ADDITIONAL TERMS AND CONDITIONS OF AGREEMENT

BETWEEN

STATE AND CONSULTANT

This Agreement is made this \_\_ day of in the year Two Thousand \_\_\_\_\_\_\_\_\_\_\_\_, between the State of New Jersey, Department of Transportation, hereinafter "STATE" and

**name and address of consultant**

hereinafter "CONSULTANT";

For the following Project:

**Project Description**

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

1. This Agreement is comprised of both the Additional Terms and Conditions of Agreement between STATE and CONSULTANT ("Additional Terms and Conditions") contained herein and the Standard Terms and Conditions of Agreement Between STATE and CONSULTANT (Articles 1 through 60) ("Standard Terms and Conditions") dated **09/24/2024** which can be obtained from the Department’s website at:

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

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

1. The CONSULTANT shall provide professional services for the Project in accordance with the Standard Terms and Conditions and these Additional Terms and Conditions.
2. The CONSULTANT shall submit a Quality Management Plan to the Department in accordance with the “Quality Management Plan Procedure” for approval. Obtaining approval of a Quality Management Plan from the STATE is a pre-requisite of the CONSULTANT prior to execution of this AGREEMENT with the STATE.

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

1. The CONSULTANT warrants that all engineering services shall be performed or approved by an engineer licensed by the New Jersey Board of Professional Engineers and Land Surveyors to practice in the State of New Jersey.
2. If the CONSULTANT is required by the Professional Service Corporation Act (N.J.S.A. 14A:17‑1 et. seq.) to be authorized by the New Jersey Board of Professional Engineers and Land Surveyors to provide engineering and/or land surveying services, the CONSULTANT hereby warrants that it is currently so authorized and that it will retain its authorization by the New Jersey Board of Professional Engineers and Land Surveyors until completion of all work under this Agreement.
3. The CONSULTANT shall certify that neither it nor any of its affiliates has an existing or a potential conflict(s) of interest with the services to be provided under this CONTRACT and shall certify that to the extent that there is (are) any existing or potential conflict(s) of interest, the CONSULTANT will provide a complete disclosure of the existing or potential conflicts of interest on forms provided by the STATE. In addition the CONSULTANT shall warrant that it will immediately notify the STATE’s Coordinator if an existing or potential conflict of interest becomes known to the CONSULTANT after entering into the Agreement with the STATE.
4. To the extent that it is not inconsistent with the terms of this Agreement, the CONSULTANT's **Technical Proposal** of **date here and Cost Proposal** of **date here** is made a part of this Agreement as if set forth herein. Notwithstanding the above, however, all payment and compensation provisions of the proposal are superseded by the terms of this Agreement, whether or not there is conflict or inconsistency between such provisions and such terms.

II. COMPENSATION

This is a Cost Plus Fixed Fee Agreement.

The STATE shall compensate the CONSULTANT for allowable direct and indirect costs incurred, together with a Fixed Fee, up to a maximum Project amount of **$ total cost (prime and subs)** for satisfactorily performing the work. In addition to this limitation on total compensation, the limitations set forth below on specific categories of costs shall also apply. The CONSULTANT agrees that all funds are subject to appropriations and the availability of funds.

The STATE will make payment for properly prepared invoices if the Fixed Fee amounts for the CONSULTANT and Subconsultants are correct and the total costs are within the base agreement ceiling and the ceiling on any Extra Work modifications.  Invoices will not be rejected if cumulative costs exceed various line item cost ceilings such as direct salary, direct expenses, field overhead, or individual sub-consultant ceilings.  Any billings in excess of allowable fee will be reduced to the current allowable ceiling amount. Monthly invoices must detail actual costs versus budgeted for each of the contract line items. This Agreement does not create for the CONSULTANT the right to provide any services other than those specifically authorized in Part IV.A. The STATE reserves the right to perform any Extra Work services needed to complete the project with its own forces or to contract with other parties for performance of said services.

