



State of New Jersey

CHRIS CHRISTIE
Governor

DEPARTMENT OF TREASURY
DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION
P O BOX 034
TRENTON NJ 08625-0034

KIM GUADAGNO
Lt. Governor

FORD M. SCUDDER
State Treasurer
CHRISTOPHER CHIANESE
Director

April 20, 2017

SOLICITATION OF PROFESSIONAL CONSULTANT SERVICES

PROJECT #: P1155-00
HUDSON RIVER REBUILD BY DESIGN PROJECT
DESIGN AND CONSTRUCTION ADMIN. SERVICES (TC-003)

STATE OF N.J., DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION

The New Jersey Division of Property Management & Construction (DPMC) is seeking to engage the services of a civil engineering consulting firm to provide a design and construction administration services to the N.J. Department of Environmental Protection's (NJDEP) Rebuild by Design Unit for the Hudson River Project. These consulting services include all work necessary to complete the required permitting, professional engineering, architecture, landscape architecture design, bidding, and construction administration services for this project to be funded by HUD CDBG-DR grants. It is the intent of the State to award a 3-year term contract to the selected consultant firm.

Only those firms having a DPMC "Unlimited" prequalification in the civil engineering discipline (discipline code P05) and hydrology discipline (P47) are eligible to compete for this term contract. Firms that are interested in the contract but not DPMC-prequalified must obtain DPMC prequalification in the civil engineering and hydrology disciplines before June 13, 2017. All joint venture firms must be separately prequalified by DPMC in civil engineering by June 13, 2017. Please visit the DPMC website at www.state.nj.us/treasury/dpmc to obtain a prequalification application (DPMC Form 48A) or contact the DPMC Prequalification Unit at (609) 633-3767.

A mandatory pre-proposal meeting will be held at **10:00 AM, Tuesday, May 16, 2017** in the Division of Purchase and Property Bid Room, 33 W. State Street, 9th Floor, Trenton, NJ. Firms are limited to two (2) representatives at the pre-proposal meeting. Firms that do not have a representative attend this mandatory meeting will be ineligible to compete for the term contract.

Consultant proposals (an original and five copies) from interested firms that have attended the mandatory pre-proposal meeting are due to DPMC by **NO LATER THAN 2:00 PM, Tuesday, June 13, 2017**. Proposals will be accepted only from firms that have the requisite prequalification in civil engineering and hydrology and have attended the mandatory pre-proposal meeting.

The selection committee, comprised of members from the Departments of Treasury and NJDEP, will evaluate the proposals on the basis of the civil engineering firms' (and other

proposed team members') organization and staffing; experience on large scale projects of a similar scope; proposed approach to project and adherence to the project schedule; and proposed hourly rates for the various levels of personnel. The firms must demonstrate in their proposals examples of successful projects, including but not limited to: design development, permitting, bidding and construction administration on projects of a similar scope, size and nature.

Interested firms that meet the prequalification criteria may obtain an RFP package and register for the mandatory pre-proposal meeting by contacting Catherine Douglass of DPMC at (609) 777-3094.

All competing firms are required to comply with the requirements of P.L. 1975, C. 127 (N.J.A.C. 17:27), regarding non-discrimination requirements in the performance of State contracts and P.L. 2005, C. 51 certification and disclosure of political contributions.

*Richard M. Ferrara, Assistant Deputy Director
Contracts & Procurement Unit
Division of Property Management & Construction
State of New Jersey
P.O. Box 034
Trenton, NJ 08625-0034*

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

PROJECT: P1155-00
Hudson River Rebuild By Design
Design and Construction Administration Services (TC-003)

DATE: May 16, 2017

ADDENDUM "A"

This ADDENDUM is issued for the purpose of clarifying and amending certain requirements of the Request for Proposal 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 contract. Unless specifically noted or specified hereinafter, all work shall comply with the applicable provisions of the Contract.

A copy of Attachment A, Project Schedule is attached. The schedule is also available on the DPMC website at www.state.nj.us/treasury/dpmc. Click on the Project Advertisements link on the left side of the home page and select A/E Major Contract Advertisements.

A copy of the sign-in sheet from the Mandatory Pre-Proposal Meeting for Project P1155-00 conducted on May 16, 2017 is attached. Please note all future project information including addenda, project schedule notifications, etc. will be forwarded to the prime consultants competing for this contract. It is the prime consultant's responsibility to share information with their sub-consultants.

Reminders:

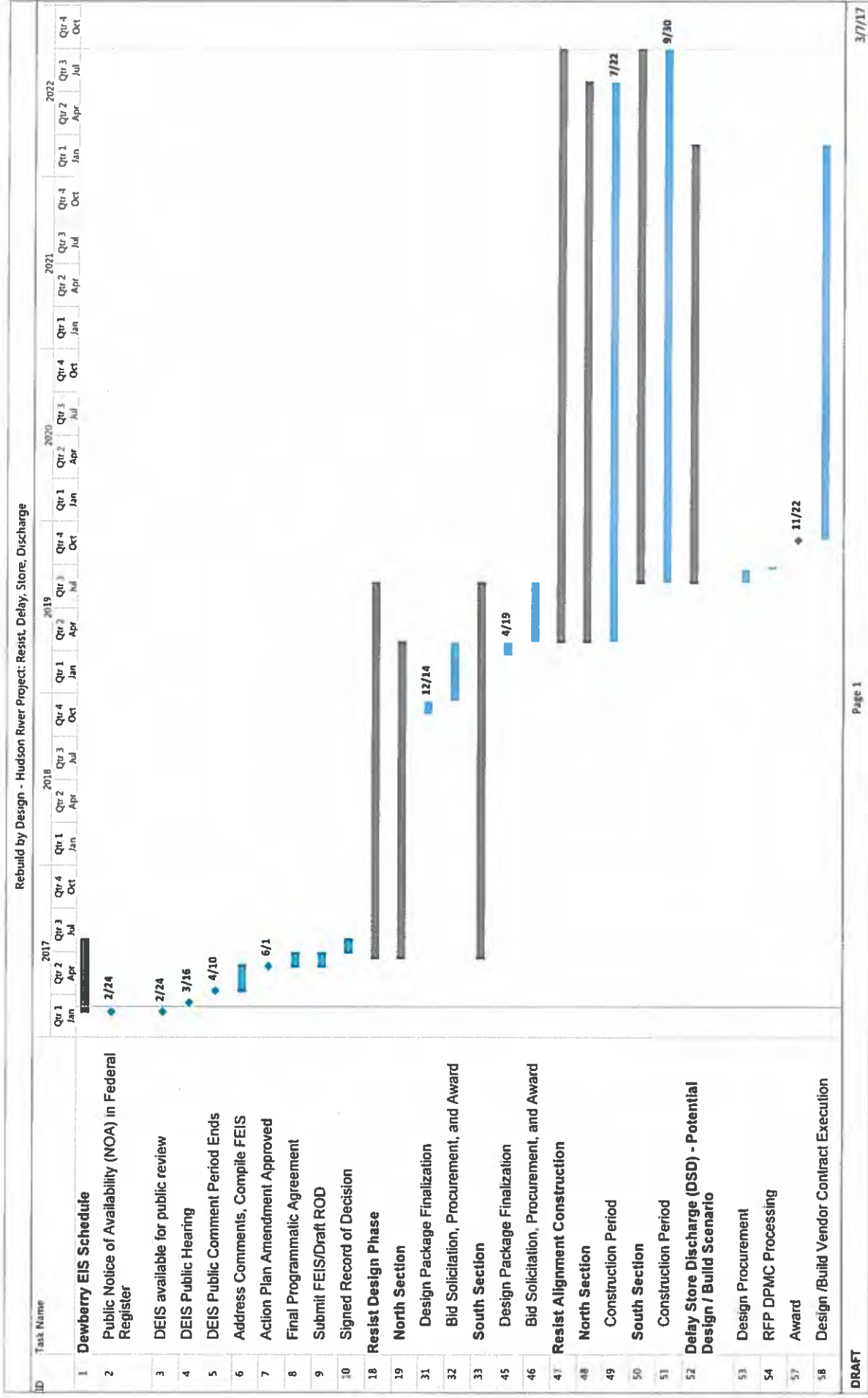
- Technical proposals and fee rates (one original and five copies) are due **no later than 2:00 p.m., June 13, 2017.**
- **The deadline for questions is no later than 3:00 p.m., May 19, 2017.** An addendum responding to all questions received will be distributed to all participating firms. Questions shall be submitted in Word format to Catherine Douglass at catherine.douglass@treas.nj.gov.

Addendum "A" Attachments

- **Attachment A, Project Schedule**
- **Mandatory Pre-Proposal Meeting Sign-In Sheet**

End of Addendum "A"

ATTACHMENT A



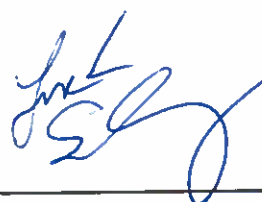
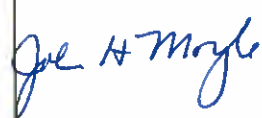


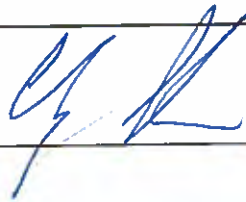


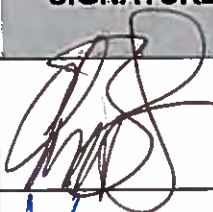
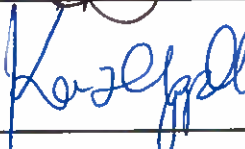







PRE-PROPOSAL MEETING SIGN-IN SHEET













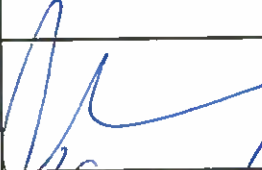
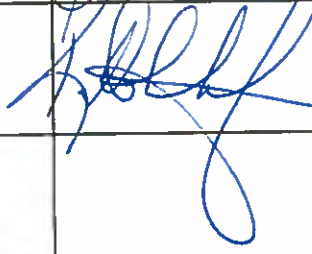


DPMC PROJECT # P1155-00

DATE: 5/16/17

PROJECT TITLE: Hudson River Rebuild by Design
Design and Construction Administration Services (TC-003)

COMPANY NAME (PRINT)	REPRESENTATIVE (PRINT)	SIGNATURE	TELEPHONE NUMBER	E-MAIL
STATE OF NJ DEPT. OF TREASURY, DPMC, CONTRACT ADMINISTRATION	Richard Flodmand, Deputy Director			
STATE OF NJ DEPT. OF TREASURY DPMC	Walter Fernandez			
DEPARTMENT OF ENVIRONMENTAL PROTECTION, PROJECT TEAM LEADER, BUREAU OF FLOOD RESILIENCE	Frank Schwarz			
DEPARTMENT OF ENVIRONMENTAL PROTECTION, DIRECTOR, DIVISION OF DAM SAFETY AND FLOOD CONTROL	John Moyle			
DEPARTMENT OF ENVIRONMENTAL PROTECTION, COMPTROLLER, BUDGET AND FISCAL OPERATIONS	Stephen Matis			
STATE OF NJ DEPT. OF TREASURY DPMC, PROCUREMENT	Catherine Douglass, Selection Coordinator			
NTDEP	Clay Sherman			

