

**STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION  
PO BOX 034  
TRENTON, NJ 08625-0034**

DATE: December 3, 2013

TO: Lammey & Giorgio, PA.  
Ronald A. Sebring Associates, LLC  
USA Architects & Planners  
LAN Associates, Inc.  
McAuliffe & Carroll Architects

FROM: Richard Flodmand, Deputy Director  
Division of Property Management & Construction

SUBJECT: **Addendum "A"**  
**J0298-00 thru J0302-00 ARCHITECTURAL DISCIPLINE**  
**DEMOLITION OF FOUR (4) PROPERTIES**  
**SAYREVILLE BOROUGH, MIDDLESEX COUNTY, NJ**

Enclosed is the above reference addendum. All competing firms shall acknowledge receipt by returning this form via email or fax to:

State of New Jersey  
Division of Property Management and Construction  
Contract Administration  
Attention: Richard Flodmand, Deputy Director  
PO BOX 034  
Trenton, NJ 08625-0034  
Fax # (609) 292-7651  
E-MAIL: [richard.flodmand@treas.state.nj.us](mailto:richard.flodmand@treas.state.nj.us)

\_\_\_\_\_  
Date Received

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

STATE OF NEW JERSEY  
DEPARTMENT OF TREASURY  
DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION  
P.O. BOX 034, TRENTON, NJ 08625-0034

PROJECT: J0298-00 thru J0302-00 ARCHITECTURAL DISCIPLINE  
DEMOLITION OF FOUR (4) PROPERTIES  
SAYREVILLE BOROUGH, MIDDLESEX COUNTY, NJ

DATE: DECEMBER 3, 2013

**ADDENDUM "A"**

This ADDENDUM is issued for the purpose of clarifying and amending certain requirements of the Scope of Work as noted hereinafter, and is hereby made part of and incorporated in the Consultant's Contract. The consultant is to consider these matters when preparing their technical and fee proposals for this project. Unless specifically noted or specified hereinafter, all work shall comply with the applicable provisions of the Contract.

**Responses to Consultant Questions (*Responses are in Italics*)**

**Questions submitted by Lammey & Giorgio:**

- 1) Should we include environmental analysis, remediation design & monitoring as an Allowance?

*Answer: Yes*

- 2) Can we assume that none of these properties are historic and therefore would not require any prior approvals from HPO?

*Answer: Yes. The Department of Environmental Protection (DEP) has reviewed each property and determined none are historic.*

- 3) Should we include the costs for a contractor to make the necessary disconnects for the electrical, water, sanitary & gas services in order for the utility companies to issue their disconnect letters?

*Answer: Yes, if this work is not going to be completed by the utility itself.*

- 4) Are any of the properties served by a well or septic system? Our concern is that if any of the properties have a well then proper closure and documentation is required. A permit will not be issued until the well is closed. From experience this will never happen in the allotted timeframe of 45 days.

*Answer: No. DEP has reviewed each property and determined none of these properties are served by wells or septic systems. They are all served by public sewer and water.*

- 5) With asbestos containing materials our subconsultant's experience has been that a permit cannot be issued until a certification (typically by the asbestos consultant) stating that asbestos has been removed and/or no asbestos was found. Essentially the A/E can apply

for the demolition permit but the permit will not be issued until the asbestos is removed by a licensed asbestos abatement contractor and a certification is issued by the consultant.

- i) N.J.A.C. 5:23-2.17 (e) Asbestos abatement: Before a structure can be demolished or removed, the owner or agent shall document that the requirements of USEPA 40 CFR 61 subpart M have been or shall be met. A permit to demolish or remove the structure shall not be issued until the owner or agent notifies the enforcing agency that all friable asbestos or asbestos-containing material that will become friable during demolition or removal has been or will be properly abated prior to demolition.

*Answer: This is standard practice for demolition projects.*

- 6) Will the State provide us with utility account numbers for each of the properties & assist in expediting disconnect letters? Our experience has been that securing the necessary disconnect letters from the utility companies will probably cause the 90 day design, permit, bidding & demolition schedule not to be met.

*Answer: No. Each property owner is expected to close all utility accounts and terminate service at or before the time legal title is conveyed to the State.*

#### **Questions submitted by USA Architects:**

- 1.) Will boundary and topographic surveys of each property be provided and if so, in AutoCAD format?

*Answer: Boundary and Topography surveys will not be provided. A copy of the property's legal description shall be provided.*

- 2.) Are there any records (Permits for closure) available on Underground Storage Tanks (UST's) or septic systems on any of these sites?

*Answer: DEP has researched the properties and there are no UST's or septic systems on these properties. The 28 Mac Arthur Avenue property (Block 168.05 Lot 3) previously had a UST but it was appropriately and legally removed in 2009, prior to the State's acquisition of the property.*

- 3.) Can we use an allowance for Ground Penetrating Radar surveys to locate buried structures (i.e. septic tanks, oil tanks, cesspools, etc.)?

*Answer: Yes. However, see 2 above.*

- 4.) Is it acceptable DPMC policy to demolish and cap underground utilities at the property line?

*Answer: Yes. Note that the concrete sidewalks and driveway aprons are to remain.*

- 5.) Will DPMC pay for regulatory agency permit fees or should they be estimated and included in an allowance?

*Answer: UUC permit fees shall be paid by DPMC. Any other required permits should be noted in your proposal and a corresponding allowance should be proposed.*

- 6.) Questions related to the Fee Form DPMC AC-1 (8/08)

- a) Please review the form submitted with the RFP. It seems the formatting has jumbled and the intent is no longer clear. For example there are blanks before and after the text on lines 1,2,3,& 4.

*Answer: The DPMC AC-01 form is reattached for use in both Word and PDF formats. Please call if there are additional problems with the form.*

- b) We understand that the Agency Consultant (USA Archts.) puts its fee in the box/chart at the top of the page and the hours and fee for each task are totaled in the lower right corner of the chart. However, is our Site/Civil Sub-Consultant's work expressed as a fee or as an Allowance? What about our Environmental Sub-Consultant? Since the quantity of Environmental work is unknown at this time, it only seems appropriate as an Allowance, correct?

*Answer: Site/Civil Sub-Consultant's should be identified on a separate line under "Task/Phase" of DPMC AC-01. Environmental Sub-Consultants should be included as an allowance. See "c" below.*

- c) Can we add lines for other Allowances as discussed in #3 & #5 above.

*Answer: Detail the proposed allowances on an attached sheet and include the total of all proposed allowances on Line 2 of DPMC AC-01.*

- d) If either or both of the Sub-Consultants costs appear as Fees and not Allowances, does the \$15,000 limit still apply to each work order?

*Answer: The \$15,000 limit on work orders does not apply to each of these demolition work orders. As directed in the RFP "Please prepare a DPMC work order (AC-01) for each of the four properties listed in the scope of work."*

#### **Question submitted by McAuliffe + Carroll Architects**

Does the drawing package cover all the dwellings, or does each one need it's own drawing package?