## Allowable Costs

1. Allowable direct costs are those costs incurred by the CONSULTANT solely for the Project work and services set forth in subparagraph 3(a) and (b) and in subparagraph 4(a) below and not identified as unallowable. Allowable indirect costs are those costs (i.e., payroll burden, general field overhead and administrative costs) of the CONSULTANT set forth in subparagraph 3(c) below which are not identified solely with one agreement, but are rather, company‑wide or attributable to more than one agreement of the CONSULTANT, and are not identified as unallowable. Costs incurred in preparing proposals for this Agreement and modifications, if any, shall be treated as allowable indirect costs.

1. Unallowable costs are those costs identified in the Agreement as unallowable or non-reimbursable; costs identified as unallowable or non-reimbursable by New Jersey Department of Transportation policies and practices pertinent to agreement compensation; and costs identified as unallowable or non-reimbursable in FAR (Federal Acquisition Regulations Subpart 31.2 ‑ Contracts with Commercial Organizations (48 C.F.R. 31.201 et. seq.).

If costs are identified as unallowable or non-reimbursable in any one of the categories specified in the previous sentence, they shall be considered unallowable costs.

3. The STATE shall reimburse the CONSULTANT upon receipt of properly prepared monthly invoices for those portions of its allowable direct labor and indirect costs incurred for Project work. The STATE shall reimburse the CONSULTANT for direct salary, direct salary premium and field overhead costs up to the following maximum allowable costs:

Direct Salary Costs: **$ salary cost**

Direct Salary Premium Cost: **$ salary premium cost**

Field Overhead Costs: **$ field overhead cost**

The STATE shall reimburse the CONSULTANT for the following allowable direct salary, direct salary premium, and field overhead costs:

1. Actual wages earned by partners and principals while performing technical work on the Project and actual wages paid to employees for work on the Project as authorized by the STATE. A certified salary schedule shall be attached to the agreement cost proposal and shall list all employees of the CONSULTANT and any subconsultants separately, who will perform technical functions on the project, stating their names, titles, ASCE or NICET grades, and hourly wage rates as of the selection date posted on the Professional Services website.
   * 1. The STATE will not make payment for the costs of services performed by any individual unless the STATE has authorized the individual to perform the service. The STATE will make payment for authorized individuals only at wage rates approved by the STATE’s Coordinator.
     2. The STATE will not reimburse the CONSULTANT for costs for wage rates in excess of the amount authorized by the STATE. If the agreement cost proposal provides for salary escalation, costs for salary escalation are intended solely to provide funding as a contingency in the budget for the Agreement, and it does not create the right to any salary escalation during the performance of the Agreement.
     3. With the agreement cost proposal, the CONSULTANT shall submit to the STATE the CONSULTANT’s salary review policy, detailing when individuals are scheduled for salary review. The CONSULTANT shall submit requests for salary adjustment of employees assigned to the agreement to the STATE’s Coordinator for approval.
     4. The STATE will approve salary increases for all ASCE and NICET grades up to 3% per annum.
     5. The CONSULTANT shall provide a current certified salary schedule with a cost proposal when a Consultant Agreement Modifications or Consultant Agreement Addenda is required. All of the provisions of 3.a.i – iv noted above shall apply to direct salary costs for Consultant Agreement Modifications and Consultant Agreement Addenda.
     6. If a change in personnel or a Consultant Agreement Modification results in a change in function of an individual working under the Agreement, the restrictions of 3.a.iv will not apply, and the CONSULTANT and the STATE’s Coordinator shall negotiate a salary rate for that function.
     7. The STATE may request special documentation of any wage rate or individual job function at any time it deems necessary for the duration of the Agreement
2. A premium of up to one‑half (1/2) of straight‑time hourly wage rates for overtime hours authorized by the STATE, when such overtime is, in fact, paid by the CONSULTANT.
3. An audited percentage of allowable direct salary costs incurred at the approved interim field overhead rate. For interim billing purposes, the STATE shall pay the CONSULTANT, known as **consultant name here, XXX**%, of allowable straight‑time hourly wage incurred. The final field overhead rates for each year will be determined by Audit and subject to adjustment, increase or decrease, based on actual cost.
4. If out-of-state travel is directed, actual wages paid to employees for travel time to fabrication facilities and return, except no reimbursement will be made for the first one-half hour of travel time in each direction.
5. The final field overhead rates for each year will be determined by Audit and subject to adjustment, increase or decrease, based on the actual cost. The audited percentage for allowable indirect costs will be the ratio of allowable payroll burden and general and administrative costs to the total allowable direct salary costs (excluding premium portion of overtime) of the CONSULTANT. This audited percentage will be developed on an annual basis using the CONSULTANT's fiscal year.