COMPANY NAME (PRINT)	REPRESENTATIVE (PRINT)	SIGNATURE	TELEPHONE NUMBER	E-MAIL
AECOM	Christopher Benosky			
AECOM	Karen Appell			
CH2M	William McMillin			
CH2M	Jonathon Goldstick			
HDR, INC.	Werner Mueller			
Dresdner Robin	Matthew Neuls			
Dresdner Robin	Nicholas Noce			
Jacobs	Thomas Decker KARL MANGER			
CB&I Environmental and Infrastructure	Yosry Bekhiet			
CB&I Environmental and Infrastructure	Ali-Syed			
Taylor Wiseman Taylor	Thomas Wingate			
Taylor Wiseman Taylor	Sam Previtera			
Michael Baker International	Daniel Barone			

COMPANY NAME (PRINT)	REPRESENTATIVE (PRINT)	SIGNATURE	TELEPHONE NUMBER	E-MAIL
Michael Baker International	Darren Riegler			
Mott MacDonald	Eric Betz			
Mott MacDonald	Doug Gaffney			
STV, Inc.	Michael Tumulty			
STV, Inc.	Kevin Pierce			
Dewberry	Pete Agnello			
Dewberry	Larry Smith			
SCAPE	Alexis Landes Chris Hepner			
Tetra Tech	Dave Moore			
The Nader Group	Wassim Nader			
The Nader Group	Karen Wenschhof			
Pennoni Associates	Shan Fanchiang 			

COMPANY NAME (PRINT)	REPRESENTATIVE (PRINT)	SIGNATURE	TELEPHONE NUMBER	E-MAIL
Burns Engineering	Henry Mercaldo			
Burns Engineering	Somsook Sethbhakdi (see below)			
Ramboll	Richard Baldwin	RJB		
YU&Associates (Pewberry)	En Hui Joe	EH Joe		
Burns Engineering	Somsook Sethbhakdi	Som S. Sethbhakdi		
OMA	HELEN BILLSON LAURA BAIRD	HELEN BILLSON Laura Baird		
Langon Engineering	David Charlotte	David Charlotte		
OLIN	DARRELL CAMPANA	Darrell Campa		
MASOR Consulting	Richard Maloney	Richard Maloney		
Arcadis *	Edgar Winkler	Edgar Winkler		
AKRF	DUSTIN KAPSON	D.A.K.		
Mistras *	E. Chudzik	E. Chudzik		

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

PROJECT: P1155-00
Hudson River Rebuild By Design
Design and Construction Administration Services (TC-003)

DATE: May 25, 2017

ADDENDUM "B"

This ADDENDUM is issued for the purpose of clarifying and amending certain requirements of the Request for Proposal 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 contract. Unless specifically noted or specified hereinafter, all work shall comply with the applicable provisions of the Contract.

Section 7 of the General Conditions, Fees and Invoicing, has been revised to remove the reference to "lump sum". "Not-to-exceed" has been inserted regarding fees for tasks. Not-to-exceed fees are the primary method for consultant fees on work orders associated with the Rebuild By Design federally funded projects. A revised copy of the General Conditions (Revised 5/17) is attached.

Attached is the Evaluation Criteria form for proposals submitted for Project P1155-00.

An Excel spreadsheet containing information requested in Question 1 submitted by Arcadis is also attached.

Section B. Additional Instructions, (c) of the TC-003 Instructions and Proposal Forms document distributed with the RFP material references TC-001 in error and is revised to TC-003.

RESPONSES TO CONSULTANTS' QUESTIONS

ARCADIS

1. Appendix L of the Feasibility Study (presumably) only includes a high level summary of cost elements for the resist element. Based on past experience, we have concerns on several of the summarized costs and would like to examine the more detailed cost estimating for the resist elements (like those provided for the DSD elements in Appendix L). Can the more detailed calculations of the resist cost elements be provided before the June 13th proposal submission? If not for the proposal, can they be supplied to the short listed firms, so they could be addressed for a future interview?

Answer: The estimates provided in Appendix L showing summarized costs were developed using information from the Feasibility Consultant and the Construction Management Firm. Additional raw cost estimating from the Feasibility Consultant is attached to this Addendum "B" (Excel workbook file name: 060916_RBDH RESIST COSTS_rev1.xls). Numbers in the raw cost estimates may differ from those summarized in the Feasibility Report due to further evaluation at the summary level.

2. How much coordination has there been with the owner of the railroad embankments that are proposed to be incorporated into the flood protection system? Have the owner's requirements and constraints been defined and incorporated? Are as-built drawings of the embankments available? Has material sampling been completed? Who will be responsible for maintaining these embankments as flood protection structures?

Answer: *Communication with the owners of the rail embankments has been ongoing and will continue throughout the project. Information concerning the embankments has not yet been made available, nor has the material sampling of the embankments taken place. Responsibilities for the maintenance of the entire project will be covered in the Operations & Maintenance Plan that will be developed with the help of the O&M Subcommittee comprised of, but not limited to, NJDEP, City of Hoboken, City of Jersey City, City of Weehawken, the Project Designer, Construction Management Firm, County of Hudson, North Hudson Sewerage Authority and NJ TRANSIT.*

3. How much coordination has there been with the NJTransit regarding construction near the PATH tubes? Have the owner's requirements and constraints been defined and incorporated?

Answer: *There has been preliminary discussion with the New York/New Jersey Port Authority (NYNJPA) concerning the PATH tubes. Coordination between NJDEP/Consultant and the PA will need to continue throughout the project. Detailed information concerning PATH tubes has not yet been made available, nor has any subsurface investigation been conducted. Additionally, due to security requirements, NYNJPA requires that the successful bidder have Secure Worker Access Consortium (SWAC) staff available in order to obtain specific information about the PATH tubes and their locations.*

4. Will the geotechnical boring samples collected during the initial design phase be made available to the selected consultant? Are there any restrictions on the use of the geotechnical information provided with the feasibility study by the selected consultant for the detailed design phase?

Answer: *All currently available geotechnical data is in the Feasibility Report (see Appendix C). There are no restrictions in using the data provided.*

5. For structures adjacent to roadways and driveways, have vehicle protection systems been included in the preliminary design?

Answer: *No.*

MOTT MACDONALD

Per the pre-proposal meeting, please see our questions pertaining to the RFP below:

1. In RFP Section 7.1, Overview of Services Required by Consultant, bullet number 4, Organizing Stakeholder Outreach: We understand that the consultant would be providing Public Outreach support to the NJDEP who will lead the effort and provide continuity from the feasibility study. Please elaborate on the anticipated role of the winning team's public outreach team.

Answer: *During the design phase, it is anticipated that the consultant will work with the communities to finalize the urban design considerations and amenities to be incorporated into the project's Resist component. It is anticipated that public outreach will involve design*

workshops, stakeholder focus groups and public meetings scheduled by DEP with input from the Municipalities and project team.

2. In RFP Section 7.1, Overview of Services Required by Consultant, bullet number 12, Assist in obtaining access agreements and easements, as required: Does the consultant team need legal and/or real estate expertise, or would the assistance be to the NJDEP in the form of engineering and environmental coordination?

Answer: *It is anticipated that the consultant team will require access agreements in order to perform work on site. The negotiation of easements will require only engineering and environmental coordination at this time. Should legal and/or real estate expertise be needed, a separate work order clearly defining those services will be issued.*

- ~~3.~~ In RFP Section 4.3.1, Prequalification Requirements: If the team includes prequalified firms in the disciplines listed in Section 4.3.1 of the RFP, can the team additionally include technical advisors having similar disciplines that are not prequalified?

Answer: *Yes, as long as the Consultant has identified prequalified firms on their team for the prequalified disciplines required, on the project team, additional technical advisors with similar discipline capabilities and expertise can be identified on the team as a "technical advisor."*

4. Page 12 Section 5.1.1 mentions an "attached Evaluation Criteria Form." This is also referred to in Section 6.1, #4. Is Section 6.1.1 the only Evaluation Criteria in the RFP?

Answer: *Yes, the evaluation criteria listed in RFP Section 6.1.1 are the criteria the Consultant's proposal will be evaluated on. These are the same criteria listed on the project Evaluation Form for TC-003 that the committee members will be using.*

Attachments:

General Conditions to Hudson River Rebuild by Design Project P1155-00 (Revised 5/17)
Evaluation Criteria Form
Rebuild By Design Hudson River Resist Costs

End of Addendum "B"

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

GENERAL CONDITIONS

TO THE

**REBUILD BY DESIGN
HUDSON RIVER PROJECT**

TERM CONTRACT TC-003

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

**GENERAL CONDITIONS
TO THE
REBUILD BY DESIGN
HUDSON RIVER PROJECT
TERM CONTRACT TC-003**

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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.

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

b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of *N.J.S.A. 52:13D-13g.* Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

f. The provisions cited above in paragraph 3a. through 3e. shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c.

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

During the performance of this contract, the contractor agrees to comply with the following Mandatory Equal Employment Opportunity Language (N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)):

For Goods, Professional Service and General Service Contracts: The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity 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 contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for

employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- 1) Letter of Federal Affirmative Action Plan Approval
- 2) Certificate of Employee Information Report
- 3) Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at ww.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program 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 Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

For Construction Contracts: The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be

limited to the following: employment, up- grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27- 7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27- 7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5- 31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union 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 for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, 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 for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA 201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on- the- job and/or off- the- job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program 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 Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

5A. Anti-Discrimination Provisions (NJSA 10:2-1)

Every contract for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that:

- a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

- c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$ 50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

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 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 not-to-exceed amount unless stated otherwise. The Consultant's 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, then 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 found to be incomplete or deficient upon delivery, the Owner may withhold from each invoice an amount equivalent to the value of the technical data, or any part thereof not delivered or deficient.
- 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. 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.

11A. MUTUAL RESPONSIBILITY OF CONSULTANT, CONTRACTORS

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 to the extent caused by the Consultant's intentional, reckless or negligent acts, errors or omissions. Nothing contained in this paragraph shall be construed to relieve the culpable Consultant

from any liability or damage sustained on account of its intentional, reckless or negligent 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 not limited to, loss of profit or revenues, costs of capital, interest of any nature, or attorneys' fees.

13. DISPUTES

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. However, it shall not be a condition precedent to the Consultant's right to file a legal action upon such claim, dispute or matter that it be first considered and addressed at a Contracting Officer's Conference.

Disputes regarding whether a party has failed to make payments required under the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-1, et seq., shall be governed by the provisions of paragraph 8.4.1 of these General Conditions.

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 shall indemnify and hold harmless the Owner, its employees, representatives, and agents from and against any and all losses, suits, 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 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 Workforce Development 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 five (5) years after final payment. The consultant shall also maintain all documentation related to deliverables, products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available for audit to the New Jersey Office of the State Comptroller or any other State audit agency 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 N.J.S.A. 54:49-19, 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 amended 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.