*Answer: Only one drawing package is required. The demolition of all four dwellings shall be bid as a single bid package.*

**THE DUE DATE FOR SUBMITTAL OF TECHNICAL PROPOSALS FOR THIS PROJECT IS  
2:00 PM, TUESDAY, DECEMBER 10, 2013**

**End of Addendum "A"**

DEPARTMENT OF THE TREASURY  
DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION

**REQUEST FOR PROPOSAL  
FOR DPMC AGENCY CONSULTANTS (ARCHITECTURE)**

DPMC PROJECT NO.: J0298-00 thru J0302 Architectural Discipline

Project Description: Demolition of Four (4) Properties  
Sayreville Borough, Middlesex County, NJ

Firms: Lammey & Giorgio, PA (J0298-00)  
Ronald A. Sebring Associates (J0299-00)  
USA Architects & Planners (J0300-00)  
LAN Associates. Inc. (J0301-00)  
McAuliffe & Carol Architects (J0302-00)

**Deadline for Consultant Questions: NO LATER THAN 2:00PM, MONDAY, DECEMBER 2, 2013**

**Proposal Due Date: NO LATER THAN 2:00 PM, TUESDAY, DECEMBER 10, 2013**

This confirms that your firm was selected from the list of DPMC contracted agency consultant firms in the architectural discipline and is requested to submit a work order proposal for this project assignment. Attached is a sample work order form for your use for this project. The Scope of Work is attached for your information and use.

The deadline for consultant questions is no later than 12:00 Noon, Monday, December 2, 2013. Questions shall be submitted to Richard Flodmand, Deputy Director, Contract Administration via email at [richard.flodmand@treas.state.nj.us](mailto:richard.flodmand@treas.state.nj.us). Responses to all questions will be forwarded via email to all firms.

Please prepare a DPMC work order(AC-01) for each of the four properties listed in the scope of work. The assignment will be awarded to the consultant firm that provides the lowest sum total for all four properties.

Please submit the original work orders on the form (AC-01) provided via email to me at [richard.flodmand@treas.state.nj.us](mailto:richard.flodmand@treas.state.nj.us) by the proposal due date and time listed above.

Subsequent to submission of this Work Order, should your firm decide not to submit a proposal for this project, please notify me at 609-984-3629 or by email at [richard.flodmand@treas.state.nj.us](mailto:richard.flodmand@treas.state.nj.us).

Thank you.

*Richard Flodmand*

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Deputy Director, DPMC

November 25, 2013

c: Lori Benedetti

## Scope of Work

### **Design Consultant Services for Demolition of Residential Properties Sayreville Borough, Middlesex County, NJ**

**Objective:** Demolish all existing structures on the properties identified in this scope of work that are not part of the natural environment and return each property to its natural state. The properties will become open space under the ownership of the NJ DEP.

**Design Requirements:** Produce design specifications and other required documents for the demolition, removal and disposal of all structures on the property and restoration of the site to a natural state. Consulting services will include, but are not limited to:

- Demolish and remove all structures on the property including, but not limited to:
  - House, including slabs and basement walls
  - Garages, storage sheds and misc. structures
  - Pools
  - Driveways, up to the sidewalk (driveway aprons to remain)
  - Fences
  
- Utilities:
  - Coordinate with utility companies for shut off of services and secure letters from each stating the utility has been disconnected, including:
    - Electric
    - Water
    - Gas
    - Sewer
  - Cap or seal services per utility company requirements
  
- Landscaping:
  - Backfill all excavation to grade
  - Existing trees and shrubbery to remain where not impacted by demolition activities
  - Top soil and seed
  
- Hazardous Materials:
  - Lead paint
    - Test for lead paint, provide test reports
    - If present, include removal/disposal procedures/requirements in construction documents
  - Asbestos Contain Materials

- Test for asbestos containing materials, provide test reports
- If present, include removal/disposal procedures/requirements in construction documents
- Construction estimate
  - Provide a detailed construction estimate in CSI format for all work

**Permits**

- Secure all permits required for completion of the work

**Bid & Award Services- Provide Support to DPMC for Demolition Contract Bidding**

- Attend pre-bid meeting
  - Record and provide meeting minutes
- Prepare Bulletin(s) as required
  - Respond to all contractors questions
- Review bids from contractors
- Provide recommendation of award letter for lowest responsible bidder

**Construction Administration Services – Provide Support to DPMC in Managing Demolition Contractor**

- Chair project kick-off meeting
  - Record and provide meeting minutes
- Process contractor invoices
- Review/approve submittals
- Review change order requests
  - Provide estimate of changes work
  - Provide recommendation for approval
- Perform weekly site inspections
  - Submit report of observations and issues
- Complete closeout documents

**Schedule:** There is a 90 day requirement for certain federal grants (FEMA, CDBG, etc.) for completion of the demolition work in order for the State to receive reimbursement for the State funds expended. It is anticipated that the design work should be completed in approximately 30 days and that permit approvals would be completed within an additional 15 day period. Therefore, the bidding and construction is scheduled to be completed within the remaining 45 days in order to meet the federal requirements. An extension of time may be requested by the NJ DEP from FEMA (or other applicable federal funding source) due to weather or other justifiable issues outside the State's responsibility.

**Liquidated**

**Damages:** There is a 90 day requirement for certain federal grants for completion of the demolition work in order for the State to receive reimbursement for the State funds expended. It is anticipated that the demolition design and permit approvals should be completed in approximately 45 days and that the bidding and construction will be completed in 45 days. An extension of time may be requested by the NJ DEP from the federal agency providing fund reimbursement due to weather or other justifiable issues outside the State's or consultant's responsibility.

Liquidated damages may be levied for failure to deliver the demolition design and permit approvals for each property within 45 days of issuance of the notice to proceed, in the amount of \$5 per business day per property not delivered, up to a maximum of \$5,000 in total liquidated damages.

The State shall have the sole discretion to allow a grace period or toll the time periods for the completion of the demolition design and permit approvals.

The State shall assess liquidated damages and deduct the liquidated damages, if any, from any payment to be made to the Consultant.

These liquidated damages shall take precedence over any conflicting provisions in the General Conditions to the Consultant Agreement accompanying the original agency consultant RFP.