4. The STATE shall reimburse the CONSULTANT for the following allowable direct expenses:

1. Costs incurred for the following itemized expenses as authorized by the STATE which are directly chargeable to the Project, and not normally provided as part of field overhead, up to an amount not to exceed **$ direct expense cost**.
2. Travel reimbursement using CONSULTANT employee owned or leased vehicles at a mileage rate approved by the STATE. The rates approved by the STATE for “Use of non-consultant owned vehicles at a mileage rate approved by the State which will be at the actual company reimbursement rate allowed or at the mileage rate limitation noted in the current Federal Travel Regulation, whichever is lesser, exclusive of commutation. Rental of non-consultant owned vehicles must be at a rental rate approved by the State, exclusive of commutation." The Current Federal Travel Regulation mileage limitations are at <http://www.gsa.gov/mileage>.
3. For in-state travel, if the STATE assigns a CONSULTANT employee to an official station (e.g. to a project field office, project site or a STATE facility) travel reimbursement will not be made for commutation to or from the official station. If the STATE does not assign the CONSULTANT employee to an official station, and the STATE direct the CONSULTANT employee to travel to a temporary location (e.g. to materials plant facilities), travel reimbursement will include travel to the temporary location, except no reimbursement will be made for the first 16 miles in each direction.
4. For CONSULTANT employees who are not regularly assigned to the project (e.g. Project Manager, Scheduling Analysts), if they are required to attend project related meetings, travel reimbursement will include the lesser of actual distance traveled to the project site or the distance from the CONSULTANT’s office to the project site and return.
5. For travel to fabrication facilities outside the State, travel reimbursement will include travel to fabrication facilities and return.
6. If lodging out-of-state is required, travel reimbursement for commutation to the fabrication facility and return to the lodging location, except no reimbursement will be made for the first 16 miles in each direction.
7. If travel out-of-state is required for extended durations, travel reimbursement for a CONSULTANT employee’s trip home and return to the fabrication facility will be allowed once per month.
8. If travel out-of-state is required, costs for meals and lodging at rates approved by the STATE, not to exceed actual cost. Rates approved by the STATE will be consistent with the current Federal Travel Regulation Per Diem Rates available at <http://www.gsa.gov.>
9. Expendable materials and equipment rental, as approved by the STATE.
10. Vendor invoiced prints, reproductions, renderings, and acquisition of documents as approved by the STATE.
11. Costs for relocation expenses as allowable in FAR (Federal Acquisition Regulations, Subpart 31.205-35) for work assignment locations outside the State of New Jersey for preauthorized consultant personnel subject to the following restrictions:
    1. Amounts to be reimbursed shall not exceed the Employee’s actual expenses and shall not exceed a total amount of $12,000.00 for any individual Employee.
    2. If relocation costs for an employee have been allowed, and the employee resigns prior to the completion of the need employees services, the CONSULTANT shall refund or credit to the STATE all relocation costs paid for that employee.
12. If, during the duration of this Agreement, the CONSULTANT determines

that the costs to be incurred in any of the cost categories set forth in Part II.A.3.a - d or Part II.A.4.a will be less than the category limitations contained therein, the CONSULTANT may ask the STATE to transfer the excess monies to one of the other categories to cover the cost of additional work or anticipated overages within the scope of the Agreement or a previously executed extra work Consultant Agreement Modification. The CONSULTANT must provide the STATE with a complete written justification for the transfer and gain approval from the STATE before performing the proposed additional work or before incurring costs in excess of a category limitation.