EVALUATION CRITERIA

DPMC PROJECT#: P1155-00
REBUILD BY DESIGN – HUDSON RIVER
TERM CONTRACT (TC-003)

FIRM NAME _____

CRITERIA	MAXIMUM POINTS	SCORE
Firm / Project Team – Overall Organization and Personnel / Staffing Capability including Sub-consultants	25	
Comments:		
Firm / Project Team Experience on large scale Projects/ Contracts of a similar size and nature	30	
Comments:		
Project Approach and Plan for Adherence to the Project Schedule in providing services on RBD Term Contract	30	
Comments:		
Price/Cost Proposal – Value and Competitiveness of Loaded Hourly Rates for Personnel Levels (Individual & Overall Ave.)	15	
Comments:		
TOTAL	100	

EVALUATOR# _____

DATE _____

TECHNICAL ATTACHMENTS FOR THIS DOCUMENT ARE NOT REPRINTED
HERE DUE TO SIZE

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

**PROJECT: P1155-00
Hudson River Rebuild By Design
Design and Construction Administration Services (TC-003)**

DATE: June 5, 2017

ADDENDUM "C"

This ADDENDUM is issued for the purpose of clarifying and amending certain requirements of the Request for Proposal 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 contract. Unless specifically noted or specified hereinafter, all work shall comply with the applicable provisions of the Contract.

Attached is the revised CDBG Statement of Assurances for Project P1155-00 Hudson River Rebuild By Design (revised 6/5/17). The revised statement is posted to the DPMC website at www.state.nj.us/treasury/dpmc. Click on A/E Major Contract Advertisements and select Project P1155-00.

Some minor changes were made and Section J, Equal Employment Opportunity was updated to reflect the current language.

End of Addendum "C"

STATEMENT OF ASSURANCES FOR
REBUILD BY DESIGN – HUDSON RIVER PROJECT
(the “Project”)
DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES
TERM CONTRACT TC-003
(the “Contract”)
DPMC PROJECT P1155-00

The purpose of this Statement of Assurances is to list requirements applicable to programs funded in whole or in part by Community Development Block Grant-Disaster Recovery (“CDBG-DR”) funds received from the U.S. Department of Housing and Urban Development (“HUD”). Not all of the requirements listed herein shall apply to all activities or work under the Contract.

As used herein, “**Contractor**” and “**Consultant**” refer to any contractors or consultants awarded a Contract to provide goods or perform services in connection with the Project and paid with CDBG-DR funds.

Contractor/Consultant agrees to comply with all *applicable* federal CDBG-DR laws, guidelines and standards in a manner satisfactory to the State and HUD, including all administration and compliance requirements set forth by this Statement of Assurances. To the extent that Contractor/Consultant utilizes any subconsultants/subcontractors, Contractor/Consultant shall require and ensure that each subconsultant/subcontractor comply with all *applicable* federal CDBG-DR laws, guidelines and standards; any subcontracts entered into by Consultant shall set forth these requirements. Contractor/Consultant also agrees to comply with all *applicable* cross-cutting statutes and regulations, subject to waivers cited in the Federal Register, Docket No. FR-5696-N-01 (March 5, 2013) (Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving CDBG - DR funds in Response to Superstorm Sandy), as supplemented by additional applicable Notices published by HUD in the Federal Register.

Contractor/Consultant agrees to comply with the requirements of Title 24 of the CFR, Part 570 (HUD regulations concerning Community Development Block Grants).

The failure to list herein a legal requirement applicable to services performed by Contractor/Consultant does not relieve the Contractor/Consultant from complying with that requirement.

A. GENERAL PROVISIONS

1. Under provisions of the Hatch Act that limit the political activity of employees and HUD regulations governing political activity (24 CFR 570.207), CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

2. No federally appointed funds shall be used for lobbying purposes regardless of level of government, in accordance with 2 CFR 200.450.
 3. HUD rules prohibit the use of CDBG funds for inherently religious activities, as set forth in 24 CFR 570.200(j), except for circumstances specified in the Department of Housing and Urban Development Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving CDBG Disaster Recovery Funds in Response, 78 FR 14329 (March 5, 2013).
 4. HUD rules impose drug-free workplace requirements in Subpart B of 2 CFR part 2429, which adopts the government-wide implementation (2 CFR Part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988.
 5. Citizens will be provided with an appropriate address, phone number, and times during which they may submit complaints regarding activities carried out utilizing these CDBG-DR funds. The State will provide a written response to every citizen complaint within fifteen (15) working days of the complaint.
- B. **PERSONALLY IDENTIFIABLE INFORMATION:** To the extent the Contractor/Consultant receives personally identifiable information, it will comply with the Privacy Act of 1974 and HUD rules and regulations related to the protection of personally identifiable information. The term “personally identifiable information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc., either alone or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc. See 2 CFR 200.79 & OMB M-07-16. Contractor/Consultant shall require all persons that have access to personally identifiable information (including subcontractors/subconsultants and their employees) to sign a Non-Disclosure Agreement.

C. **FINANCIAL MANAGEMENT AND PROCUREMENT**

1. *To the extent applicable*, Contractor/Consultant shall adhere to the principles and standards governing federal grant distribution as set forth in the OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200).
2. Contractor/Consultant shall comply with all *applicable* laws pertaining to financial management, including 2 CFR Part 180 and 2 CFR Part 2424, which prohibit the making of any award or permitting any award (sub grant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs. To the extent that it uses subcontractors or subconsultants, Contractor must verify that none of them are on the List of Parties Excluded from Federal Procurement or Non-procurement Programs promulgated in accordance with Executive Orders 12549 and 12689, “Debarment and Suspension,” as set forth at 2 CFR Part 2424. No Contractors or Subcontractors that are on the List may receive any CDBG funds.
3. Conflict of interest rules, as set forth in 24 CFR 570.489, 24 CFR 570.611, and 2 CFR 200.112, apply. Contractor/Consultant shall disclose in writing any potential conflict of interest to DPMC and DEP.
4. *To the extent applicable*, Contractor/Consultant shall comply with 24 CFR Part 570 regarding the management and disposition of cash, real and personal property acquired with CDBG-DR funds.

5. *To the extent applicable*, Contractor/Consultant shall comply with 24 CFR 570.489(j) regarding change of use of real property. These standards apply to real property within its control (including activities undertaken by subcontractors/subconsultants). These standards apply from the date CDBG-DR funds are first spent until five years after the close-out of the Program.

D. RECORDS AND RECORDS RETENTION

1. The Contractor shall be responsible for maintaining records, in accordance with N.J.A.C. 17:44-2.2(b), 2 CFR 200.333, 24 CFR 570.502 and 570.506. Records shall be maintained for the longer of:
 - (a) a period of three (3) years from submission of the final expenditure report for the Rebuild by Design Program; and
 - (b) a period of seven (7) years from the date of final payment.
2. If any litigation, claim, or audit pertaining to the Contract has been started before the expiration of the seven-year record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required seven-year period, whichever is later.
3. Contractor/Consultant shall provide the State and HUD, including their representatives or agents, access to and the right to examine all records, books, papers, or documents related to the Contract and the use of CDBG funds.

E. FEDERAL LABOR STANDARDS: *To the extent applicable*, Contractor/Consultant shall comply with Federal Labor Standards, including:

1. Section 110 of the Housing and Community Development Act of 1974, 42 U.S.C. §5310, 24 CFR §570.603 and HUD Handbook 1344.1 Federal Labor Standards Requirements in Housing and Urban Development Programs, as revised, which require that all laborers and mechanics (as defined at 29 CFR §5.2) employed by Contractor/Consultant (including its subcontractors/subconsultants) in connection with construction contracts over \$2,000, are paid wages at rates not less than those prevailing on similar construction in the locality as per the Davis-Bacon Act (40 U.S.C. §3141 *et seq.*), as amended; except that these requirements do not apply to the rehabilitation of residential property if such property contains less than 8 units;
2. The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts of \$100,000 or greater be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work-week, and projects must comply with safety standards;
3. The Federal Fair Labor Standards Act (29 U.S.C. 201 *et seq.*), requiring that covered nonexempt employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week;
4. The Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3), which apply to contracts and subcontracts for construction, prosecution, completion, or repair of public buildings, public works or buildings, or works financed in whole or in part by Federal loans or grants, and requires payment of wages once a week and allows only permissible payroll deductions;
5. Department of Labor regulations in parallel with HUD requirements above:

- a. 29 CFR part 1: Procedures for Predetermination of Wage Rates
 - b. 29 CFR part 5: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)
 - c. 29 CFR part 6: Rules of Practice for Administrative Proceedings Enforcing Labor Standards In Federal and Federally Assisted Construction Contracts and Federal Service Contracts
 - d. 29 CFR part 7: Practice Before the Administrative Review Board With Regard to Federal and Federally Assisted Construction Contracts.
6. All applicable Federal Labor Standards provisions set forth in form HUD-4010. Consultant/Contractor will ensure that form HUD-4010 is included in all bid packages and subcontracts entered into with contractors, consultants, or other third parties to supply goods or perform services in connection with the Contract activities and paid with CDBG-DR funds.

F. SECTION 3 REQUIREMENTS

1. *To the extent applicable*, Contractor/Consultant shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (“Section 3”). Section 3 is intended to encourage recipients of HUD funding to direct new employment, training, and contracting opportunities to the greatest extent feasible to low- and very low-income persons, and to businesses that employ these persons, within their community. Section 3 applies to grantees and subrecipients that receive assistance exceeding \$200,000 in certain types of HUD funding, including CDBG funding, and to contractors and subcontractors that enter into contracts in excess of \$100,000 funded by certain types of HUD funding, including CDBG funds, for any activity that involves housing construction, rehabilitation, and demolition, or other public construction. A guide to Section 3 applicability and compliance requirements is located at HUD’s [website, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3), under Frequently Asked Questions (FAQs).
2. **Pursuant to 24 CFR 135.38, the following language shall be included in all contracts and subcontracts:**
 - a. *The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*
 - b. *The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.*
 - c. *The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set*

forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- d. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.*
- e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.*
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).*

G. FAIR HOUSING AND NON-DISCRIMINATION

- 1. *To the extent applicable, Contractor/Consultant shall comply with the following fair housing and non-discrimination laws. Any act of unlawful discrimination committed by Contractor/Consultant or failure to comply with applicable laws shall be grounds for termination of the Contract.*
 - a. *Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §200d et seq., and the regulations issued pursuant thereto (24 CFR Part 1), which provide that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which it receives federal financial assistance and shall immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to it this assurance shall obligate it, or in the case of any transfer of such property, and transferee, for the period during which the property or structure is used for another purpose involving the provision of similar services or benefits.*
 - b. *Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619), which requires administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Title VIII further prohibits discrimination against any person in the sale or rental of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status.*

