of any claim the State or the Council, has or may have for latent defects or errors or other breaches of warranty or negligence.
 - (4) Should the Contractor hire, employ or otherwise engage subcontractors, the Contractor shall be considered the prime Contractor and the sole point of contact with regard to contractual matters. The Contractor assumes sole and full

responsibility for the complete performance contemplated by the Contract including the performance of all subcontractors.

- (5) When the Contractor intends to subcontract for any work under the Contract, the subcontractor must be approved by the Executive Director in writing. It is understood, however, that consent of the Executive Director for the subcontracting of any work under the Contract in no way relieves the Contractor from its full obligations under the Contract. In addition, the Contractor must notify and receive the approval of the Council's Project Manager before hiring any subcontractor for the Contract work. The Contractor shall at all times give due attention to the fulfillment of the Contract and shall keep the work under its control. Consent to the subcontracting of any part of the work by the Executive Director in writing 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 subcontractor. The Contractor shall be responsible for all work performed by the subcontractor, which shall conform to the provisions of the Contract and all requirements of law. The failure of any subcontractor to adhere to the terms of the Contract or requirements of law may, in the Council's discretion, be cause for termination of the contract award.
- (6) All payments for services under the Contract will be made only to the Contractor. The Contractor assumes sole and full responsibility for any payments due to its subcontractors under the Contract.
- (7) Nothing herein or in the Contract shall be construed as creating a contractual relationship between any subcontractor and the State and/or the Council.
- (8) The Contractor's obligations under this clause are in addition to the Contractor's other expressed or implied assurances under the Contract or law and in no way diminish any other rights that the State or the Council may have against the Contractor.

E. **INVESTIGATION:** By submitting a proposal in response to the Council Request, the Respondent certifies and warrants that it has satisfied itself, from its own investigation, of the conditions to be met and that it fully understands its obligations and if awarded the Contract agrees that it will not make any claim for, or have right to, cancellation or relief from the Contract without penalty because of its misunderstanding or lack of information.

F. **PRICE FLUCTUATION DURING CONTRACT:** Unless otherwise set forth in writing by the Executive Director, all rates and costs quoted shall be firm and not be subject to increase during the duration of the Contract. However, in the event of a manufacturer's price or Contractor's rate or cost decrease during the Contract period, the State shall receive the full benefit of such reduction on any undelivered purchase order and on any subsequent order placed during the Contract period. The Executive Director must be notified in writing of any rate or cost reduction within five (5) days of the effective date. Failure to report and/or pass on reductions may result in the termination of the contract award for cause.

G. **COST LIABILITY:** Neither the Council nor the State assumes any responsibility or liability for costs incurred by the Respondent prior to the award of the Contract and thereafter only as specifically provided in the Contract.

H. **INDEMNITY/LIABILITY TO THIRD PARTIES:**

- (1) The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the State of New Jersey and the Council, and their employees from and against any and all claims, demands, suits, actions, recoveries, judgments and

costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this Contract.

- (2) The Contractor shall hold and save the State of New Jersey, the Council and its members, officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this Contract.
- (3) The Contractor further agrees that:
 - (a) any approval by the State or the Council of the work performed and/or reports, plans or specifications provided by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Contract;
 - (b) the State and the Council assume no obligation to indemnify or save harmless the Contractor, its agents, servants, employees or subcontractors for any claim which may arise out of its performance of the Contract; and
 - (c) the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the State or the Council from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.

I. **INSURANCE:** The Contractor shall procure and maintain at its own expense, until at least three (3) years after the completion of all work and/or services performed under the Contract, extensions and/or modifications thereto, liability insurance for damages imposed by law and assumed under the Contract, of the kinds and in the amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey, and with an A.M. Best rating of "A" or better. By submitting a proposal in response to the Council Request, the Contractor expressly agrees that any insurance protection required herein or by the Contract shall in no way limit the Contractor's obligations assumed in the Contract and shall not be construed to relieve the Contractor from liability in excess of such coverage nor shall it preclude the State from taking such other actions as are available to it under other provisions of the Contract or otherwise in law or equity.