**Properties to be Demolished**

**Property 1**

Address: 127 Weber Avenue, Sayreville Boro  
Lot – Block: 169.07 24  
Lot Area: 0.22 acre  
Structure Type: Single family residence  
Building size: 1,244 sf  
Number Stories: 1  
Design Style: Ranch  
Year Built: 1975  
Basement: Full  
Garage: 1



**Property 2**

Address: 50 MacArthur Avenue, Sayreville Boro  
Lot – Block: 168.02 24  
Lot Area: 0.15 acre  
Structure Type: Single family residence  
Building size: 1,085 sf  
Number Stories: 1  
Design Style: Ranch  
Year Built: 1950  
Basement: Partial  
Garage: 1

**Property 3**

Address: 129 MacArthur Avenue, Sayreville Boro  
Lot – Block: 169.05 3  
Lot Area: 0.17 acre  
Structure Type: Single family residence  
Building size: 1,484 sf  
Number Stories: 1.5  
Design Style: Cape Cod  
Year Built: 1952  
Basement: Partial  
Garage: none

**Property 4**

Address: 28 MacArthur Avenue, Sayreville Boro  
Lot – Block: 168.05 3  
Lot Area: 0.20 acre  
Structure Type: Single family residence  
Building size: 1,700 sf  
Number Stories: 1.5  
Design Style: Cape Cod  
Year Built: 1953  
Basement: Full  
Garage: none

**End of Scope of Work  
11/25/13**

## DPMC AGENCY CONSULTANT WORK ORDER

FACILITY NAME & LOCATION:  NJ DEP BLUE ACRES, SAYREVILLE – PROPERTY #

CONSULTANT'S NAME: \_\_\_\_\_

DPMC AGENCY CONSULTANT CONTRACT NO.: \_\_\_\_\_

AGENCY WORK ORDER NO.: \_\_\_\_\_

EFF. DATE OF CONTRACT: \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_

**PROJECT DESCRIPTION: DESIGN CONSULTANT SERVICES FOR DEMOLITION OF FOUR PROPERTIES, SAYREVILLE BOROUGH, MIDDLESEX COUNTY, PER SCOPE OF WORK DATED 11/25/13.**

PROPERTY NUMBER & ADDRESS:

**ITEMS IN THIS BOX ARE TO BE COMPLETED BY THE AGENCY CONSULTANT  
PERSONNEL CATEGORY**

TASK/PHASE	HOURLY RATE *	\$	\$	\$	\$	\$	\$	\$	TOTALS PER TASK
	LEVEL	7	6	5	4	3	2	1	
	HRS								
	AMT	\$	\$	\$	\$	\$	\$	\$	\$
	HRS								
	AMT	\$	\$	\$	\$	\$	\$	\$	\$
	HRS								
	AMT	\$	\$	\$	\$	\$	\$	\$	\$
	HRS								
	AMT	\$	\$	\$	\$	\$	\$	\$	\$
	HRS								
	AMT	\$	\$	\$	\$	\$	\$	\$	\$
	HRS								
	AMT	\$	\$	\$	\$	\$	\$	\$	\$
	HRS								
	AMT	\$	\$	\$	\$	\$	\$	\$	\$
<b>TOTALS</b>	HRS								
	AMT	\$	\$	\$	\$	\$	\$	\$	\$

Six (6) sets of design documents are to be included in the rates utilized for each submission. No additional fees will be paid for reproduction unless the number of copies required exceeds six (6) per submission.

CONSULTANT SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

ITEMIZE ALLOWANCES BELOW:

	\$	1. TOTAL CONSULTANT FEE FOR THIS WORK ORDER	\$	
	\$	2. TOTAL VALUE OF ALLOWANCES FOR THIS WORK ORDER	\$	
TOTAL ALLOWANCES	\$	3. TOTAL VALUE OF REPRODUCTION FOR WORK ORDER	\$	
TOTAL REPRODUCTION COSTS	\$	4. TOTAL AMOUNT OF THIS WORK ORDER (LINE 1,2 & 3)	\$	

**AGENCY CERTIFICATIONS: I hereby certify that this work order is: a) Independent of any other work order and does not violate the prohibition against segmenting projects to avoid exceeding the established limit of \$15,000; b) Does not exceed the aggregate contract limits of \$300,000 or contract expiration date; c) Submitted prior to initiation of the work unless an emergency situation existed, in which case, it is being submitted within 48 hours of the initiation of the work with attached justification from the appropriate client agency Director (Check Below).**

**EMERGENCY WORK ORDER (JUSTIFICATION FROM DIVISION DIRECTOR ATTACHED)**

CERTIFIED AND APPROVED:

APPROVED:

CLIENT AGENCY REPRESENTATIVE

DATE

DPMC COORDINATOR, CONTRACT ADMINISTRATION

DATE

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION

**GENERAL CONDITIONS  
TO THE  
CONSULTANT AGREEMENT**

TABLE OF CONTENTS

<b>1. ANTI-COLLUSION CLAUSE</b> .....	<b>3</b>
<b>2. CONFLICT OF INTEREST</b> .....	<b>3</b>
<b>3. OFFER OF GRATUITIES</b> .....	<b>3</b>
<b>4. CONFLICT OF TERMS</b> .....	<b>3</b>
<b>5. NON-DISCRIMINATION</b> .....	<b>4</b>
<b>6. TIME OF COMPLETION</b> .....	<b>7</b>
<b>7. FEES AND INVOICING</b> .....	<b>7</b>
<b>8. NJ PROMPT PAYMENT ACT</b> .....	<b>8</b>
<b>9. WITHHOLDING PAYMENT FOR NON-DELIVERY OF DELIVERABLES</b> .....	<b>9</b>
<b>10. NO DAMAGE FOR DELAY</b> .....	<b>9</b>
<b>11. CONSULTANT’S CLAIMS FOR DAMAGES</b> .....	<b>9</b>
<b>12. LIMITATIONS OF LIABILITY</b> .....	<b>10</b>
<b>13. DISPUTES</b> .....	<b>10</b>
<b>14. INDEMNIFICATION</b> .....	<b>10</b>
<b>15. TERMINATION FOR CONVENIENCE OF THE OWNER</b> .....	<b>11</b>
<b>16. TERMINATION FOR CAUSE</b> .....	<b>11</b>
<b>17. SUSPENSION</b> .....	<b>11</b>
<b>18. OWNERS RIGHT TO CARRY OUR THE WORK</b> .....	<b>12</b>
<b>19. NEW JERSEY PREVAILING WAGE ACT</b> .....	<b>12</b>
<b>20. PUBLIC ANNOUNCEMENTS</b> .....	<b>13</b>

<b>21. PATENTS .....</b>	<b>13</b>
<b>22. OWNERSHIP OF DOCUMENTS .....</b>	<b>13</b>
<b>23. COPYRIGHTS.....</b>	<b>13</b>
<b>24. RIGHT TO AUDIT.....</b>	<b>13</b>
<b>25. PROCEDURAL REQUIREMENTS AND AMENDMENTS .....</b>	<b>14</b>
<b>26. SECURITY AND STATE REGULATIONS .....</b>	<b>14</b>
<b>27. INSURANCE REQUIREMENTS.....</b>	<b>14</b>
<b>28. SUB-CONSULTANTS .....</b>	<b>15</b>
<b>29. SUB-CONTRACTORS .....</b>	<b>15</b>
<b>30. ASSIGNMENT.....</b>	<b>15</b>
<b>31. COMPLIANCE WITH LAW .....</b>	<b>15</b>
<b>32. SET-OFF FOR STATE TAX.....</b>	<b>16</b>
<b>33. COMPLETE AGREEMENT CLAUSE.....</b>	<b>16</b>
<b>34. SEVERABILITY CLAUSE .....</b>	<b>16</b>
<b>35. HAZARDOUS MATERIALS.....</b>	<b>16</b>
<b>36. THIRD PARTIES .....</b>	<b>16</b>
<b>37. FINAL ACCEPTANCE .....</b>	<b>17</b>

## **1. ANTI-COLLUSION CLAUSE**

Pursuant to *N.J.S.A. 52:34-15*, the Consultant, by signing the Proposal, does hereby warrant and represent that this agreement has not been solicited, secured, or prepared directly or indirectly, in a manner contrary to the laws of the State of New Jersey and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the agreement by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity or consideration of any kind directly or indirectly, to any state employee, officer or official.