- c. Title II of the Civil Rights Act of 1968 (25 U.S.C. 1301-1303), which prohibits discrimination because of race, color, religion, or natural origin in certain places of public accommodation.
- d. Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 *et seq.* The ABA requires access to buildings designed, built, altered, or leased by or on behalf of the federal government or with loans or grants, in whole or in part, from the federal government. As used in the ABA, the term “building” does not include privately owned residential structures not leased by the government for subsidized housing programs.
- e. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 *et seq.*, which prohibits discrimination on the basis of sex in any federally funded education program or activity.
- f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, which provides that no otherwise qualified individual shall solely by reason of his or her handicap be excluded from participation, denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.
- g. Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794d, which requires Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities, and applies to all federal agencies when they develop, procure, maintain or use electronic and information technology.
- h. Section 109 of Title I of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under that Part. Section 109 further prohibits discrimination to an otherwise qualified individual with a handicap, as provided under Section 504 of the Rehabilitation Act of 1973, as amended, and prohibits discrimination based on age as provided under the Age Discrimination Act of 1975. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR 6.
- i. Section 104(b)(2) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304(b), which requires communities receiving community development block grants to certify that the grantee is in compliance with various specified requirements.
- j. Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*, which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.
- k. Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 *et seq.*, as amended by the ADA Amendments Act of 2008, which prohibits discrimination against people with disabilities by public entities, which includes any state or local government and any of its departments, agencies or other instrumentalities.
- l. Housing for Older Persons Act of 1995 (“HOPA”) (42 U.S.C. 3607), which governs housing developments that qualify as housing for persons age 55 or older.
- m. Accessibility requirements contained in Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181 *et seq.*).
- n. Executive Order 11063: Equal Opportunity in Housing, November 20, 1962, as amended by Executive Order 12259, and the regulations issued pursuant thereto, which pertain to equal opportunity in housing and non-discrimination in the sale or rental of housing built with federal assistance.
- o. Executive Order 11246 (Johnson), September 24, 1965, as amended by Executive Order 11375 (Johnson), October 13, 1967, as amended by Executive Order 13672 (Obama), July 21, 2014, which prohibit discrimination in employment on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. Further, contractors and subcontractors on federal and federally assisted construction contracts shall take affirmative action to insure that equal opportunity is provided in all aspects of their employment,

- including, but not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training and apprenticeship.
- p. Executive Order 12086: Consolidation of contract compliance functions for equal employment opportunity, October 5, 1978.
 - q. Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, January 17, 1994.
 - r. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.
 - s. Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency (LEP), August 11, 2000, and Federal Register Notice FR-4878-N-02 (available online at <http://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>), which require recipients of federal financial assistance to ensure meaningful access to programs and activities by LEP persons. (The State's Language Access Plan (LAP) is available online at http://www.renewjerseystronger.org/wp-content/uploads/2014/08/NJ-DCA-LAP_Version-1.0_2015.01.14-for-RenewJerseyStronger.pdf).
 - t. Executive Order 13217: Community-Based Alternatives for Individuals with Disabilities, June 19, 2001.
 - u. Executive Order 13330: Human Service Transportation Coordination, February 24, 2004.
 - v. Implementing regulations for the above:
 - i. 24 CFR part 1: Nondiscrimination in Federally Assisted Programs of HUD.
 - ii. 24 CFR part 3: Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance.
 - iii. 24 CFR 5.105: Other Federal Requirements.
 - iv. 24 CFR part 6: Nondiscrimination in Programs, Activities Receiving Assistance under Title I of the Housing and Development Act of 1974.
 - v. 24 CFR part 8: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.
 - vi. 24 CFR 50.4(l) and 58.5 (j): Environmental Justice.
 - vii. 24 CFR 91.225(a)(1): Affirmatively Furthering Fair Housing.
 - viii. 24 CFR 91.325(a)(1): Affirmatively Furthering Fair Housing.
 - ix. 24 CFR 91.325(b)(5): Compliance with Anti-discrimination laws.
 - x. 24 CFR 91.520: Performance Reports.
 - xi. 24 CFR part 100 – part 125: Fair Housing.
 - xii. 24 CFR part 107: Non-discrimination and Equal Opportunity in Housing under Executive Order 11063 (State Community Development Block Grant Grantees).
 - xiii. 24 CFR part 121: Collection of Data.
 - xiv. 24 CFR part 135: Economic Opportunities for Low- and Very Low-Income Persons.
 - xv. 24 CFR part 146: Non-discrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.
 - xvi. 24 CFR 570.206(c): Fair Housing Activities.
 - xvii. 24 CFR 570.487(b): Affirmatively Furthering Fair Housing.
 - xviii. 24 CFR 570.487(e): Architectural Barriers Act and Americans with Disabilities Act (State Community Development Block Grant Grantees).
 - xix. 24 CFR 570.490(a)-(b): Recordkeeping requirements.
 - xx. 24 CFR 570.491: Performance Reviews and Audits.
 - xxi. 24 CFR 570.495(b): HCDA Section 109 nondiscrimination.
 - xxii. 24 CFR 570.506(g): Fair Housing and equal opportunity records.
 - xxiii. 24 CFR 570.601: Affirmatively Further Fair Housing.
 - xxiv. 24 CFR 570.608 and Part 35: Lead-Based Paint.
 - xxv. 24 CFR 570.614: Architectural Barriers Act and Americans with Disabilities Act.

- xxvi. 24 CFR 570.904: Equal Opportunity and Fair Housing Review
xxvii. 24 CFR 570.912: Nondiscrimination compliance

H. CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISES

1. Contractor/Consultant shall take all necessary affirmative steps to ensure contracting opportunities are provided to small, minority-owned, woman-owned, and veteran-owned businesses, and labor area surplus firms. As used in this contract, the terms "minority-owned business," "women-owned business," and "veteran-owned business" means a business that is at least fifty-one percent (51%) owned and controlled by minority group members, women, or veterans. For purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native Americans. Consultant may rely on written representations by businesses regarding their status as minority, women and veteran businesses in lieu of an independent investigation.
2. Affirmative steps shall include:
 - a. Placing qualified small and minority-, veteran- and women-owned businesses on solicitation lists;
 - b. Ensuring that small and minority-, veteran- and women-owned businesses are solicited whenever they are potential sources, for goods and/or services required in furtherance of the Contract;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority-, veteran- and women-owned businesses;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority-, veteran- and women-owned businesses; and
 - e. Using the service and assistance, as appropriate, of organizations such as the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce; and
 - f. Requiring the subcontractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (a) through (e) of this section.

I. ENVIRONMENTAL REGULATORY COMPLIANCE

To the extent applicable, Contractor/Consultant must comply with HUD regulations found at 24 CFR Parts 50 and 58, implementing the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321 *et seq.*, and other Federal environmental requirements, including but not limited to:

1. Floodplain management and wetland protection:
 - a. Executive Order 11990, Protection of Wetlands (May 24, 1977) (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted by HUD regulations at 24 CFR 55, particularly sections 2 and 5 of the order;
 - b. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order;
2. The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. §§1456(c) and(d));
3. In relation to water quality:

- a. Executive Order 12088, as amended by Executive Order 12580, relating to the prevention, control and abatement of water pollution;
 - b. The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f) et seq. and U.S.C. §349), as amended, particularly Section 1424(e) (42 U.S.C. §§ 300h-303(e)), which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency (“EPA”) determines may contaminate an aquifer which is the sole or principal drinking water source for an area (40 CFR 149); and
 - c. The Federal Water Pollution Control Act of 1972, as amended, including the Clean Water Act of 1977, Public Law 92-212 (33 U.S.C. §1251, et seq.) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation’s water.
4. Endangered Species Act of 1973 (16 U.S.C. §1531 et seq.), as amended, particularly section 7 (16 U.S.C. §1536);
 5. The Fish and Wildlife Coordination Act of 1958, as amended;
 6. Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.), particularly sections 7(b) and (c) (16 U.S.C. §1278(b) and (c));
 7. Executive Order 11738 (Nixon), Sept. 10, 1973, providing for administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans, and EPA regulations (40 CFR 15);
 8. The Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)), and 40 CFR 6, 51, 93, which prohibits engaging in, supporting in any way, providing financial assistance for, licensing or permitting, or approving any activity which does not conform to State or Federal implementation plans for national primary and secondary ambient air quality standards.
 9. The Farmland Protection Policy Act of 1981, 7 U.S.C.A. §4201 et seq., particularly sections 1540(b) and 1541 (7 U.S.C. §4201(b) and §4202), and Farmland Protection Policy, 7 CFR 658, which require recipients of federal assistance to minimize the extent to which their projects contribute to the unnecessary and irreversible commitment of farmland to nonagricultural uses;
 10. Noise abatement and control requirements at 24 CFR 51B;
 11. Explosive and flammable operations requirements at 24 CFR 51C;
 12. Requirements at 24 CFR 58.5(i) relating to toxic chemicals and radioactive materials;
 13. Environmental Justice, Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

J. EQUAL EMPLOYMENT OPPORTUNITY

1. All federally assisted construction contracts must include the equal opportunity clause provided under 41 CFR §60-1.4(b). Federally assisted construction contracts include any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the federal government. Construction work is defined as “the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including

facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.” 41 CFR §60-1.3.

2. Pursuant to 41 CFR §60-1.4(b), the following language shall be included in all federally assisted construction contracts and subcontracts:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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 contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representatives of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

TERM CONTRACT TC 003

INSTRUCTIONS AND PROPOSAL FORMS

This package consists of the following Term Contract TC 003 documents:

- (a) TERM CONTRACT RATE SCHEDULE INSTRUCTIONS AND GUIDELINES
- (b) CONSULTANT AFFIDAVIT (Page 1 of 5)
- (c) CONSULTANT TERM CONTRACT RATE SCHEDULE (Page 2 of 5)
- (d) OTHER REQUIRED FORMS (Pages 3 thru 5)
- (e) TERM CONTRACT TC 001 REQUEST FOR PROPOSAL
- (f) STATEMENT OF ASSURANCES FOR REBUILD BY DESIGN TC-001
- (g) CONSULTANT AGREEMENT AND GENERAL CONDITIONS TO THE RBD MEADOWLANDS TERM CONTRACT TC-001

INSTRUCTIONS

1. Read the entire TERM CONTRACT REQUEST FOR PROPOSAL, including all instructions, terms, conditions and specifications.
2. **Submit questions regarding the RFP and associated contract documents to: Catherine.Douglass@treas.nj.gov by 3:00pm on May 19, 2017.**
3. **Complete and return the following before 2:00PM, June 13, 2017:** One (1) original and Five (5) copies of:
 - (a) CONSULTANT AFFIDAVIT, TC 003 RATE SCHEDULES (Pages 1 and 2)
 - (b) OTHER REQUIRED FORMS (Pages 3 thru 5)
 - (c) TECHNICAL PROPOSAL
4. **The Consultant Affidavit must be signed by a principal of the firm having contracting authority.** Unsigned affidavits will be rejected as non-responsive.
5. Retain for your files:
 - (a) A copy of your firm's TECHNICAL PROPOSAL
 - (b) A copy of your completed CONSULTANT AFFIDAVIT
 - (c) A copy of your completed CONSULTANT TERM CONTRACT RATE SCHEDULES
 - (d) A copy of your all OTHER REQUIRED FORMS
 - (e) TERM CONTRACT TC 003 REQUEST FOR PROPOSAL
 - (f) STATEMENT OF ASSURANCES FOR REBUILD BY DESIGN TC -003
 - (g) CONSULTANT AGREEMENT & GENERAL CONDITIONS TO THE RBD MEADOWLANDS TERM CONTRACT TC-003
 - (h) DPMC NOTICE OF TERM CONTRACT AWARD FOR TC 003 (This will be sent to you upon receipt and acceptance of the Consultant proposal)