- (1) The insurance to be provided by the Contractor shall be as follows:
 - (a) Commercial General Liability policy as broad as the standard coverage forms in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
 - (b) Automobile liability insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
 - (c) Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than \$1,000,000

BODILY INJURY, EACH OCCURRENCE; \$1,000,000 DISEASE EACH EMPLOYEE; \$1,000,000 DISEASE AGGREGATE LIMIT.

(d) Professional Liability Insurance: The Contractor shall carry Errors and Omissions/ Professional Liability Insurance in the amount of not less than \$5,000,000 per claim and in the aggregate and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new carrier an endorsement for retroactive coverage.

2) The Contractor shall, prior to commencement of the work required under the Contract, provide the Executive Director with a valid original Certificates of Insurance as evidence of the Contractor'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 shall provide for thirty (30) days written notice to the Executive Director prior to any cancellation, expiration or non-renewal of insurance during the term required in the Contract, extensions and/or modifications thereto. The Contractor shall further be required to provide the Executive Director with valid original certificates of renewal of the insurance upon the expiration of the policies. The Contractor shall also, upon request, promptly provide the Executive Director with copies of each policy required under these Standard Terms and Conditions and the Contract, certified by the agent or underwriter to be true copies of the policies provided to the Contractor. All certificates and copies of insurance policies shall be forwarded to the Council's address as listed herein.

In the event that the Contractor provides evidence of insurance in the form of certificates of insurance valid for a period of time less than the period during which the Contractor is required by the terms of these Standard Terms and Conditions and the Contract to maintain insurance, i.e. three (3) years after the expiration of the Contract, said certificates shall be acceptable, but the Contractor shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance from time to time, so that the Council is continuously in possession of evidence of the Contractor's insurance in accordance with the foregoing provisions.

In the event the Contractor fails or refuses to renew any of its insurance policies as necessary, or any policy is canceled, terminated or modified so that the insurance does not meet the requirements of these Standard Terms and Conditions or the Contract, the State and/or Council may refuse to make payment of any further amounts due under the Contract or refuse to make payments due or coming due under other agreements between the Contractor and the State. The State, in its sole discretion, may use funds retained under this paragraph to renew the Contractor's insurance for the periods and amounts referred to above. During any period when the required insurance is not in effect, the Executive Director may, at the Executive Director's option, recommend to the Council to either suspend work under the Contract or proceed to default the Contractor and thereby terminate the contract award.

J. **AVAILABILITY OF RECORDS:** The Contractor shall maintain and retain weekly payroll, overhead, cost and accounting records and all other records related to the services performed on the Project, including expenses pertaining to additional services required by the State on the Project. Such records shall be maintained and available for the State's and/or Council's inspection as to all aspects of the work, whether performed by the Contractor or any independent firms. These records shall be kept in accordance with generally accepted accounting principles and practices for a period of three (3) fiscal years after the expiration of the State's fiscal year in which the Contract expires or in which final payment is received by the Contractor under the

Contract, which ever occurs later. (The State's fiscal year is from July 1 through June 30). The Executive Director has the right to request, and Contractor agrees to furnish free of charge, all information and copies of all records which the Executive Director requests. The Contractor shall allow the Executive Director or his designee(s) to visit the office(s) of the Contractor periodically, upon reasonable notice, in order to review any document related to the Contract or to otherwise monitor work being performed by the Contractor pursuant to the Contract. Any failure by the Contractor to maintain or produce such records or to otherwise cooperate may be cause for termination of the Contract award and/or suspension or debarment of the Contractor from State contracts.