## **2. CONFLICT OF INTEREST**

The Consultant shall notify to the Owner in writing of any interest in, or association with, any Contractor, subcontractor, material supplier, Consultant or manufacturer or other party which has any interest in this Project as soon as the potential for such interest is reasonably foreseeable by the Consultant.

## **3. OFFER OF GRATUITIES**

*N.J.S.A. 52:34-19* makes it a misdemeanor to offer, pay or give any fee, commission, compensation, gift or gratuity to any person employed by the Owner. It is the policy of the Owner to treat the offer of any gift or gratuity by any company, its officers or employees to any person employed by the State of New Jersey as grounds for debarment or suspension of such company from submitting proposals on and providing work or materials on State contracts.

## **4. CONFLICT OF TERMS**

In the event of a conflict in contractual terms and conditions between the Documents comprising this AGREEMENT, the following order shall prevail for purposes of interpretation of this contract.

- a. Notice of Award
- b. Agreement between the State of New Jersey and the Consultant
- c. General Conditions to the Consultant AGREEMENT
- d. Consultant's Fee Proposal
- e. Addenda
- f. Scope of Work
- g. Consultant's Technical Proposal
- h. PROCEDURES FOR ARCHITECTS & ENGINEERS

## 5. NON-DISCRIMINATION

The laws of New Jersey (*N.J.S.A. 10:5-31 et seq.*) provide that no public works Contractor or Consultant can be awarded nor any monies paid until the prospective Contractor/Consultant has agreed to contract performance which complies with the approved Affirmative Action Regulations of the State and includes procurement and service contracts as well as construction contracts. This section was prepared to explain the affirmative action requirements and procedures for public agencies awarding contracts and for Contractors bidding on contracts.

To assure effective application of the affirmative action law while allowing the business operations of government to proceed efficiently, these regulations (see *N.J.A.C 17:27*) are designed to minimize administrative paperwork and delays.

During the performance of this contract, the Consultant agrees as follows:

- A. The Consultant or its sub-consultants, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, or affectional or sexual orientation. The Consultant will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, or affectional or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination clause.
- B. The Consultant or its sub-consultants, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex or affectional or sexual orientation.
- C. The Consultant or its sub-consultants, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Public Agency Compliance Officer, advising the labor union under this act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Consultant or its sub-consultants, where applicable, agrees to comply with any and all regulations promulgated by the Treasurer pursuant to *N.J.S.A. 10:5-31 et seq.*, as amended and supplemented from time to time.
- E. When hiring workers in each trade, the Consultant or sub-consultant agrees to attempt in good faith to employ minority and female workers in each trade consistent with the applicable employment goal prescribed by *N.J.S.A. 17:27-7.3*; provided, however, that the Affirmative Action Office may, in its discretion, exempt a Consultant or sub-consultant from compliance with the good faith procedures prescribed by the following provisions (1), (2) and (3), as long as the Affirmative Action Office is satisfied that the Consultant is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Affirmative Action Office, that its percentage of active "card carrying" members who are minority and female workers is equal to or greater than the applicable employment goal prescribed by *N.J.A.C. 17:27-7.3* promulgated by the Treasurer pursuant to *N.J.S.A. 10:5-*

31 *et seq.*, as amended and supplemented from time to time. The Consultant or sub-consultant agrees that a good faith effort shall include compliance with the following procedures:

1. If the Consultant or sub-consultant has a referral agreement or arrangement with a union, the Consultant or sub-consultant shall, within three working days of the contract award, seek assurances from the union that it will cooperate or sub-consultant shall, within three working days of the contract or sub-consultant as it fulfills its affirmative action obligations under the contract and in accordance with the regulations promulgated by the Treasurer pursuant to *N.J.S.A. 10:5-31 et seq.*, as supplemented and amended from time to time. If the Consultant or sub-consultant is unable to obtain said assurances from the union at least five working days prior to the commencement of work, the Consultant or sub-consultant agrees directly to attempt to hire minority and female workers consistent with the applicable employment goal. If the Consultant's or sub-consultant's prior experience with a union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and female workers consistent with the applicable employment goal by complying with the following hiring procedures prescribed under (2) below; and the Consultant or sub-consultant further agrees immediately to take said action if it determines or is so notified by the Affirmative Action Office that the union is not referring minority and female workers consistent with the applicable employment goal.
2. If the hiring of a work force consistent with the employment goal has not or cannot be achieved for each individual position by adhering to the procedures of (1) above, or if the Consultant or sub-consultant does not have a referral agreement or arrangement with a union, the Consultant or sub-consultant agrees to take the following actions consistent with the applicable county employment goals:
  - a. To notify the Public Agency Compliance Officer, Affirmative Action Office and at least one approved minority referral organization of its manpower needs, and request referral of minority and female workers;
  - b. To notify any minority and female workers who have been listed with it as awaiting available vacancies.
  - c. Prior to commencement of work, to request the local union, if the Consultant or sub-consultant has a referral agreement or arrangement with a union to refer minority and female workers to fill job openings.
  - d. To leave standing requests for additional referral of minority and female workers with the local union, if the Consultant or sub-consultant has a referral agreement or arrangement with a union the State Training and Employment Service and other approved referral sources in the area, until such time as the work force is consistent with the employment goal.
  - e. If it is necessary to lay off some of the workers in a given trade to assure, consistent with the applicable State and Federal statutes and court decisions, that sufficient minority and female employees remain on the site consistent with the employment goal; and to employ any minority and female workers so laid off by the Consultant in the area on which its work force composition is not consistent with an employment goal established pursuant to *N.J.A.C. 17:27*.
  - f. To adhere to the following procedure when minority and female workers apply or are referred to the Consultant or sub-consultant:
    - (1) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required, the Consultant or sub-consultant shall determine the qualifications of such

individuals, and if the Consultant's or sub-consultant's work force is not consistent with the applicable employment goal, it shall employ such persons which satisfy appropriate qualification standards provided, however, that Consultant or sub-consultant shall determine that the individual at least possesses the skills and experience recognized by any worker's skills and experience classification determination which may have been made by a Public Agency Compliance Officer, union apprentice program or a referral agency, provided the referral agency is acceptable to the Affirmative Action Office and provided further that, if necessary, the Consultant or sub-consultant shall hire minority and female workers who qualify as trainees pursuant to these regulations. All of the requirements of this paragraph, however, are limited by the provisions of paragraph (3) below.