THIS PROPOSAL MUST BE RECEIVED NO LATER THAN 2:00 P.M., JUNE 13, 2017 AND WILL BE CONSIDERED UNRESPONSIVE IF RECEIVED LATER THAN THE DATE AND TIME SPECIFIED. IF THE PROPOSAL IS TRANSMITTED VIA OVERNIGHT MAIL, ENCLOSE THE PROPOSAL IN THE CARRIER'S PACKAGING. MAIL TO:

State of New Jersey
Department of Treasury
Attn.: Consultant Selection Group
Division of Property Management & Construction
Contracts and Procurement Unit
33 W. State Street, 9th Floor
P. O. Box 034
Trenton, New Jersey 08625-0034

TC 003 TERM CONTRACT RATE SCHEDULE - INSTRUCTIONS AND GUIDELINES

SERVICES AND PRICES/COSTS

A. Contract Hourly Rates

- (a) The DPMC has specified certain Personnel Levels/Labor Categories for contract performance, (see attached Personnel Type/Level Description/Examples sheet). These Personnel Levels are indicated on the Term Contract Rate Schedule for the base years and option years at the end of Section B. The Consultant is to propose hourly rates for each Personnel Level/Labor Category in the Rate Schedules. The hourly rates for each Personnel Level will be used for pricing task orders in each of the respective performance periods.
- (b) The hourly rates proposed by the Consultant and accepted at contract award for each respective performance period, i.e., the base year or option years, are to be fixed for the duration of that period. Hourly rates are to be listed in whole numbers, no cents please.
- (c) In developing the required all inclusive, “loaded” hourly rates for the various Personnel Levels, the Consultant should include all costs required for each personnel type, including, all direct labor costs, overhead costs, fringe benefits, supplies, equipment, communication services, administrative costs, insurance, in-State travel, meals and lodging, professional fees and profit associated with this contract as defined in Section 5.2.4 of the RFP. Price increases will not be granted for any alleged omissions or miscalculations of contract pricing.
- (d) The hourly rates listed by the Consultant and accepted at contract award will be the rates that will be used as the basis for pricing task orders issued under this contract. The base year and each option year period are to be separately priced based on the Term Contract Rate Schedule provided by the Consultant.

B. Additional Instructions

- (a) Firms are cautioned that any proposal/offer may be rejected as non-responsive if it is materially unbalanced as to prices for the base and/or the optional contract periods. An offer is unbalanced when it is based on prices/rates that are significantly understated for some service levels and prices/rates that are significantly overstated for other service levels.
- (b) Firms must propose prices/rates for all Personnel Levels/Labor Categories in order to be considered for award. Consultants may not use pricing alternatives, which differ from these instructions.
- (c) The Consultant shall maintain Professional Liability Insurance with a \$2,000,000 minimum limit and a \$100,000 maximum deductible for this Term Contract. See Consultant Agreement, Section D, Professional Liability and General Condition to Term Contract TC-001, Section 27 for additional insurance information and requirements.

TC-003 PERSONNEL LEVELS with EXAMPLES

LEVEL 7

Title: **Principal, partner or officer of the firm**
Duties: Overall responsibility for the legal, technical and financial obligation of the firm.
Qualifications: Current License in applicable discipline, if required by law.
Experience: N/A

LEVEL 6

Title: **Project Executive; Senior Project Manager**
Duties: Under direct leadership of principal, controls project scheduling and management.
Qualifications: Current license in applicable discipline, if required by law.
Experience: N/A

LEVEL 5

Title: **Project Manager; Discipline Manager;**
Duties: Under direction of Project Executive, directs day-to-day operations of the project, scheduling deadlines, group work activities, etc.
Qualifications: BA, BS degree or equivalent experience; Current license in applicable discipline, if required by law.
Experience: Minimum 7 years.

LEVEL 4

Title: **Senior Engineer; Senior Architect or Designer; Senior Hydrologist; Senior Estimator; Permit Coordinator**
Duties: Under supervision of Project Manager, reviews project elements to conform to project requirements, directs designer and others on projects.
Qualifications: BA, BS degree or equivalent experience; Current license in applicable discipline, if required by law.
Experience: Minimum 5 years

LEVEL 3

Title: **Discipline Engineer; Architect or Designer; Hydrologist; Estimator**
Duties: Under supervision performs basic engineering tasks, analysis or elements of project scope; Takes designed systems and layout data and sketches and translates into usable construction documents.
Qualifications: BA, BS degree or equivalent experience; including appropriate licenses and certifications if required.
Experience: Minimum 3 years

LEVEL 2

Title: **Senior Technical Support; Senior CADD Operator/Draftsperson;**
Duties: Oversees of the preparation of site maps, Takes simple systems and layout data and sketches and translates into usable information; Performs drafting as required for construction documents.
Qualifications: High School Graduate, Technical School, or equivalent, with courses in discipline.
Experience: Minimum 3 years direct work experience within discipline.

LEVEL 1

Title: **Computer or CADD Draftsperson; Technician; Office Assistant**
Duties: Performs all entry level tasks: Assembles tracings for review, printing; keeps logs of tracings, shop drawings; performs tracing, drafting and other technical tasks; performs various office functions.
Qualifications: High School Graduate, Technical School or equivalent with courses in discipline.
Experience: N/A

**TC - 003
REBUILD BY DESIGN TERM CONTRACT
HUDSON RIVER PROJECT**

Consultant AFFIDAVIT

IMPORTANT - PLEASE READ, SIGN AND PROVIDE INFORMATION REQUESTED BELOW

Affidavit: I, being duly sworn upon my oath, hereby represent and state the foregoing information contained in the Term contract Proposal and any attachments thereto the best of my knowledge are true and complete. I acknowledge that the State of New Jersey (Owner) is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the Owner, or its contractors, to notify the Owner in writing of any changes to the answers or information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the Owner and that the Owner, at its option, may declare any contract(s) or sub-contract(s) resulting from this certification void and unenforceable.

Signature of the Consultant below attests that the Consultant has read, understands and agrees to all terms, conditions and specifications set forth and referenced in the TC – 003 Term Contract Request for Proposal (RFP) including the Statement of Assurances for Rebuild by Design TC – 003, Consultant Agreement & General Conditions to the Rebuild By Design Term Contract TC-003. Signature of the Consultant signifies that a contract is established immediately upon notice of award by the State of New Jersey for any or all of the items and the length of time indicated in the proposal. Failure to accept a contract award, to hold prices or to meet any other terms or conditions as defined in the Request for Proposal and subsequently the Notice of Award, during the term of the contract, shall constitute a breach of contract and may result in termination, suspension or debarment from further contractual agreements with the Owner.

Signature and Title of Principle or Individual of the firm authorized to sign contractual documents:

Firm Name: _____

Signature: _____ Print Name: _____

Title: _____ Date: _____

ATTESTED: Sworn and subscribed to before me on the _____ day of _____, 1998.

Signature: _____
(Notary Public-Not an Officer of the Firm)

RETURN THIS COMPLETED DOCUMENT TO DPMC

(PAGE 1 OF 5)

PROJECT KEY PERSONNEL LIST

FIRM NAME	KEY PERSONNEL & TITLE	PERCENTAGE OF TIME ASSIGNED TO PROJECT							
		FEASIBILITY STUDY	ENVIRONMENTAL IMPACT STATEMENT	DESIGN PHASE	BIDDING & AWARD PHASE	CONSTRUCTION		CLOSE OUT PHASE	HOURLY WAGE LEVEL 1-7
						OFFICE	FIELD		

INSERT THE WAGE LEVEL FROM 1 TO 7 OF EACH KEY PERSON. **DO NOT** INSERT ANY HOURLY RATE

KEY TEAM MEMBER PROJECT EXPERIENCE DATA SHEET

NAME _____

TITLE _____

FIRM _____

PROJECT TITLE LOCATION AND TOTAL CONSTRUCTION COST OR FEE	A/E OF RECORD FOR THIS REFERENCED PROJECT	SPECIFIC TYPE OF WORK EXPERIENCE (STUDY, SCHEMATIC, CONSTRUCTION ADMINISTRATION)	TEAM MEMBERS SPECIFIC ROLE OR TITLE ON THE REFERENCED PROJECT	DURATION OF TEAM MEMBER'S INVOLVEMENT OF THE REFERENCED PROJECT (IN MONTHS)	% OF TIME DURING DURATION BASED UPON A 40 HOUR WEEK	DATES OF THE TEAM MEMBER'S INVOLVEMENT IN THE REFERENCED PROJECT	CLIENT NAME CONTRACT PERSON AND PHONE NUMBER

* A KEY TEAM MEMBER IS A TECHNICAL OR MANAGEMENT PERSON DEVOTING 20% OR MORE OF THEIR TIME TO ANY PHASE OF THE PROJECT

**TC 003 TERM CONTRACT RATE SCHEDULE
BY PERSONNEL LEVEL**

NAME OF FIRM:

INSTRUCTIONS

Provide a LOADED hourly rate (\$ per hour; no cents please) below for all Personnel included in each of the Levels listed. Please refer to the RFP for a description of each of the personnel types by level. Your proposal may be considered unresponsive if you leave blanks.

PERSONNEL TYPE/DISCIPLINE	TERM CONTRACT HOURLY RATES PER CONTRACT PERIOD		
	BASE (3 YEARS)	EXTENSION OPTION – YRS 4/5	EXTENSION OPTION – YR 6
LEVEL 7	\$	\$	\$
LEVEL 6	\$	\$	\$
LEVEL 5	\$	\$	\$
LEVEL 4	\$	\$	\$
LEVEL 3	\$	\$	\$
LEVEL 2	\$	\$	\$
LEVEL1	\$	\$	\$
AVERAGE RATE (ALL LEVELS) Please calculate for Levels 7 -1	\$	\$	\$

Authorized Signature: _____

RETURN THIS COMPLETED DOCUMENT TO DPMC

(PAGE 2 OF 5)

MAC BRIDE PRINCIPLES COMPLIANCE CERTIFICATION

Pursuant to Public Law 1995, c.134, a responsible consultant selected, after public bidding, by the Director of the Division of Property Management and Construction, pursuant to N.J.S.A. 52:32-2, must complete the certification below by checking one of the two representations listed and signing where indicated. If a consultant who would otherwise be awarded a contract or agreement does not complete the certification, then the Director may determine, in accordance with applicable law and rules, that it is in the best interest of the State to award the contract or agreement to another consultant who has completed the certification and has submitted a fee proposal within five (5) percent of the most advantageous fee proposal. If the Director finds the consultant to be in violation of the principles which are the subject of this law, he shall take such action as may be appropriate and provided for by law, rule or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the consultant in default and seeking debarment or suspension of the consultant.