- K. **DATA CONFIDENTIALITY:** All information or data supplied by the State or the Council after the award of the Contract, any data gathered by the Contractor in fulfillment of the Contract, and any analysis thereof (whether in fulfillment of the Contract or not) are to be considered strictly confidential and shall be used only as set forth in the Confidentiality Agreement.
- L. **NO WAIVER OF WARRANTIES OR REMEDIES AT LAW OR EQUITY:** Nothing in the Contract shall be construed to be a waiver by the State or Council of any warranty, expressed or implied, except as specifically and expressly stated in a writing executed by the Council. Further, nothing in the Contract shall be construed to be a waiver by the State or Council of any remedy available to the State or Council under the Contract, at law or equity except as specifically and expressly stated in a writing executed by the Council.
- M. **OWNERSHIP OF MATERIAL:** All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the Contract, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this Contract shall be and remain the property of the State of New Jersey and shall be delivered to the State of New Jersey upon 30 days notice by the State. With respect to software computer programs and/or source codes developed for the State, the work shall be considered "work for hire", i.e. the State, not the contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of law, be a work made for hire in accordance with the terms of this Contract, Contractor or subcontractor hereby assigns to the State all right, title and interest in and to any copyright in perpetuity, and the State shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.
- N. **PUBLICITY:** Publicity and/or public announcements pertaining to the project or the contractual relationship between the parties shall be prohibited unless, and only to the extent approved by the Executive Director prior to release.

IV. **CONTRACTUAL RELATIONSHIP**

- A. **ASSIGNMENT:** The Contractor shall not assign or transfer its obligations or rights under the Contract without the prior written consent of the Council. Any assignment or transfer of the Contractor's rights under the Contract without the prior written consent of the Council shall not relieve the Contractor of any duty, obligation or liability assumed by it under the Contract and shall be cause for termination of the contract award.
- B. **MERGERS, ACQUISITIONS AND DISSOLUTION:**
 - (1) **Merger or Acquisition:** If, subsequent to the award of any contract resulting from the Council Request, the Contractor shall merge with or be acquired by another firm, for

purposes of this Contract only, the documents set forth below must be submitted to the Executive Director for approval within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in termination of the Contract award for cause. Any such merger or acquisition will require the assignment of the Contract pursuant to the provisions related thereto set forth herein.

- (a) Corporate resolutions prepared by the awarded Contractor and new entity ratifying acceptance of the Contract terms, conditions and prices, as may be amended.
- (b) State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to the provisions contained herein.
- (c) Vendor Federal Employer Identification Number.
- (d) Ownership Disclosure: Within thirty (30) days after any merger or acquisition, the Contractor must disclose the names and addresses of all of its owners and potential owners which hold or may acquire 10% or more of its stock or interest. The Contractor has the continuing obligation to notify the Council of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed. Compliance with this provision does not give rise to any rights to the Contract to the acquirer or resulting entity (in the case of a merger) without the written consent of the Council.

- (2) Dissolution: If, during the term of the Contract, the Contractor's partnership, joint venture or corporation shall dissolve, the Executive Director must be so notified. All responsible parties of the dissolved partnership or corporation must submit to the Executive Director, in writing, the names of the parties proposed to perform the contract and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved partnership, joint venture or corporation submit the required documents to the Executive Director. If the Contractor is (1) a corporation, it must provide a copy of the corporate resolution to dissolve; (2) a partnership, the written statement of the partnership, general partner, receiver or custodian thereof that the partnership has dissolved; and (3) a joint venture, the written agreement of the principal parties thereto to dissolve the joint venture.

- C. **NOTICE:** The Contractor shall promptly provide notice to the Executive Director of all information related to its merger, acquisition and/or dissolution.

V. **ADDITIONAL TERMS**

- A. **CONTRACT AMOUNT:** The estimated amount of the contract(s), when stated in the Council Request, shall not be construed as either the maximum or minimum amount which the State and/or the Council shall be obligated to order or expend as the result of the Council Request or any contract entered into as a result of the Council Request.

- B. **PERFORMANCE SECURITY:**

- (1) Performance Security: If performance security is required in the Council Request, the successful Firm shall furnish performance security in such amount on any award of the Contract or line item purchase. See N.J.A.C. 17:12-2.5. Acceptable forms of performance security are as follows:

- (a) an irrevocable security in the amount listed in the Council Request payable to the Treasurer, State of New Jersey, binding the Contractor to provide faithful performance of the Contract;
- (b) a properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey, as beneficiary issued by a federally insured financial institution; and
- (c) the amount of the performance security will be stated on the cover sheet to the Council Request. If the requirement for performance security is expressed as a percentage, security will be required only if the total amount of the Contract exceeds \$250,000.