## Fixed Fee

The STATE shall pay the CONSULTANT a Fixed Fee of up to **$ fixed fee cost** for performance of Project work in a satisfactory manner. The STATE shall pay as invoices are approved, a percentage of the Fixed Fee equal to the rate of **XX %** multiplied by the CONSULTANT’s direct salary cost expended during the period covered by the invoice. The total amount of Fixed Fee to be paid by the STATE will be based on the percentage of the total amount of allowable direct salary costs incurred.

## Additional Work, Decreased Work

1. If the STATE orders a change in the work which represents Additional Work or Decreased Work, adjustments to allowable direct and indirect costs resulting there from shall be made by Consultant Agreement Modification. The STATE shall pay the CONSULTANT for Additional Work costs in accordance with allowable costs incurred, as defined, and in the manner set forth, in paragraph A. above. Correspondingly, adjustments resulting from Decreased Work shall reduce the allowable direct and indirect costs consistent with the manner set forth in Paragraph A, above. Additional Work is defined as an increase in hours for services or for additional services to be provided in this Agreement or as provided for in a previous Extra Work Consultant Agreement Modification. Decreased Work is defined as decreased hours worked, or the elimination of services to be provided pursuant to this Agreement or as provided for in a previous Extra Work Consultant Agreement Modification. Additional Work and Decreased Work Consultant Agreement Modifications may raise or lower the limitations on total compensation and on specific categories of costs set forth in Paragraph A above, as well as make adjustments to such limitations as are contained in previous Consultant Agreement Modifications.

2. The STATE will provide for an additional or a reduced Fixed Fee as part of a Consultant Agreement Modification for additional work or decreased work for each phase of work as follows:

1. If the CONSULTANT’s direct salary cost is increased or decreased, the STATE will proportionately adjust the payment for Fixed Fee based on the increase or decrease of the CONSULTANT’s direct salary as provided in II.B.
2. If a Sub-consultant’s direct salary cost is increased or decreased, the STATE will proportionately adjust the payment for Fixed Fee based on the increase or decrease of the Sub-consultant’s direct salary.

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

## Extra Work

* + - 1. In addition to providing Construction Inspection services for this project, the STATE, at its sole discretion, may add the following projects by Extra Work Consultant Agreement Addenda consistent with the STATE’s advertised project solicitation:

**List Project Descriptions or state: No Extra Work**

* + - 1. If the STATE directs the performance of Extra Work, the costs thereof shall be provided for in the Consultant Agreement Addendum. The STATE shall pay the CONSULTANT for Extra Work costs in accordance with allowable costs incurred, as defined, and in a manner set forth, in Paragraph A and Paragraph B above. Costs for Extra Work shall be invoiced separately from the costs for the project and from other Extra Work.
      2. The CONSULTANT shall perform no Extra Work without having received prior written notice from the STATE authorizing such Extra Work.

## Payment of Subconsultants

* + - 1. All payments for work, Additional Work and Extra Work subcontracted by the CONSULTANT, if any, shall be made to the CONSULTANT upon properly submitted invoices. All work performed by subconsultants on the Project shall be treated as being performed by the CONSULTANT. The CONSULTANT shall remain responsible for satisfactory performance of all work.
      2. The reimbursement limitations set forth in Part II, paragraphs A. and B. above; do not include the compensation to be paid the CONSULTANT for work performed by subconsultants.
      3. If the CONSULTANT is paid on a fixed price basis for the work performed by a subconsultant, the fixed price set forth below shall be considered full compensation for all costs incurred by the CONSULTANT for work performed by that subconsultant. Payment of the fixed price shall be made on monthly invoices submitted by the CONSULTANT based upon the percentage of the subcontracted work completed, as shown in the CONSULTANT's monthly progress reports.
      4. The STATE shall reimburse the CONSULTANT for subcontract work as follows:

|  |  |
| --- | --- |
| Subconsultant | Cost Plus Fixed Fee |
| Sub 1 name here |  |
|  |  |
| Part II |  |
| Limitation on Total Compensation | **$ sub 1 total cost** |
|  |  |
| Part II, para. A.3. |  |
| Allowable Direct Salary Cost  Allowable Direct Salary Premium Cost  Allowable Field Overhead Costs | **$sub 1 direct salaries cost**  **$sub 1 direct salary premium cost**  **$sub 1 field overhead cost** |
| Interim Field Overhead Rate | **sub 1 field overhead Rate %** |
|  |  |
| Part II, para, A.4.a. |  |
| Allowable Direct Costs | **$sub 1 direct expense** |
|  |  |
| Part II, para. B. |  |
| Fixed Fee | **$ sub 1 fixed fee** |
| Fixed Fee Rate | **sub 1 rate %** |

## Payment of Overpayment

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

## Records

* + - 1. The CONSULTANT shall retain and make available all records, papers, documents, books and other supporting evidence pertaining to the costs incurred during the performance of work under this Agreement and during the preparation of proposals ("retained records") to satisfy Contract/Agreement negotiation, administration, audit and inspection requirements of the STATE during the Agreement period and for a minimum of five (5) years after final payment or termination of the Agreement. Additionally, all records involved with disputes, litigation or settlement of claims arising under or related to the Agreement shall be retained and made available until such disputes, litigation or claims are finally disposed of. No retained records or records involved with disputes, litigation or settlement of claims shall be destroyed by the CONSULTANT without the prior written approval of the STATE.
      2. FAR Subpart 4.7 ‑ Contractor Records Retention (Apr. 1984) (48 C.F.R. 4.700 et. seq.) and FAR 52.215‑1 (Apr. 1984) (48 C.F.R. 52.215‑1) are hereby made a part of this Agreement by reference as if set forth fully herein.

## Audit of Records

1. The CONSULTANT shall make available at its office at all times requested retained records and records involved with disputes, litigation or settlement of claims for examination, audit, and/or reproduction by the STATE without conditions of any type.
2. Audits shall be performed in accordance with Article 58 of the Standard Terms and Conditions.
3. The STATE may, at its option, perform audits throughout the retained records period and may, at its option re-audit all or parts of costs previously audited.
4. Final Payment

Upon conclusion of work, or as requested by the STATE’s Coordinator, the CONSULTANT shall provide the STATE’s Coordinator with written notice that all work required by the Agreement has been completed. The CONSULTANT shall submit a final invoice which shall include the following release clause: "In consideration of the requested final payment, the CONSULTANT hereby releases and gives up any and all claims the CONSULTANT may have, now or in the future, against the State of New Jersey, its officers and employees, arising out of any and all obligations assumed, and work performed under Agreement **XXXXXXXXX**, including claims for Extra or Additional Work." It is understood that this release does not waive the CONSULTANTS’s rights to recover underpayments determined by any audit performed subsequent to the submission of the release clause, but reimbursement is restricted by the requirement that all costs may not exceed the maximum Project amount noted in Part II. If this invoice is accepted by the STATE, the STATE will then make final payment to the CONSULTANT. It is expressly understood and agreed that this final payment shall not waive any rights of the STATE to adjust and collect overpayments disclosed by subsequent audits.

5. Repayment by Consultant.

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

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

## Subconsultants

The CONSULTANT shall require its subconsultants, if any, to comply with the provisions of paragraphs G and H above by placing equivalent provisions in subcontracts.

III. TIME

The STATE and CONSULTANT agree that:

A. Work under this Agreement shall begin within five (5) working days of the CONSULTANT's receipt of written notice from the STATE to proceed.

B. Additional Work or Extra Work shall begin within five (5) working days of receipt by the CONSULTANT of a copy of the executed Consultant Agreement Modification authorizing such Additional Work or Extra Work.