I certify, pursuant to N.J.S.A. 52:34-12.2, that the entity for which I am authorized to bid:

_____ has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein through the operation of offices, plants, factories, or similar facilities, either directly or indirectly, through intermediaries, subsidiaries or affiliated companies over which it maintains effective control; or

_____ will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.8 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signature of Consultant

Dated:

RETURN THIS COMPLETED DOCUMENT TO DPMC

(PAGE 3 OF 5)

STATE OF NEW JERSEY
DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION
DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

PROJECT NUMBER _____ BIDDER _____

*Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division of Purchase and Property's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Bidders **must** review this list prior to completing the below certification. **Failure to complete the certification may render a bidder's proposal non-responsive.** If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.*

PLEASE CHECK THE APPROPRIATE BOX:

☐ I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, C. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. I will skip Part 2 and sign and complete the Certification below.

OR

☐ I am unable to certify as above because the bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below. Failure to provide such will result in the proposal being rendered as non-responsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

Part 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN

You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the box(es) below.

Name _____ Relationship to Bidder/Offeror _____
Description of Activities _____
Duration of Engagement _____ Anticipated Cessation Date _____
Bidder/Offeror Contract Name _____ Contact Phone Number _____

List Additional Activities on Separate Sheet

CERTIFICATION: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the State of New Jersey is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey and that the State at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print): _____ Signature: _____

Title: _____ Date: _____

RETURN THIS COMPLETED DOCUMENT TO DPMC
(PAGE 4 OF 5)

Public Law 2005, Chapter 92

Formerly: Executive Order 129

SOURCE DISCLOSURE CERTIFICATION FORM

Bidder: _____

I hereby certify and say:

I have personal knowledge of the facts set forth herein and am authorized to make this Certification on behalf of the Bidder.

The Bidder submits this Certification as part of a bid proposal in response to the referenced solicitation issued by the State of New Jersey, Department of Treasury, Division of Property Management and Construction (DPMC), in accordance with the requirements of Public Law 2005, Chapter 92, (N.J.S.A. 52:34-13.2 et seq., superseding Executive Order 129 (2004)).

The following is a list of every location where services will be performed by the bidder and all subcontractors.

<u>Bidder or Subcontractor</u>	<u>Description of Services</u>	<u>Performance Location(s) by Country</u>
--------------------------------	--------------------------------	---

Any changes to the information set forth in this Certification during the term of any contract awarded under the referenced Project Number will be immediately reported by the Bidder to the Contract Compliance Unit in the DPMC, Department of Treasury, State of New Jersey, PO Box 034, Trenton, NJ 08625.

I understand that, after award of a contract to the Bidder, it is determined that the Bidder has shifted services declared above to be provided within the United States to sources outside the United States, prior to a written determination by the Director, Division of Property Management and Construction, that extraordinary circumstances require the shift of services or that the failure to shift the services would result in economic hardship to the State of New Jersey, the Bidder shall be deemed in breach of contract, which contract will be subject to termination for cause under its contract with DPMC.

I further understand that this Certification is submitted on behalf of the Bidder in order to induce DPMC to accept a bid proposal, with knowledge that the State of New Jersey and DPMC are relying upon the truth of the statements contained herein.

I certify that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Bidder: _____
[Name of Organization or Entity]

By: _____

Title: _____

Print Name: _____

Date: _____

**RETURN THIS COMPLETED DOCUMENT TO DPMC
(PAGE 5 OF 5)**

REQUEST FOR PROPOSAL

REBUILD BY DESIGN – HUDSON RIVER

DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES

TERM CONTRACT TC-003

DPMC PROJECT P1155-00

Date Issued: April 20, 2017

State of New Jersey
Department of Treasury
Division of Property Management & Construction
33 West State Street, 9th Floor
P.O. Box 034
Trenton, New Jersey 08625-0034

State of New Jersey
Department of Environmental Protection
Office of Flood Hazard Risk Reduction Measures
Trenton, New Jersey 08625- 0420

Revised 4/10/17

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- 8.5 Disposition of Materials

1.0 PURPOSE, INTENT AND GENERAL GUIDELINES

This Request for Proposal (RFP) is issued by the Department of the Treasury, Division of Property Management and Construction (DPMC) on behalf of the New Jersey Department of Environmental Protection, Office of Flood Hazard Risk Reduction Measures (NJDEP). The purpose of this RFP is to solicit proposals from DPMC-prequalified CIVIL ENGINEERING/HYDROLOGY firms to perform the tasks necessary to complete professional engineering and architectural design and construction administration services for a Department of Housing and Urban Development (HUD)–selected Rebuild by Design (RBD) project concept for the State of New Jersey (State). The Consultant firm will be responsible for preparing the necessary studies, design and bid documents to be advertised for bid to DPMC classified construction contractors and providing permit applications, permit coordination, bidding support and construction administration services.

It is the intent of the State to award this term contract for a base period of three years to one Consultant with a team of Sub-consultants including, engineering, architectural, hydrology and other appropriate specialty consultants. The State shall have the unilateral option of extending this term contract for additional option periods per Section 6.7. It is the State's intent to engage the Consultant for the following project:

Rebuild by Design – Hudson River Project “Resist, Delay, Store, Discharge”

It is anticipated that the highest ranked Consultant will be engaged for the Rebuild by Design – Hudson River Project for Design, Bidding and Construction Administration services. The Consultant must be able to provide the variety of services needed to complete the work described herein, including having senior level and mid-level staff within the different disciplines that may be required to complete the design project(s) with multiple components and varying scope of work needs, including but not limited to surveying, well drilling, sampling, and sample lab analysis. The Consultant may meet this requirement either through in-house staffing or through use of Sub-Consultants procured through a competitive bid process.

Work under this contract will require the services of NJ Licensed Professional Engineers (PEs), NJ licensed architects (RAs) and may require the services of a NJ Licensed Site Remediation Professionals (LSRPs).

The State/DPMC reserves the right to perform the services described in this RFP itself or to contract out separately for these services if deemed to be in the best interest of the State.

2.0 BACKGROUND / OVERVIEW

The United States Department of Housing and Urban Development (HUD) launched the Rebuild by Design (RBD) competition in 2013, inviting communities’ interdisciplinary design teams to craft a collaborative process to find effective ways to protect people, homes, businesses and infrastructure, and to increase resilience in Sandy-affected regions as part of recovery from the storm. During the course of this competition, a comprehensive urban stormwater management strategy was developed for the Hoboken, Jersey City, and Weehawken area that included hard infrastructure and soft landscape for coastal defense (Resist); policy recommendations, guidelines, and urban infrastructure to slow stormwater runoff (Delay); green and grey infrastructure improvements to allow for greater storage of excess rainwater (Store); and water pumps and alternative routes to support drainage (Discharge). This proposal was selected as a winner of the RBD competition and HUD subsequently awarded the State of New Jersey \$230 million for the implementation of the first phase of the “Hudson River Project: Resist, Delay, Store, Discharge” (the Project).

The State of New Jersey, acting through the New Jersey Department of Community Affairs, is the responsible entity that has assumed environmental responsibilities for the Sandy CDBG-DR programs in accordance with 24 CFR §58.1(b)(1). The New Jersey Department of Community Affairs has designated NJDEP to assist with the Design Phase. In accordance with HUD's procedures for NEPA found at 24 CFR Part 58, an Environmental Impact Statement (EIS) was prepared. NJDEP engaged Dewberry Engineers, Inc. (Dewberry) to complete a feasibility study (FS), prepare the EIS and assist with NEPA compliance.

The purpose of the Hudson River project is to evaluate and build upon the adopted Feasibility Study and Environmental Impact Statement (<http://www.state.nj.us/dep/floodresilience/rbd-hudsonriver-deis.htm>) in order to determine the best, most cost effective way to design and construct the preferred alternative. The Consultant will be required to provide modeling, design, construction and administration services for the Project. As per the Federal Register notice, the Consultant may (but is not required to) subcontract with or seek input from the design team (or members of the design team) that participated in the development of the successful RBD proposal for the HUD- sponsored competition. The activities contemplated also include other technical and programmatic services, including assistance with reporting and grant compliance obligations and other "as directed" assistance.

This Request for Proposal (RFP) is for a Consultant to provide a complete design for the Resist element of the Project. The Project takes a multi-faceted approach intended to address flooding from both major storm surge and high tide as well as from heavy rainfall events. These events often occur individually, but can also occur together, increasing their impacts. The Project seeks to benefit flooding areas inside the Project Area, which encompasses the City of Hoboken, extending into Weehawken and Jersey City, with the following approximate boundaries: the Hudson River to the east; Baldwin Avenue (in Weehawken) to the north; the Palisades to the west; and 18th Street, Washington Boulevard and 14th Street (in Jersey City) to the south.

The Engineer shall base the design on the Preferred Alternative (Alternative 3) identified in the Draft EIS (DEIS) and FS.

The overall scope of this RBD project is comprised of multiple tasks. The Consultant will be provided with a scope of work for each required task and will provide a Work Order proposal for review and approval prior to proceeding with any services. To the extent feasible, the Consultant may be required to complete tasks concurrently, in order to complete all tasks within the timeframe.

Major Components of Overall Project Scope

The general requirements of the design and construction activities to be performed under this contract include the following major components of the Project scope and represent the effort that may be required by the Consultant during the contract term. These components include the following:

- Conducting investigations and studies including modeling necessary for design and permitting of the Resist element of the Hudson River Project.
- Preparation of design and construction schedules, cost estimates, and permits.
- Determination of access and/or easement requirements.
- Design for construction of the previously identified Preferred Alternative for the site. See Feasibility Study for details on the Preferred Alternative.
- Evaluating the design for green design and sustainability implementation. Design of urban amenities integrated with the Resist components

- Preparing and obtaining Permits required for the project.
- Bidding Administration and Services
- Construction Administration and Oversight Services
- Community Relations, including but not limited to, coordination with the many project stakeholders throughout the design, bidding and construction process.