The Performance Security must be submitted to the Executive Director within thirty (30) days of the effective date of the Contract award and cover the period of the Contract and any extensions thereof. Failure to submit performance security may result in termination of the Contract award for cause and nonpayment for work performed.

- C. **TIME PERIODS:** The Council may extend or shorten any time period specified in the Contract for good cause. Moreover, when, in the discretion of the Executive Director, non-performance by the Contractor may affect the health, safety or welfare of the State, the Executive Director may dispense with any time period specified Paragraph VII B herein.

VI. MANDATORY COMPLIANCE WITH LAW

The Contractor's compliance with the legal requirements set forth in this paragraph as well as any other applicable laws, regulations or codes is mandatory and cannot be waived by the State, the Council or the Executive Director. The list of laws, regulations and/or codes cited herein is not intended to be an exhaustive list and is available for review at the State Library, 185 W. State Street, Trenton, New Jersey 08625.

A. **BUSINESS REGISTRATION:**

- (1) All New Jersey and out of State corporations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue prior to conducting business in the State of New Jersey.
- (2) Proof of valid business registration with the Department of the Treasury, Division of Revenue shall be submitted by the Firm and, if applicable, by every subcontractor of the Firm, with the Firm's bid. No contract will be awarded without proof of business registration with the Division of Revenue. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG. can be filed online at www.state.nj.us/njbgs/services.html.
- (3) Before performing work under the Contract, all subcontractors of the Contractor must provide to the Contractor proof of New Jersey business registration. The Contractor shall forward the business registration documents on to the Council.

- B. **AFFIRMATIVE ACTION:** The Contractor shall not discriminate in employment and agree to abide by all antidiscrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, inclusive, N.J.S.A. 10:5-1, et seq., and N.J.S.A. 10:5-38 and all rules and regulations issued thereunder.

- C. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall abide by the provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq.
- D. **PREVAILING WAGE ACT:** The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq., is hereby made part of every contract entered into on behalf of the State of New Jersey through the Council, except those contracts which are not within the contemplation of the Act. The Firm's signature on its proposal is its guarantee that neither the Firm nor any subcontractors the Firm might employ to perform the work covered by its proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act.
- E. **OWNERSHIP DISCLOSURE:** Pursuant to N.J.S.A. 52:25-24.2, contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of the bid submission, the Firm disclosed the names and addresses of all of its owners holding 10% or more of the corporation or partnership's stock or interest during the term of the Contract. The Contractor has the continuing obligation to notify the Council of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.
- F. **FIRM'S WARRANTY:** By submitting a proposal in response to the Council Request, the Firm warrants and represents that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. The penalty for breach or violation of this provision may result in termination of the contract award without the State being liable for damages, costs and/or attorney fees or, in the Council's discretion, a deduction from the Contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.
- G. **MACBRIDE PRINCIPLES:** The Contractor shall comply with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:34-12.2.
- H. **P.L. 2004, C.57:** The Contractor and its subcontractors must comply with P.L. 2004, C.57, which requires the Contractor and its subcontractors to collect and remit applicable State use tax to the New Jersey Division of Taxation on the sale of all goods and services in the State of New Jersey subject to the provisions of the "Sales and Use Tax Act," P.L. 1966, C.30 (N.J.S.A. 54:32B-1 et seq.).
- I. **COMPLIANCE WITH N.J.S.A. 19:44A-20.13 et seq.** The Contractor is required to comply with the "pay to play" disclosure requirements set forth in the statutes. Compliance requires the Contractor to submit the Executive Order 134 Certification and Disclosure (DPP134-C & D). In addition, the Contractor is under a continuing duty to disclose during the time of the Contract all contributions made during the term of the Contract covered under the statute. Towards satisfying that duty, the contractor shall submit the Continuing Disclosure of Political Contributions (DPP134-CD) when required under the statute. Failure to comply with any of the requirements of the statute may result in the termination of the Contract. All forms and instructions are available on the New Jersey Treasury Department, Division of Purchase and Property web-site: <http://www.state.nj.us/treasury/purchase/forms.htm>.
- J. **COMPLIANCE WITH REQUIREMENTS OF NJSA 52:34-13.2:**
- (1) Subject to the exceptions below, N.J.S.A. 52:34-13.2 requires that all contracts that are "primarily for the performance of services" shall be performed within the United States. This provision applies to all contractors and sub-contractors performing such contracts