- (2) If the Consultant's or sub-consultant's work force is consistent with the applicable employment goal, the name of said female or minority group individual shall be maintained on a waiting list for the first consideration in the event the Consultant's or sub-consultant's work force is no longer consistent with the applicable employment goal.
- (3) If, for any reason, said Consultant or sub-consultant determines that a minority individual or a female is not qualified or if the individual is an advanced trainee or apprentice, the Consultant or sub-consultant shall inform the individual in writing with the reasons for the determination, maintain a copy in its files, and send a copy to the Public Agency Compliance Officer and to the Affirmative Action Office.
- g. To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract and on forms made available by the Affirmative Action Office which shall be submitted promptly to that office upon request.
3. The Consultant or sub-consultant agrees that nothing contained in the preceding provision (2) shall preclude the Consultant or sub-consultant from complying with the hiring hall or apprenticeship provisions in any applicable bargaining agreement or hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program or admission, pursuant to such agreement or arrangement; provided, however, that where the practices of a union or apprenticeship program will result in the exclusion of minorities and females consistent with the county employment goal, the Consultant or sub-consultant shall consider for employment persons referred pursuant to said provision (2) without regard to such agreement or arrangement; provided further, however, that the Consultant or sub-consultant shall not be required to employ minority and female advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total work force which percentage significantly exceeds the apprentice-to-journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area. Also, the Consultant or sub-consultant agrees that in implementing the procedures of the preceding provision (2), it shall, where applicable, employ minority and female workers residing within the geographical jurisdiction of the union.
4. The Consultant and its sub-consultants agree to complete an initial Project Manning Report on forms provided by the Affirmative Action Office or in the form prescribed by the Affirmative Action Office and submit a copy of said form no later than three working days after signing a contract; and to submit a completed copy of a Monthly Project Staffing Report to the Affirmative Action Office and to the public agency compliance officer once a month (by the seventh work day of each month) thereafter for the duration of the contract. The Consultant agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary for



on-the-job programs for outreach and training of minority and female trainees employed on the construction project.

5. The Consultant and its sub-consultants shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to *N.J.A.C. 17:27-10.1 et seq.*

Provisions (e) and (f) are not required for sub-consultants with four or fewer employees in the company or a sub-consultant which has presented evidence of a federally approved or sanctioned affirmative action program.

## **6. TIME OF COMPLETION**

In the event of the failure of the Consultant to complete the work within the time specified solely due to their own cause of delay, the Consultant may be liable to the Owner for all direct and consequential losses or damages that the Owner may incur because of the delay; such as, but not limited to, added costs of the project and the cost of furnishing temporary services and facilities, if any.

Any such sums for which the Consultant is liable may be deducted by the Owner from any monies due or to become due to the Consultant.

## **7. FEES AND INVOICING**

The Consultant's fee for tasks performed during the design phase and for all technical and administrative tasks during the construction and close-out phases, such as the review of Contractor submittals, preparation and distribution of minutes, on-site observation during construction, etc., will be a lump sum amount unless stated otherwise. The Consultant's lump sum fee shall be further broken down by phase depending on the contract. In the event that any of the project phases or services are extended for reasons other than the fault of the Consultant, than the Consultant may submit an amendment for additional costs associated with the extension or additional services. Such costs shall be based on direct costs. The Consultant will not be entitled to an automatic extension of the monthly rate for that phase or any subsequent phase.

Invoices for materials and labor expenses shall be submitted on an Invoice Form provided by the Owner, accompanied by appropriate backup as required by the Owner. Copies of all bills for reimbursables allowed by contract must be attached to the invoice form.

Invoices during the design phase may be submitted monthly to the Owner or when work is completed, reviewed and accepted by the Owner. Invoices during the construction phase may also be submitted monthly. Completed invoices must identify the Owners project number for the project and location of the project. Invoices for all work performed shall be processed only after Owner review and acceptance of the work.

Invoices will not be processed if work is found to be incomplete or unsatisfactory upon review by the Owner. The invoice, or portion of the invoice, will be held unprocessed until the Consultant makes the necessary corrections and the work is acceptable to Owner.

## 8. NJ PROMPT PAYMENT ACT

8.1 For purposes of the State's Prompt Payment Act N.J.S.A. 2A:30A-1 et seq.:

- a. An invoice will be deemed to have been received by the Owner when it is received by the person or entity designated by the State to review and sign the invoice on the State's behalf at the address designated by the State for receipt of contract invoices. Receipt of an invoice by such person or entity shall commence the running of the 20-day period for formal approval and certification as provided under N.J.S.A. 2A:30A-2(a).
- b. The "billing date" as that term is used in N.J.S.A. 2A:30A-2 shall be the earlier of the date upon which an invoice for payment is approved for payment or 20 days after the invoice is received, per subparagraph "A" above, unless within such 20-day period the invoice is found to be incomplete or otherwise unacceptable and returned to the Consultant with a written explanation of deficiencies.
- c. In the event that an invoice is found to be deficient and returned to the Consultant, the "billing date" shall be calculated from the date that a corrected invoice is received.
- d. Payment shall be considered to have been made on the date on which a check for such payment is dated.
- e. Payment terms (e.g. "net 20") offered by the Consultant shall not govern the Owner's obligation to make payment.
- f. The following periods of time will not be included in the calculation of the due date of any Consultant invoice:
  - 1) Any time elapsed between receipt of an improper invoice and its return to the Consultant, not to exceed 20 calendar days; or
  - 2) Any time elapsed between the State's return of an improper invoice to the Consultant and the Owner's receipt of a corrected invoice.

8.2.1 The Provisions of this Article 8 shall not govern the Owner's payment obligations nor shall they supersede or modify any other contractual provision allowing the withholding of monies from the Consultant to the extent that the Consultant has not performed in accordance with the provisions of the contract. Nor shall this Article 8 govern the State's payment obligations nor supersede or modify any other contractual provision governing Consultant claims for additional compensation beyond the base contract price and approved contract amendments.

### 8.3 Interest

8.3.1 Interest shall be payable on amounts due the Consultant if not paid within thirty (30) calendar days after the billing date specified in the above subparagraph 8.1 (f) as provided under the State's Prompt Payment Act (N.J.S.A. 2A:30A-1 et seq.). Interest at a equal to the prime rate plus 1% on amounts due shall be payable to the consultant for the period beginning on the day after the required payment date and ending on the date on which the check for payment is drawn.