The following documents are included with this RFP (see link provided) for the Consultants' information and review:

- Draft Environmental Impact Statement (DEIS) (<http://www.state.nj.us/dep/floodresilience/rbd-hudsonriver-deis.htm>)
- Rebuild by Design – Hudson River Project Hydrology and Flood Risk Assessment Report, dated January 26th, 2017, *(in addition to report contents, refer to Chapter 10 Conclusions and Recommendations)* (<http://www.state.nj.us/dep/floodresilience/rbd-hudsonriver-fs.htm>)
- Rebuild by Design – Hudson River Project Feasibility Study Report – FINAL, dated February 3rd, 2017, *(in addition to report contents, refer to Chapter 9 Conclusions and Recommendations)* (<http://www.state.nj.us/dep/floodresilience/rbd-hudsonriver-fs.htm>)
- Rebuild by Design – Hudson River Project: Modeling Memo - September 1, 2016 Meeting summary (<http://www.state.nj.us/dep/floodresilience/docs/rbd-hydfa/hydrology-and-flood-risk-assessment-reportfinal-appendices-c.pdf>)
- Project Schedule (Attachment A)

Additional information regarding contract scope of work requirements is included in Section 7.0 Scope of Work of this RFP.

Consultant Additional Requirements – The work under this contract will be funded and/or reimbursed in whole or in part with CDBG-DR funding from HUD. The Consultant must comply with all requirements applicable to CDBG-DR funded projects, as referenced in the Statement of Assurances annexed to this RFP. If other State or federal programs (e.g., FEMA) provide funding or reimbursement for services or work under this Contract, the Consultant may be directed to meet other federal and/or State program requirements in order for services/work to be funded or reimbursed by the respective funding agencies or Programs.

3.0 DEFINITIONS

Addendum - If the State decides to revise this RFP, the State will issue the revisions to all bidders in a document called an "Addendum."

Assignment – The scope of services of a specific Work Order to be completed under the requirements of this Contract.

Award Letter – Notice of Contract Award letter issued to the selected Consultants at the onset of the contract period.

Awarded Contractor(s) - The construction contractor(s) awarded a contract by the DPMC for the performance of specified construction work on a designated property or properties.

Construction Management Firm (CMF) – The construction management firm awarded the contract to oversee and manage the design and construction projects for the DPMC and DEP.

Consultant – The person, partnership, corporation, firm or joint venture responding to this RFP that upon successful award will have a contractual agreement with the State of New Jersey.

Contract – The full agreement between the State and the successful bidder that defines the performance of the work including the RFP, Consultant's proposal, Award Letter, Work Orders, and Notice to Proceed for individual Work Orders.

Contracting Officer – The Contracting Officer (CO) is the final contracting authority in all DPMC contractual matters relating to the Contract and each Work Order Assignment including Work Order approvals and amendments. The CO may delegate certain other administrative and project management responsibilities to authorized representatives.

Contractor - A person, partnership, corporation or joint venture that has a contractual agreement with the State of New Jersey.

Deliverables - Items defined in the Scope of Work, Section 7.0 as products or proof of services rendered under this Contract.

Director - Director of the Division of Property Management & Construction, Department of the Treasury.

DPMC – Division of Property Management & Construction, a division of the New Jersey Department of the Treasury.

Environmental Impact Statement and **EIS** – An Environmental Impact Statement, prepared in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. §4321 *et seq.*, and HUD regulations implementing NEPA (24 C.F.R. Parts 50 & 58) <http://www.state.nj.us/dep/floodresilience/rbd-hudsonriver-deis.htm>

Evaluation Committee - A committee established by the DPMC CO to review and evaluate bid proposals and to recommend contract awards. The committee for this RFP shall include representatives of the Departments of Environmental Protection and Treasury.

FEMA – Federal Emergency Management Agency.

General Conditions – The General Conditions to the Consultant Agreement which describes additional terms and conditions of the Contract.

HUD – U.S. Department of Housing and Urban Development.

Issuing Office - Division of Property Management & Construction (DPMC), Department of the Treasury.

Joint Venture - Two or more companies, individuals, corporations, partnerships or other entities that form a temporary union for the purpose of performing the work of this RFP. Both joint venture firms must be prequalified by DPMC in the civil engineering discipline to be eligible for consideration on this Contract.

Key Personnel – Consultant’s assigned project personnel designated Level 5 or above, dedicated to each project phase.

Loaded Rates – All inclusive rates submitted by the Consultant for use during the term of this Contract. These loaded rates should include all anticipated costs for travel, overhead, administrative costs, routine copying, insurance, mail and messenger services, office equipment, phone costs, meals and lodging, professional fees, and profit.

NJDEP-New Jersey Department of Environmental Protection.

Notice to Proceed - A written notice given by the State DPMC to the Consultant fixing the date on which the Consultant is permitted to start the performance of work under this Contract following the issuance of approved Work Orders.

Project – The flood mitigation project known as “Hudson River-Resist, Delay, Store, Discharge,” which is described in the DEIS document available online at:
<http://www.state.nj.us/dep/floodresilience/rbd-hudsonriver-deis.htm>

Project Area - Portions of Hoboken, Jersey City and Weehawken, defined as the Study Area in the DEIS document.

Project Director – The DPMC representative with overall responsibility for contract management and oversight of assignments under this Contract in support of the DPMC Contracting Officer (CO).

Project Executive – The Consultant’s representative responsible for management and control of the Consultant’s project assignments under this Contract and for coordination with the DPMC Project Director and DEP Project Manager.

Project Manager - The representative with overall responsibility for oversight of the services performed on each assignment under this Contract. The Consultant and the DEP will each have a respective Project Manager that will coordinate together on the project assignments issued under this Contract.

Proposal - The submittal required at the second stage of the selection process, including a technical proposal, completed “Term Contract Rate Schedule by Personnel Levels” form, and all required administrative forms as outlined in Section 5.0 of this RFP.

RFP - Request for Proposal.

SOW - Scope of Work describing the overall services and requirements required by the Consultant under this Term Contract and specific work order assignments.

Sub-Consultant - A person, partnership, corporation, joint venture or other business entity which the Consultant retains per an agreement to carry out activities or services related to the Project, either as a subcontractor or Sub-Consultant.

Work Order – Following contract award, the Consultant will receive from the DPMC/NJDEP a brief scope of work for each individual Work Order Assignment. The Consultant shall prepare a Work Order proposal using the rate schedule submitted in its proposal, on a Work Order form (Form TC-003). The Work Order form shall include the number of hours and labor rate(s) for each proposed task, as well as a proposed schedule for completing the work assignment. If acceptable, the Work Order form shall be signed by NJDEP and authorized by the DPMC Contracting Officer, or his designee, signifying the State’s acceptance of the Consultant’s proposed work order services and fees for that Assignment.

4.0 SELECTION PROCESS PROCEDURES

This RFP is being issued by the Department of the Treasury, DPMC on behalf of the NJDEP Office of Flood Hazard Risk Reduction Measures. The RFP is part of a competitive bidding process which is governed by statutory law, see N.J.S.A. 52:34-6; N.J.S.A. 52:34-9.7, and N.J.S.A. 52:34-12 . The procedures and submissions required herein are necessary to comply with the statutes and other laws applicable to this procurement, and to ensure a full, fair and informed competition and contract award resulting in the best value to the State. Read the instructions in this RFP carefully. **Failure to comply with the mandatory requirements of the RFP will result in proposal rejection.**

4.1 SELECTION PROCESS STAGES

There are two stages in the selection process for this Contract:

Stage 1 – Mandatory Pre-Proposal Meeting

Stage 2 - Submission of Technical Proposal & Hourly Rate Schedule by Personnel Level

4.1.1 STAGE 1 - MANDATORY PRE-PROPOSAL MEETING

There will be a mandatory pre-proposal meeting. In order for a proposal to be considered for award, one representative of the Consultant must be present at the mandatory pre-proposal meeting commencing at the time and in the place specified below. Any Consultant who fails to have a representative attend this mandatory meeting will be disqualified from submitting a proposal. The purpose of the pre-proposal meeting is for the State to explain the RFP requirements and entertain questions about the RFP. Questions submitted in writing from the interested Consultants will be responded to in writing by the DPMC to all the firms. The pre-proposal meeting will be held as follows:

⌋ Date: May 16, 2017
⌋ Time 10:00 AM
⌋ Place: Division of Purchase and Property Bid Room, 33 W. State Street, 9 th Floor, Trenton, NJ

If there is any change in this date or meeting details, recipients of this RFP will be notified by e-mail and on the DPMC website.

4.1.2 STAGE 2 - SUBMISSION OF TECHNICAL PROPOSAL & TERM CONTRACT RATE SCHEDULES

As discussed in RFP Section 5.0 below, the technical proposal and rate schedule must include all required information pertaining to the Consultant's experience and hourly rates, and any other information required by the State for this Contract. **An original and five (5) copies of the proposal must be submitted by the due date and time.** In order to be considered for award, the proposal and all required attachments and information must be received by the DPMC at the appropriate location by the required time. **Any proposal not received on time will be rejected.**

⌋ Date: June 13, 2017
⌋ Time: No Later than 2:00 PM
⌋ Location: Plan Room - 9th Floor Department of Treasury, Division of Property Management & Construction Contracts & Procurement Unit 33 West State Street, P.O. Box 034 Trenton, New Jersey 08625-0034 ATTENTION: CATHERINE DOUGLASS

NOTE: Consultants using USPS Regular or Express mail services should allow additional time since USPS mail is not delivered directly to the DPMC.

4.2 RFP AND PROPOSAL SUBMITTAL PROCEDURES

The following procedures apply to this RFP.

4.2.1 ISSUING OFFICE

This RFP is issued by the DPMC. It is being issued in accordance with N.J.S.A. 52:34-6, N.J.S.A. 52:34--9.7 and N.J.S.A. 52:34-12. For purposes of this selection process, the DPMC is the sole point of contact between the Consultant and the State.

4.2.2 QUESTIONS, EXCEPTIONS AND ANSWERS

If Consultants have any questions about or objections to the RFP prior to the question cut-off date, the DPMC will respond to questions and exceptions posed in writing. Consultants should not contact the NJDEP directly with questions or clarification requests about this RFP or the selection process. **All questions must be submitted in writing to the DPMC.** Answers to questions submitted in writing prior to the stipulated question cut-off date will be provided as an Addendum to the RFP. All answers documented in an Addendum will be binding on Consultants and the State unless subsequently modified by the DPMC in writing. **Any oral explanations or instructions not covered by an Addendum shall not be binding on the State.**

4.2.3 PROPOSAL CLARIFICATION

Proposals will be reviewed by an Evaluation Committee appointed by the DPMC CO. Where the Evaluation Committee reviewing the proposals determines that any or all of the proposals require some clarification, the Evaluation Committee may require any or all of the Consultants to clarify their proposals through an oral presentation or through written responses to written questions. At such an oral presentation or in such written questions, the Committee may request the Consultant to clarify or explain items in its proposal. However, the oral or written presentation may not be used to supplement or to change the original proposal. Any attempts to supplement or change the original proposal through the clarification process shall be given no effect. The DPMC will schedule the time and place of any such oral presentations.

4.2.4 PUBLIC ACCESS TO SUBMISSIONS

Pursuant to State open records laws, following award of this Contract, all firms are welcome to review all technical proposals, score sheets, and all other contract documents. Firms can schedule a review appointment by contacting the DPMC Selection Coordinator Catherine Douglass at (609) 777-3094 to schedule an appointment.