for the State. This Contract and Request for Proposal do not fall within any exception to the statute.

FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A CONTRACT TO THE FIRM.

- (3) BREACH OF CONTRACT: A SHIFT TO OUTSOURCED SERVICES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF THE CONTRACT.
- (4) If, during the term of the Contract, the Contractor or subcontractor, who had on Contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside of the United States, the Contractor shall be deemed in breach of the Contract, which Contract shall be subject to termination for cause pursuant to Section VII B (3) (c).

K. NOTICE TO ALL STATE VENDORS: SET-OFF FOR STATE TAX:

Please be advised that, pursuant to L. 1995. c.159, effective January 1, 1996 and codified at N.J.S.A. 59:49-19 and N.J.S.A. 59:49-20, 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 and services or construction projects, 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 that taxpayer's, partner's or shareholder's share of the payment of that indebtedness. The amount set-off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off.

The Division of Taxation may initiate procedures to set-off the tax debt of a specific vendor upon the expiration of ninety (90) days after either the issuance by the Division of a notice and demand for payment of any State tax owed by the taxpayer or the issuance by the Division of a final determination on any protest filed by the taxpayer against an assessment or final audit determination. A set-off reduces the contract payment due to a vendor by the amount of that vendor's State tax indebtedness or, in the case of a vendor-partnership or vendor-S corporation, by the amount of state tax indebtedness of any member-partner or shareholder of the partnership or S corporation respectively. *N.J.A.C. 18:2-8.3.*

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and shall provide an opportunity a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-18. No requests for conference, protest or subsequent appeal to the Tax Court from any protest permitted under N.J.S.A. 54:49-19 shall stay the collection of indebtedness. Interest that may be payable by the State to the taxpayer, pursuant to L. 1987, c.184 (N.J.S.A. 52:32-35) shall be stayed.

L. STANDARDS PROHIBITING CONFLICTS OF INTEREST: The following prohibitions on Contractor activities shall apply to all contracts and purchase agreements made with the State or Council:

- (1) No Contractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such Contractor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i of any such officer or employee, or partnership, firm or corporation with which they are employed or associated

or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

- (2) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the Contractor to the Attorney General and the Executive Commission on Ethical Standards.
- (3) No Contractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Contractor to, any State officer or employee or special State officer or employee or having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding the present or proposed relationship does not present the potential, actual or appearance, of a conflict of interest.
- (4) No Contractor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- (5) No Contractor shall cause or influence, or attempt to cause or influence, any State officer or employees or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- (6) The provisions cited in this paragraph shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with the Contractor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines in the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.

VII. **PROJECT SUSPENSION AND TERMINATION OF THE CONTRACT AWARD**

- A. **SUSPENSION OF PROJECT:** If, for any reason, the Project for which the Contractor's services were contracted should be suspended, the Council may suspend this contract upon seven (7) days written notice to the Contractor. Upon receipt of such notice, unless otherwise directed in writing by the Executive Director, the Contractor shall immediately discontinue all work under the Contract. Upon such notification, the Contractor shall be paid a proportion of the fee which the services actually and satisfactorily performed by it shall bear to the total services completed under the Contract, less payments previously made. The State may order that the work on the Project be stopped temporarily, and upon seven (7) days written notice from the Executive Director, the Contractor shall cease all work on the Project except as necessary to properly secure the Project. If the State directs that the work on the Project resume within six (6) months, the Contractor shall be obliged to complete the Project for the basic fee provided for in this Contract, plus additional compensation for any work necessitated by the stop order as approved by the Executive Director in writing.