8.3.2 Interest may be paid by separate payment to the Consultant, but shall be paid within thirty (30) calendar days of payment of the principal amount of the approved invoice.

8.3.3 Nothing in this Article 8 shall be construed as entitling the Consultant to payment of interest on any sum withheld by the Owner for any reason permitted under the contract or applicable law, or on any claim for additional compensation, over and above sums due under the base contract or approved contract amendments.

8.4.1 Disputes regarding nonpayment of a Consultant's invoice under this Article 8 may be submitted to non-binding Alternative Dispute Resolution (ADR) upon mutual agreement of the Owner and the Consultant. In such event, the Owner and the Consultant shall share equally the fees and expenses of the selected mediator, arbitrator,

umpire or other ADR neutral. Provided, however, that nothing herein shall be construed, in whole or in part, as a waiver, release or modification of the provisions of the New Jersey Contractual Act, N.J.S.A. 59:13-1 et seq. as it governs claims against the State.

8.4.2 A Consultant not paid sums due under an approved invoice within thirty (30) days of the billing date may suspend performance without penalty for breach of contract, but only after providing the Owner with seven (7) days written notice of non-payment, and only in the event that the Owner fails to furnish the Consultant, within that seven (7) day period, with a written statement of the amount withheld and the reasons for the withholding. Nothing herein shall be construed to excuse the Consultant's non-performance, or to limit the Owner's rights and remedies relating to such non-performance, with regard to any monies withheld from the Consultant upon the proper notice provided under this Article 8 or with regard to any Consultant claim disputed by the Owner.

## **9. WITHHOLDING PAYMENT FOR NON-DELIVERY OF DELIVERABLES**

- a. If technical data such as plans, specifications, minutes, approvals, recommendations, "Record" drawings, reports, computer disks, spare parts lists, or instructions books, operating and maintenance manuals, or any other items required by this AGREEMENT have not been delivered when due or are deficient upon delivery, the Owner may withhold from each invoice an amount (in equivalent to the value of the technical data, or any part thereof deficiently delivered.
- b. The withholding of any sums pursuant to this article shall not be construed as, or constitute in any manner, a waiver by the Owner of the Consultant's obligation to furnish the data required under this contract. In the event the Consultant fails to furnish these items, the Owner shall have those rights and remedies provided by law and pursuant to this AGREEMENT in addition to, and not in lieu of, the sums withheld in accordance with this article.

## **10. NO DAMAGE FOR DELAY**

The Owner shall have the right to defer the beginning or to suspend the whole or any part of the work herein contracted to be done whenever, in the opinion of the Owner, it may be necessary or expedient for the Owner to do so. And, if the Consultant is delayed in the completion of the work by act, neglect, or default of the Owner, or any other Consultant or Contractor employed by the Owner upon the work or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any case beyond the Consultant's control, or by any cause which the Owner shall decide to justify the delay, then for all such delays and suspensions the Consultant shall be allowed one day additional to the time herein stated for each and every day of such delay so caused in the completion of the work, the same to be determined by the Owner, and a similar allowance of extra time would be made for such other delays as the Owner may find to have been caused by the Owner. No such extension shall be made prior to the beginning of such delay, and a written request for additional time shall be filed with the Owner.

## **11. CONSULTANT'S CLAIMS FOR DAMAGES**

Any claims made by any Consultant against the Owner for damages or extra costs are governed by and subject to the *New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.* as well as all the provisions in this contract.

Should any Consultant damage or unnecessarily delay the work of the Owner or other Consultants or Contractors sustain damages, including delay damages, then and in that event, the culpable party agrees to pay all damages incurred by the damaged Consultant or Contractor(s). The injured Consultant or Contractor or Owner shall have a right of enforcement in court directly against the culpable party. In addition, the culpable party further agrees to defend, indemnify and save harmless the Owner from all such claims and damages. Nothing contained in this paragraph shall be construed to relieve the culpable Consultant from any liability or damage sustained on account of its acts, errors or omissions.

The Owner shall not be liable to any Consultant or Contractor for any damages or extra costs as specified in this paragraph and the Consultant's or Contractor's exclusive remedy shall be against the culpable party. The injured Consultant or Contractor agrees to make no claim for damages against the Owner when the Owner has no direct responsibility for the damages.

## **12. LIMITATIONS OF LIABILITY**

In the event of the breach of this AGREEMENT by the Owner, the Consultant shall be entitled to seek compensatory damages, but subject to the following exception; in no event shall the Owner be liable to the Consultant for any special, consequential, incidental or penal damages, including, but no limited to, loss of profit or revenues, costs of capital, interest of any nature, or attorneys' fees. This limitation of liability shall not be applicable to any claims by the Consultant against the Owner for contribution or indemnity arising from any negligence of other claims instituted by third parties which seek any such special, consequential, incidental or penal damages against the Consultant.

## **13. DISPUTES**

The Owner shall be, in the first instance, the interpreter of the requirements of this AGREEMENT and the impartial judge of the Consultant's performance hereunder. Disputes between the parties will be resolved through established administrative policies and procedures. The first step in this process is to request, in writing, a Contracting Officer's Conference. The Contracting Officer may appoint a duly authorized representative to act on his behalf. If the decision rendered by the Contracting Officer as a result of the conference is not accepted by the parties concerned, the next step that may be taken is to litigate the matter in the Superior Court of New Jersey.

The parties shall attempt to resolve disputes through the Owners established administrative policies and procedures. However, neither of the parties shall be required to exhaust any administrative remedies before or filing an action in the Superior Court of New Jersey.

The Consultant may at any time request a Contracting Officer's Conference of any claim, dispute or matter in question arising out of or relating to this AGREEMENT.

The Contractors who are working on the same project as the Consultant may also request a Contracting Officer's Conference should they have any claim, dispute or matter in question arising out of or relating to their individual contracts. The Consultant will be required to participate in such conference either as a party to the dispute or as the Owner's witness.

## **14. INDEMNIFICATION**

The Consultant will indemnify and hold harmless the Owner, its employees, representatives, and agents from and against any and all losses, suites, claims demands, fines, penalties, awards, damages, costs and expenses as well as reasonable attorney fees and court costs to the extent caused by: (A) its sole negligence, default, breach, or errors or omissions by the Consultant of obligations under this

AGREEMENT; or (B) violations or non-compliance with federal, State, local or municipal laws & regulations ordinances, building codes (including Americans with Disabilities Act, OSHA Environmental Protection Act) arising from the performance of this AGREEMENT or arising out of conditions created or caused to be created by the sole negligence of the Consultant, its agents, employees and subcontractors. The Consultant will defend the Owner, its employees, representatives, and agents from and against any and all suits, claims, demands, fines, penalties, awards, damages, costs and expenses as well as reasonable attorney fees and court costs, wherein any of the matters described in “A” or “B” above are alleged.