IV. STATEMENT OF CONSULTANT'S WORK AND SERVICES.

A. The CONSULTANT shall:

* + 1. Provide to the satisfaction of the STATE, construction engineering and inspection services. The CONSULTANT’s personnel named in the **Technical Proposal** of **date here and Cost Proposal** of **date** are considered essential to the services performed, and the CONSULTANT shall provide the named personnel within five days after being given a Notice to Proceed by the STATE’s Coordinator. Do not start any personnel without the expressed consent of the STATE’s Coordinator. The STATE will not reimburse the CONSULTANT for costs arising from unauthorized services.
    2. If for any reason the personnel named in the Technical Proposal, or otherwise approved to work under the Agreement by the STATE’s Coordinator, are not available, the CONSULTANT shall provide immediate notice to the STATE’s Coordinator. The CONSULTANT shall provide the STATE’s Coordinator with the name and resume of proposed substitute personnel for the STATE’s Coordinator’s review and approval. Additionally, the CONSULTANT shall provide documentation of qualifications of proposed substitute personnel as requested by the STATE’s Coordinator.
    3. If the STATE’s Coordinator requests additional personnel, provide resumes and proposed salaries of proposed personnel to the STATE’s Coordinator for approval prior to assignment to the project.
    4. Ensure that CONSULTANT personnel possess sufficient technical knowledge of construction to competently perform construction inspection for assigned work.
    5. Ensure that CONSULTANT personnel are familiar with the STATE’s organization, the STATE’s construction procedures and pertinent policies. Further, the CONSULTANT shall ensure that CONSULTANT personnel understand their responsibilities and the limits of their authority.
    6. Ensure that CONSULTANT personnel are familiar with the compliance requirements of the Construction Contract, including but not limited to plans, working drawings, Standard Specifications, and Special Provisions.
    7. Perform the following tasks:

1. Ensure and document that assigned work is in conformance with the construction contract documents or in the case where work is not in conformance with the construction contract documents, expeditiously notify the Resident Engineer of the details and extent of the nonconformance.
2. Inspect assigned work to ensure that the dimensions and locations of work and the Contractor’s means and methods of constructing the work are in conformance with the contract documents.
3. Maintain detailed records of all project related communications.
4. Prepare and maintain required records and reports and calculations in accordance with construction contract documents and the STATE’s Construction Procedures.
5. Take measurements and calculate quantities to make construction contract payment reports. Assist the Resident Engineer in generating monthly construction contract progress payments.
6. Inspect the contractor’s traffic interference and traffic safety and ensure implementation is compliant with the plans and specifications. Inspect the project site and the contractor’s construction operations for general safety hazards. Make recommendations to the Resident Engineer regarding safety improvements.
7. Ensure that the contractor’s traffic interference complies with the restrictions of the contract documents. Monitor the contractor’s progress; if it is evident that the contractor’s traffic interference will result in a delay to opening lanes to traffic, immediately notify the Resident Engineer.
8. Ensure the materials incorporated are from approved sources and have undergone materials inspection and testing, or when permitted by the STATE have been certified to be compliant with the Contract. The STATE will perform materials inspection and testing. If required, and as directed by the STATE, the consultant will provide the onsite materials inspection of concrete and/or the fabrication inspection for precast prestressed material.
9. Complete and submit, in accordance with the directions of the Resident Engineer (RE): daily and weekly reports; monthly and final estimates; as-built calculations; as-built plans detailing changes from the construction contract’s original plans. Collect pertinent information and documents, including photographs of various phases of construction.
10. Collect and review project submissions including correspondence, test reports, working drawings, purchase orders, material delivery tickets to document contract compliance.
11. Maintain a daily job diary in accordance with the STATE’s Construction Procedures. Diary entries shall include descriptions of work progress, specific problems encountered, project communications, corrective action taken, construction equipment, material deliveries, weather conditions, material shortages, tests, general observations, and all other information pertinent to the execution of the construction contract.
12. Monitor the contractor for compliance with all applicable local, state and federal laws, ordinances, rules, regulations or orders. Enforcement of such law, rules, ordinances, regulations, requirements, precautions, orders, and decrees shall remain with the appropriate Federal, State and local agencies or officials charged with this duty and responsibility.
13. In the event that interpretation of the meaning and intent of the plans and specifications become necessary during construction, consult with the Resident Engineer. All changes to the construction contract are reserved to the Resident Engineer.
14. Monitor the contractor’s compliance with: Equal Employment Opportunity Special Provisions; SBE/DBE/ESBE utilization requirements. Review all related program reports submitted by the contractor.
15. When the CONSULTANT is directed to provide a Primavera Schedule Analyst review preliminary and baseline construction contract progress schedules and progress schedule updates for schedule logic errors, compliance with the construction contract documents, and for compliance the STATE’s Construction Schedule Manual. The CONSULTANT shall provide to the STATE a report of its review and include pertinent commentary regarding the progress schedule.
16. Assist the Resident Engineer with coordinating construction inspection staff, answering correspondence, conducting meetings, communicating with the public, FHWA, and various units with the Department of Transportation.
    * 1. When the CONSULTANT provides the Resident Engineer, the CONSULTANT shall perform the following tasks:
17. Monitor the construction contract, perform inspections, and assign construction inspection staff to ensure construction operations are inspected and comply with requirements of the construction contract.
18. Make recommendations to the STATE regarding the need for construction inspection personnel, particularly to make recommendations of when reductions in staff are feasible. Coordinate staff to minimize the need for overtime by construction inspection staff.
19. Expeditiously work to resolve construction problems, perform engineering investigations related to changes or discrepancies, and answer contractor’s Requests for Information.
20. Monitor the adequacy of the contractor’s progress.
21. Evaluate, prepare, and recommend for approval, construction contract Change Orders. Negotiate prices for changes.
22. Review contractor claims and prepare step 1 claims responses. If a claim requires further review by the STATE, provide information and recommendations.
23. Prepare monthly construction contract progress payment estimates.
24. Maintain documentation of contractual liability claims. Make recommendations concerning engineering aspects of such claims to the STATE.
25. Provide the STATE with a letter, signed by a Consultant’s Engineer, licensed to practice in the STATE of New Jersey, certifying that the project was constructed in substantial conformance with the plans and specifications, except for those changes delineated in the letter.
26. Provide certification thereon of all original as-built plans, as-built calculations, maps, engineering data, final estimates and any other engineering data produced by the Consultant.
    * 1. All documents prepared by the CONSULTANT in accordance with the terms of this Agreement shall be delivered to and become the property of the STATE.
      2. Stop all work promptly, if so directed in writing by the STATE.
      3. At no cost to the STATE, give general advice regarding construction management of the construction project, make visits to the construction site, as required to correct all errors and omissions, and to discuss the conformity of the project construction with construction contract documents.
      4. This Agreement does not create for the CONSULTANT any exclusive right to provide engineering or inspection services on this project. The Consultant’s services shall be requested by the STATE when needed to supplement STATE construction inspection forces. The STATE, in its sole discretion, will determine how its projects will be staffed. The STATE reserves the right to have construction inspection services provided by its own forces or other consultants.

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

**Pick one**

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

**Goal at time of posting** percent SBE for 100% STATE funded contracts

The CONSULTANT hereby commits to make a good faith effort to achieve **(pick one)** an ESBE/DBE goal of **XXX %** (Federal funded project), **or** **XXX%** SBE goal (STATE funded project) under this Agreement.

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

V. The STATE's Coordinator for this Project, to whom the CONSULTANT shall address all correspondence, is:

**Name here**

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

**New Jersey Department of Transportation**

**Enter Regional Office Address**

**phone number**

**email**

The STATE'S Coordinator, address and telephone number may be changed by the STATE upon written notification to the CONSULTANT.

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

**Address here (must be a NJ address or legal representation in NJ)**

The CONSULTANT’s project representative is:

**Name here**

**Phone and email**

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

VII. CERTIFICATION OF CONSULTANT ELIGIBILITY

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

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

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

3. does not have a proposed debarment pending; and

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

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

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VIII. EXECUTION

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

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

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

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

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

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

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