However, in the event that services are scheduled to end either by Contract expiration or by termination of the contract award by the Council, it shall be incumbent upon the Contractor to continue the service if requested by the Executive Director to do so, until new services, if any,

are completely operational. At no time shall this transitional period extend more than ninety (90) days beyond the expiration or termination date of the existing Contract, except by agreement of the parties. The Contractor will be reimbursed for this service at the rate in effect when this transitional period clause is invoked by the Executive Director.

B. TERMINATION OF THE CONTRACT AWARD: The Council may terminate the contract award at any time during the duration of the Contract, without penalty, subject to the following provisions:

- (1) Change of Circumstances: Where circumstances change and/or the needs of the State or Council change, or the Contract is otherwise deemed by the Council to no longer be in the public interest, the Council may terminate the contract award upon no less than thirty (30) days notice to the Contractor. In the event of such a termination of the contract award, the Contractor shall furnish to the Council, free of charge, such close-out reports as may reasonably be required.
- (2) For Convenience: Notwithstanding any provision or language in this contract to the contrary, the Council may terminate at any time, in whole or in part, any contract entered into as a result of the Council Request for the convenience of the State, upon no less than 30 days written notice to the Contractor.
- (3) For Cause:
 - (a) Where a Contractor fails to perform or comply with the Contract and/or fails to comply with the complaints procedure set forth in N.J.A.C. 17:12-4.1, et seq., the Council may terminate the contract award upon ten (10) days notice to the Contractor with an opportunity to protest said termination and/or request an informal hearing. If the Contractor protests, the Council will complete the informal hearing, if necessary, and issue a final agency decision regarding termination of the Contract.
 - (b) Where a Contractor continues to perform a contract poorly as demonstrated by one or more formal complaints resolved against it, the Council may issue a Notice of Intent to Terminate the Contract Award with a ten (10) day opportunity for the Contractor to protest such termination and/or request an informal hearing. If the Contractor protests, the Council will complete the hearing, if necessary, and issue a final agency decision regarding termination and related issues including, but not limited to, damages payable to the State, subject to Paragraph VII B(5).
 - (c) The Council's right to terminate the contract award for cause includes any reason set forth in any other provision contained in the Contract.
 - (d) The failure of a Contractor to respond to the Council's notice of intent to terminate the contract award within the ten (10) day period automatically converts said notice into a final agency decision without further action of the Council.
 - (e) The Council's right to terminate the contract award for cause includes the Contractor's performance on any other State contract, a violation of state or federal law (as demonstrated by the Contractor's admissions of same or a final decision of an appropriate decision-making body), or any reason related to the ability of the Contractor to fulfill its contractual obligations. The Council may also terminate any contract with a federally debarred contractor or a contractor

which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.

- (4) In cases of emergency, the Council may shorten the time periods of notification and may dispense with an opportunity to respond.
- (5) Upon a termination of the Contract award under this or any other paragraph herein, the Contractor shall be entitled to receive as full compensation for services rendered to the date of termination that portion of the fee which the services actually and satisfactorily performed by it, as determined by the Executive Director, shall bear to the total services contemplated under this contract, less payments previously made.
- (6) Except for termination of the contract by the Council for convenience, upon termination of the contract award, the Council may acquire the services which are the subject of the Contract from another source and may charge the Contractor whose contract award has been terminated the difference in price, and the said Contractor shall be liable for same.
- (7) All protests of the Council's intent to terminate a contract award must be accompanied by a statement of the factual and/or legal basis of the protest and copies of all documents which the Contractor believes support its position.
- (8) If Council determines that an informal hearing is required, said informal hearing shall be conducted by the Council, prior to the issuance of the final agency decision regarding the interpretation of the Contract, Contractor performance and/or termination of the contract award.