## **15. TERMINATION FOR CONVENIENCE OF THE OWNER**

The performance of work under this AGREEMENT may be terminated by the Owner in accordance with this Article in whole, or from time to time in part, whenever the Owner shall determine that such termination is in its best interest. Any such termination shall be effected by delivery to the Consultant of a Notice of Termination specifying the extent to which performance and work under the AGREEMENT is terminated and the date upon which such termination becomes effective.

The Consultant shall be entitled to a proportion of the fee which the services actually and satisfactorily performed by it shall bear to the total services contemplated under this AGREEMENT less payments previously made, together with appropriate reimbursable costs to be negotiated between the Consultant and Owner.

In addition, the Owner may negotiate with the Consultant to establish an amount of compensation for the Consultant’s costs incurred in the close-out of the AGREEMENT.

## **16. TERMINATION FOR CAUSE**

If the Consultant persistently disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or otherwise has substantially breached the AGREEMENT, and fails within seven (7) days after receipt of written notice to commence and continue correction of such default, neglect or violation with diligence and promptness, the Owner may, without prejudice to any other remedy the Owner may have, terminate the employment of the Consultant and may finish the services by whatever methods the Owner may deem expedient. In such case the Consultant shall not be entitled to receive any further payment until the Project is finished. No action by the Owner under this provision shall operate to waive or release any claims that the Owner may have against the Consultant under the AGREEMENT.

## **17. SUSPENSION**

The Owner may, in its sole discretion, suspend the work. Compensation for a suspension shall be allowed only as provided in this Article.

If the Owner determines that the work of this AGREEMENT has been suspended for a period cumulatively totaling less than 90 calendar days then there shall be no AGREEMENT Modification adjusting the Consultant’s compensation.

If the Owner determines that the Work of this AGREEMENT has been suspended for a period cumulatively totaling 90 calendar days, and if the Owner determines that the suspension has resulted from no fault of the Consultant, than an AGREEMENT Modification covering the remaining work to be done shall be executed.

An AGREEMENT modification shall be executed between the Owner and the Consultant providing an adjustment to the Consultant's compensation which the Owner and Consultant deem proper after reviewing submissions by the Consultant relating to increased costs which the Consultant has actually incurred as a direct result of the suspension.

None of the above provisions shall negate any other terms of this AGREEMENT.

When such a suspension is determined by the Owner to be the fault of the Consultant, the Owner may, at its option, suspend all payments to the Consultant. Payment may be reinstated by the Owner upon completion of the Work in accordance with the other provisions of the AGREEMENT. There shall be no upward adjustment in direct or indirect costs or in any other costs. Alternately, the Owner may terminate the AGREEMENT consistent with Article 16 or 17 or carry out the Work as provided for in Article 18.

## **18. OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Consultant fails to perform any obligation imposed under this AGREEMENT, and fails within seven (7) days after receipt of written notice to commence and continue correction of such failure with diligence and promptness, the Owner may, without prejudice to any other remedy the Owner may have to take steps to remedy such failure. In such case an appropriate written notice shall be issued deducting from the payments then or thereafter due the Consultant the cost of correcting such failure including compensation for other Consultant or Contractor additional services made necessary by such failure. If the payments then or thereafter due the Consultant are not sufficient to cover such amount, the Consultant shall pay the difference to the Owner. Any action by the Owner under this provision shall be without prejudice to the Owner's rights under this AGREEMENT and shall not operate to release the Consultant from any of its obligations under the AGREEMENT.

## **19. NEW JERSEY PREVAILING WAGE ACT**

Each sub-consultant or Contractor hired by the Consultant shall comply with the New Jersey Prevailing Wage Act, *N.J.S.A. 34:11-56.25 through 56.46*, and all amendments thereto, and this Act is hereby made a part of every agreement entered into on behalf of the State of New Jersey through the Department of the Treasury, except those agreements which are not within the contemplation of the Act. Provisions of the Act include:

- a. All workers employed in the performance of every agreement in which the agreement sum is in excess of \$2,000 and work to which the Owner is a party shall be paid not less than the prevailing wage rate as designated by the Commissioner of Labor and Industry or its duly authorized representatives.
  - (1) Each Consultant and sub-consultant performing public work for the Owner on behalf of the Department of the Treasury, who is subject to the provisions of the Prevailing Wage Act, shall post the prevailing wage rates for each craft and classification involved as determined by the Commissioner, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay workers their wages.
  - (2) The Consultant's signature on the proposal is their guarantee that neither they nor any of their subconsultants is currently listed or on record by the Commissioner as one who has failed to pay the prevailing wages according to the Prevailing Wage Act.
- b. In the event it is found that any worker, employed by any Consultant or any

sub-consultant covered by any agreement in excess of \$2,000 for any public work to which the Owner is a party, has been paid a rate of wages less than the prevailing wage required to be paid by such agreement, the Owner may terminate the Consultant's or sub-consultant's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and may otherwise prosecute the work to completion.

- c. Nothing contained in the Prevailing Wage Act shall prohibit the payment of more than the prevailing wage rate to any worker employed on a public work.

## **20. PUBLIC ANNOUNCEMENTS**

Publicity and/or public announcements pertaining to this project shall be cleared with the Owner in writing prior to release.

## **21. PATENTS**

If the Consultant employs any design, device, material, or process covered by letters of patent or copyright, it shall provide for such use by suitable legal AGREEMENT with the patentee. The Consultant shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work. The Consultant shall defend, indemnify and save harmless the Owner from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses and damages which it may be obliged to pay by reason of an infringement, at any time during the prosecution of or after the acceptance of the work.

## **22. OWNERSHIP OF DOCUMENTS**

Ownership of all plans, original drawings, specifications, data, samples, tests surveys, models, material, computer discs, evidence, documentation gathered, originated or prepared by the Consultant or his sub-consultants during the performance of the contractual responsibilities pursuant to this contract, shall belong exclusively to the State. Any such plans, specifications, data, samples, tests, surveys, models, material, evidence and documentation shall be delivered to the State in a timely manner upon request. The Consultant shall be permitted to retain a copy of all such materials for his own confidential files.

The ownership by the State shall commence immediately upon the date this Agreement is made, and the ownership shall commence regardless of payment by the State of any compensation to the Consultant or regardless of delivery of any such plans, specifications, data, samples, tests, surveys, models, material, computer discs, evidence and documentation to the State.

## **23. COPYRIGHTS**

If the performance of this Agreement results in books, drawings, specifications, programs or other copyrightable material, the author is free to copyright the work, but the Owner reserves a royalty-free, nonexclusive, and irrecoverable license to reproduce, publish, or otherwise use, and to authorize others to use all copyrighted and copyrightable material resulting from the performance of the agreement.

## **24. RIGHT TO AUDIT**

The Owner reserves the right to audit the records of the Consultant in connection with all matters related to this AGREEMENT. The Consultant agrees to maintain records in accordance with generally accepted accounting principles for a period of not less than three (3) years after final payment.