VIII. CONTRACTOR COMPENSATION

- A. **INVOICING AND PROGRESS REPORTING:** The Contractor shall submit monthly invoices for work satisfactorily completed. Invoices must specify in detail the costs incurred, must be in strict accordance with the hourly rates and costs agreed to by the Council, and shall otherwise be in accordance with the terms of the Contract. The Contractor shall also submit any other supporting documentation necessary for the Council to determine that costs incurred during invoiced period have in fact been incurred.

In addition to monthly invoices, the Contractor shall submit a monthly Progress Report in the form attached hereto, which report shall set forth the Contract number; Contractor contact information; a detailed description of work conducted during the reporting period, including a list of tasks performed and percent completeness for each task based upon overall Scope of Work; percentage of Contract budget expended to date; and a list of critical issues or problems encountered during the reporting period.

- B. **PAYMENT TO CONTRACTOR:** Payment for services purchased by the Council will only be made upon the submission of monthly invoices along with adequate supporting documentation substantiating that the work has been satisfactorily completed as required in Section VIII A. Notwithstanding Section VIII C, payment will not be made until the Executive Director has approved payment.
- C. **NEW JERSEY PROMPT PAYMENT ACT:** The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32, et seq. requires State agencies to pay for goods and services within sixty (60) days of the Agency's receipt of a properly executed New Jersey Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever ever is later. Properly executed performance security, when required, must be received by the Council prior to processing any payments for goods and services accepted by the Council. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid unless it exceeds \$5.00 per properly

executed invoice. A good faith dispute creates an exception to the Prompt Payment Act. Except as noted above, cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

- D. **AVAILABILITY OF FUNDS:** The Council's obligation to make payment under the Contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Council for payment of any money shall arise unless and until funds are made available each fiscal year to the Council by the State Legislature.
- E. **RETAINAGE:** If retainage is required on the Contract, the State and/or Council will retain the stated percentage or retainage from each invoice. Payment of retainage will be authorized after satisfactory completion and submission of all services, deliverables or work products by the Contractor and acceptance by the Council of all services, deliverables or work products required by the Contract.

For ongoing term contracts, the Council will retain the stated percentage of each invoice submitted. At the end of the three (3) month period after payment of each invoice, the Council will review the Contractor's performance and if performance has been satisfactory, the Council will release the retainage for the preceding three (3) month period. Following the expiration of the Contract, retained fees will be released to the Contractor after certification by the Council's project manager, if any, that all services have been satisfactorily performed.

IX. **AMENDMENT OR MODIFICATION**

Any amendment or modification to this Contract must be made in writing and executed by both parties.

X. **NOTICES**

All notices required under this contract shall be in writing and shall be validly and sufficiently served by the Council upon the Contractor, and vice versa, if addressed and mailed by certified mail to the addresses set forth in the Contract.

For purposes of this Contract, all correspondence and documentation to the Council shall be sent to:

Kim Ball Kaiser, Esq.
Staff Attorney
New Jersey Highlands Council
100 North Road (Route 513)
Chester, New Jersey 07930

XI. **CLAIMS**

The following shall govern claims made by the Contractor against the State concerning interpretation of the Contract, Contractor performance and/or termination of the contract award: All claims asserted against the State and/or Council by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

XII. **APPLICABLE LAW**

This Contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and any violations arising out of this Contract shall be venued in the Superior Court of New Jersey or the District Court of New Jersey.

XIII. **SEVERABILITY**

If any term of this Contract is held by a court of competent jurisdiction to be invalid or unenforceable, then this Contract, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

XIV **DRAFTING PRESUMPTION**

The Contract shall be construed as if drafted by both parties and both parties waive all statutory and common law presumptions to the contrary.

XV. **HEADINGS**

Headings used in this Contract are provided for convenience only and shall not be used to construe meaning or intent.

XVI. **AUTHORIZATION TO BIND**

The person signing below represents that he or she is authorized to bind the entity listed below to the terms and conditions set forth above.

TERMS AND CONDITIONS OF THIS AGREEMENT ACCEPTED:

NAME: _____

TITLE: _____

COMPANY NAME: _____

DATE: _____