The Consultant further agrees that all such records will be made available to the Owner for the purpose of audit upon reasonable demand.

If such audit results in a finding of improper statements of hourly rates, overhead, time required, mathematical calculations, or other estimated cost of data upon which the AGREEMENT was awarded, the Owner has the authority to reduce the Consultant's invoice amount to an amount considered commensurate with the actual scope of work.

## **25. PROCEDURAL REQUIREMENTS AND AMENDMENTS**

The Consultant shall comply with all written procedural instructions that may be issued from time to time by the Owner.

During the AGREEMENT period, no change is permitted in any of the AGREEMENT conditions and specifications without express written approval from the Owner. Should the Consultant at any time find existing conditions which would make modification in requirements desirable, he shall promptly report such matters to the Owner for consideration.

The Consultant or their authorized representative(s) may be required to meet periodically with the Owner to discuss project progress.

## **26. SECURITY AND STATE REGULATIONS**

All personnel must observe all regulations in effect at the project site. While on State property, employees or sub-consultants of the Consultant will be subject to control of the Owner, but under no circumstances will such persons be deemed to be employees of the State. The Consultant or their personnel will not represent themselves as employees of the State.

The Consultant will be responsible for ensuring that all articles found by their employees or sub-consultants on or near the project site are turned in at a designated place.

All Consultant and sub-consultant personnel shall be subject to such security clearance as the Owner shall require.

## **27. INSURANCE REQUIREMENTS**

The Consultant shall secure and maintain in force, for the term of the contract, insurance coverage's provided herein. The Consultant shall provide the Owner with current certificates of insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after 30 calendar days written notice to the Owner.

### **a. COMPREHENSIVE GENERAL LIABILITY**



Comprehensive general liability insurance for the benefit of the Consultant and any sub-consultants is to be written as broad as the standard coverage form currently in use in the State of New Jersey, which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability insurance, an endorsement for completed operations insurance, and an endorsement eliminating the explosion, collapse and underground (XCU) exclusion. Limits of liability shall not be less than \$1,000,000 per occurrence for bodily injury liability and \$1,000,000 per occurrence for property damage liability.

**b. COMPREHENSIVE AUTOMOBILE LIABILITY**

Comprehensive automobile liability insurance covering owned, non-owned, and hired vehicles must be carried by the Consultant and its sub-consultants. The limits of liability shall not be less than \$1,000,000 per occurrence for bodily injury liability and \$500,000 per occurrence for property damage liability.

**c. WORKERS' COMPENSATION**

Worker's Compensation Insurance applicable to the laws of the State of New Jersey and other State or Federal jurisdiction is required to protect the employees of the Consultant or any sub-consultants who will be engaged in the performance of this contract. This insurance shall include employers' liability protection with a limit of liability not less than \$250,000.

**d. PROFESSIONAL LIABILITY INSURANCE**

The Consultant shall maintain Professional Liability insurance with limits as established elsewhere in this Agreement. The insurance carrier shall be registered with the NJ Department of Insurance and licensed or authorized to conduct business in the State of New Jersey, as required by law. In the event of a loss, the Consultant shall be held responsible for payment of the deductible as though there were no deductible. Such insurance shall be maintained for a period of not less than six months following the actual completion and acceptance of the project by the Owner. Contractual Liability Insurance is not acceptable.

## **28. SUB-CONSULTANTS**

If any part of the work covered by this AGREEMENT is sub-contracted, the sub-consultant must be prequalified by the Owner. If there is no prequalification category for the discipline of a specific sub-consultant, they must be approved by the Owner prior to using the sub-consultant.

Payment of all sub-consultants is the sole responsibility of the Consultant. Nothing contained in this AGREEMENT shall create a contractual relationship between any sub-consultant and the Owner.

On request, the Consultant shall furnish the Owner with copies of all Agreements between the Consultant and its sub-consultants.

## **29. SUB-CONTRACTORS**

Contractors hired by the Consultant to perform exploratory work involving the normal construction trades that is not of a professional nature need not be prequalified by the Owner; however, if the work being performed requires a State license or certification, the sub-contractor must hold the appropriate license or certification. Payment of all sub-contractors is the sole responsibility of the Consultant. Nothing contained in this AGREEMENT shall create a contractual relationship between any sub-contractors and the Owner.

### **30. ASSIGNMENT**

The Consultant shall not assign the whole or any part of this AGREEMENT without written consent of the Owner. Money due to the Consultant hereunder shall not be assigned for any purpose whatsoever.

### **31. COMPLIANCE WITH LAW**

The Consultant shall comply with any and all Federal, State, or local laws in effect or hereinafter promulgated which apply to the service herein specified.

Each and every provision required by law to be inserted in this AGREEMENT shall be deemed to have been inserted therein. If any such provision has been or has not been correctly inserted, then upon application of either party, the AGREEMENT shall be physically amended to provide for such insertion or correction. If the Owner determines that the Consultant has violated or failed to comply with applicable Federal, state or local laws with respect to its performance of this Agreement, it may withhold payments for such performance and take other such action that it deems appropriate until compliance or remedial action has been accomplished by the Consultant to the satisfaction of the Owner.

### **32. SET-OFF FOR STATE TAX**

Pursuant to P.L. 1995, c 159, and notwithstanding any provision of the law to the contrary, whenever any partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentality, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the tax payer, partner or shareholder subject to set-off under this act.

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

### **33. COMPLETE AGREEMENT CLAUSE**

This AGREEMENT represents the entire and integrated AGREEMENT between the Owner and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be mended only by subsequent written agreement.

### **34. SEVERABILITY CLAUSE**

If any provision of this AGREEMENT is found invalid, it shall be considered deleted and shall not invalidate the remaining provisions of the AGREEMENT.

### **35. HAZARDOUS MATERIALS**

Should a Consultant, through the normal course of work discover previously undetected asbestos, radon, lead, PCB's or other hazardous material, the Consultant is to report their findings immediately to the Owner. The Owner will initiate remedial action, during which time the Consultant may be required to cease work on the project if so directed by the Owner. The Consultant will commence work at the direction of the Owner, and the terms and conditions of the original project AGREEMENT shall remain in force.

### **36. THIRD PARTIES**

Nothing contained in this AGREEMENT shall create a contractual relationship with or a cause of action in favor of a third-party against the Consultant or the Owner, except that a third party Consultant or Contractor may file an action as described in General Conditions Article 11, Consultant's Claims for Damages.

### **37. FINAL ACCEPTANCE**

Prior to final acceptance by the Owner of the project, the Consultant shall submit all of the required deliverables for the project as specified in this AGREEMENT. Upon submission of the request for final payment, the Consultant firm and its successors and assigns remise, release and forever discharge the Owner, its officers, agents and employees in their official and individual capacities of and from all liabilities, obligations and claims whatsoever in law and in equity under or arising out of this AGREEMENT.