In addition, the following notice will apply to all successful proposals submitted under this RFP:

Notice of Executive Order 125 Requirement for Posting of Winning Proposal and Contract Documents

Pursuant to Executive Order No. 125, signed by Governor Christie on February 8, 2013, the Office of the State Comptroller (“OSC”) is required to make all approved State contracts for the allocation and expenditure of federal reconstruction resources available to the public by posting such contracts on an appropriate State website. Such contracts are posted on the New Jersey Sandy Transparency website located at: <http://nj.gov/comptroller/sandytransparency/contracts/sandy/>.

The Contract resulting from this RFP is subject to the requirements of Executive Order No. 125. Accordingly, the OSC will post a copy of the Contract, including the RFP, the winning bidder’s proposal and other related contract documents for the above Contract on the Sandy Transparency website.

In submitting its proposal, a bidder may designate specific information as not subject to disclosure. However, such bidder must have a good faith legal and/ or factual basis to assert that such designated portions of its proposal (i) are proprietary and confidential financial or commercial information or trade secrets or (ii) must not be disclosed to protect the personal privacy of an identified individual. The location in the proposal of any such designation should be clearly stated in a cover letter, and a redacted copy of the proposal should be provided.

The State reserves the right to make the determination as to what is proprietary or confidential, and will advise the winning bidder accordingly. The State will not honor any attempt by a winning bidder to designate its entire proposal as proprietary, confidential and/or to claim copyright protection for its entire proposal. In the event of any challenge to the winning bidder’s assertion of confidentiality with which the State does not concur, the bidder shall be solely responsible for defending its designation.

4.2.5 PROPOSAL PREPARATION COSTS

Consultants are responsible for the preparation and submission of their proposals. The State of New Jersey assumes no responsibility or liability for any costs incurred by any Consultant in the preparation of the submissions.

4.3 MANDATORY REQUIREMENTS

4.3.1 PREQUALIFICATION REQUIREMENTS

In order for a proposal to be considered responsive to this RFP, the Consultant must have a current DPMC prequalification in the “CIVIL ENGINEERING (05)” and “HYDROLOGY (47)” disciplines with a rating of “Unlimited” and have in-house capabilities or Sub-Consultants prequalified with DPMC in the following professional disciplines:

- P011 Environmental Engineering
- P001 Architecture
- P013 Landscape Architecture
- P025 Estimating/Cost Analysis

Consultants shall also have in-house capabilities or Sub-Consultants pre-qualified with DPMC in all other Engineering and other specialty disciplines necessary to complete the project as described in this RFP. Additionally, if a Sub-Consultant is proposed for a discipline for which no DPMC prequalification exists, approval of the Sub-Consultant will be determined by the DPMC. The Consultant also must have a NJDEP Licensed Site Remediation Professional (LSRP) on its staff or on the staff of one of its Sub-Consultants.

Sub-consultants or sub-contractors including geotechnical drillers, testing laboratories, aerial photography, etc. may be hired through a competitive bidding process during work order implementation if required. The Consultant will be required to obtain three competitive vendor quotes for these reproduction costs and use the selected vendor for these services. These Sub-consultants do not need to be listed in the Consultant's technical proposal in response to this RFP. SBE firms should also be considered for these sub-contracting opportunities.

For a joint venture, both firms must have a current DPMC prequalification in the CIVIL ENGINEERING (05)" and "HYDROLOGY (47) disciplines and at least one firm must have a rating of "Unlimited."

The Consultant agrees to keep its DPMC prequalification in the "Civil Engineering" and "Hydrology disciplines and other required disciplines in good standing throughout the term of this Contract and to assure that any Sub-Consultant's prequalification is also kept in good standing. If the Consultant's prequalification or Sub-Consultant's prequalification lapses, it will not be assigned any additional work until the time that its prequalification is satisfactorily restored.

4.3.2 OTHER REQUIREMENTS

The Consultant must comply with all of the mandatory procedures and requirements of the RFP and must agree to all of the material terms and conditions contained in this RFP including the Consultant Agreement and General Conditions to the Consultant Agreement to TC-003 included as an attachment to this RFP. Failure to do so will result in proposal rejection.

5.0 PREPARATION AND SUBMISSION OF PROPOSALS

In order for a proposal to be considered responsive, a Consultant must agree to perform the Scope of Work described in this RFP, agree to the terms and conditions provided in this RFP, complete the attachments provided with this RFP, and provide the information as required below. Consultants are advised to read the entire RFP and any addenda subsequently issued by the DPMC before preparing and submitting their proposals.

5.1 PROPOSAL PACKAGE – GENERAL REQUIREMENTS

5.1.1 EVALUATION CRITERIA

The Consultant shall submit a complete technical proposal outlining its past experience and qualifications to perform this Contract. The technical proposal must be prepared to respond to the items listed in the attached "Evaluation Criteria" form. The technical proposal will be evaluated by the Evaluation Committee in accordance with the evaluation criteria.

5.1.2 STRUCTURE OF FIRM/PROJECT TEAM/JOINT VENTURE

In the proposal, the Consultant shall delineate the structure of its project organization, and shall describe its approach to the management of this project as defined below. For a Joint Venture, only one of the members shall act as the lead member in dealing with the State regarding negotiations of scope of work and costs for the term contract engagements under the Contract.

5.1.3 REQUIRED FORMAT OF PROPOSAL PACKAGE

The proposal package, an original and five (5) copies, which must be completed and returned **before 2:00 PM, June 13, 2017** consists of the following components:

- Cover Letter summarizing the firm’s understanding of the Project based upon the Scope of Work, past experience, etc.;
- Organization Chart/Staffing Plan (Section 5.2.1);
- “Project Key Personnel List” (form attached);
- Resumes of Project Key Personnel;
- Relevant team experience on similar projects (Section 5.2.2);
- “Key Team Members Project Experience Data Sheets” (form enclosed);
- Project Approach (Section 5.3.2);
- Term Contract Rate Schedule by Personnel Level (form enclosed);
- Consultant Affidavit (form enclosed);
- Required Administrative forms (McBride Principles Compliance Certification, Investment Activities in Iran, Certificate of Employee Information Report, Public Law 2005 Chapter 92 (Source Disclosure form), Certificate(s) of required insurance coverage.

Please ensure that all of the above items are addressed in your proposal in the same order as stated above.

5.2 PROPOSAL PACKAGE – CONTENT & ORGANIZATION

5.2.1 ORGANIZATION CHART/STAFFING PLAN.

The Consultant shall furnish information on the management and technical staff who will be directly engaged in the activities under this Contract. A chart which delineates the Consultant’s project organization, including the program and project manager(s) and the other professional and technical personnel, and describes the roles of the various personnel, should be included in the technical proposal. No personnel substitutions are permitted without the consent of the DPMC Project Director and DEP Project Manager.

The Consultant must demonstrate its capability and capacity to support its existing obligations while undertaking the work in this Contract. The Consultant shall identify all Key Personnel including those of any Sub-Consultants, who will be assigned to work under the Contract, and their respective roles. The number and disciplines of the staff that will be available to accomplish the various tasks within the contract Assignments should be included.

The Consultant shall complete and include the attached “Project Key Personnel List.” The Consultant shall indicate generally the respective percentages of time that key individuals will be dedicated to perform each phase of work on Work Order Assignments based on a 40-hour workweek.

5.2.2 EXPERIENCE ON LARGE SCALE PROJECTS OF A SIMILAR NATURE

The Consultant shall demonstrate through examples of past projects its experience in completing various large scale projects of a similar nature involving flood mitigation and environmental infrastructure and other professional services required under the Contract. The project examples may include: surveys and site investigations; preparation of designs and bid specifications; landscape architecture in urban areas; proper removal of hazardous materials; site remediation and restoration; stakeholder outreach and coordination; construction oversight services and other tasks/services outlined in Sections 2.0 and 7.0 of this RFP. Also, personnel presented in the proposed organization chart/staffing plan should be identified with the project history examples in their resumes. The Consultant shall also specify past working experience with State and/or Federal government (e.g., HUD, FEMA, USACE, EPA, FTA). The Consultant shall limit past project descriptions to a maximum of six (6) past projects which best reflect the tasks to be required on this Contract and are similar in scope to the work described in this RFP,

The Consultant shall complete the attached “Key Team Member Project Experience Data Sheet” for each team member. The form may be reproduced as needed.

5.2.3 PROJECT APPROACH TO SERVICES ON TERM CONTRACT ASSIGNMENTS

The Consultant shall describe its approach to providing services for term Contract Assignments, including the following:

- A. The Consultant’s procedures in completing Assignments under this term Contract, including approaches used on similar contracts or projects.
- B. Identification of the individuals and Sub-Consultants on the Consultant’s team who will be responsible for the various tasks associated with the Work Order Assignments, including those who will oversee the work, serve as the liaison with the State, and provide procedures for selecting and managing Sub-Consultants.
- C. Consultant’s plan for meeting the project schedule.
- D. The Consultant’s contingency plans for dealing with problems and correcting errors that occur.
- E. The Consultant’s policies and procedures for maintaining quality control and conducting inspections and oversight of the work.
- F. The Consultant’s understanding and knowledge of DPMC and NJDEP procedures and processes.
- G. The Consultant’s knowledge and familiarity with HUD requirements noted in Section 2.0 and in the Statement of Assurances for the Rebuild by Design – Hudson River Project, annexed to the RFP document.

5.2.4 TERM CONTRACT RATE SCHEDULE BY PERSONNEL LEVELS.

The Consultant shall submit a completed “Term Contract Rate Schedule by Personnel Level” on the form provided in this RFP. The Rate Schedule form shall provide all-inclusive, fully “loaded” rates for the various Personnel Levels that may be required during the term of the Contract. These loaded rates must include all costs required for each Personnel Level including all direct labor costs, overhead costs, fringe benefits, supplies, office equipment and phone costs, communication services, administrative costs, insurance, in-State travel, meals and lodging, professional fees and profit.

Loaded rates must be submitted for all Personnel Levels from 1 through 7, for each contract period. The “base” period is the original three year term of this Contract. Should the State opt to extend the Contract, the rates for “Option One” will apply for the initial two-year extension, and the “Option Two” rates will apply for the optional second one-year extension. The rates must be typed or written in ink; the State will not accept rates prepared in pencil. **DO NOT LEAVE ANY BLANKS, AS THIS WILL RESULT IN YOUR PROPOSAL BEING CONSIDERED NON-RESPONSIVE AND REJECTED BY THE STATE.**

Attached to the “Term Contract Rate Schedule by Personnel Level” form is a guide that describes the seven Personnel Levels for which hourly rates are to be submitted. This guide, “Personnel Levels with Examples” note some specific job duties, qualifications and experience levels that apply to the various Personnel Levels. These Personnel Levels are considered typical professional and technical levels required to accomplish the work specified in the Scope of Work and are to be used for establishing a rate schedule.

All seven Personnel Levels must be filled in for each term contract period. Failure to submit a complete rate schedule for each contract period will result in the proposal being deemed non-responsive and rejected.

Following the completion of rate schedules for each of the three contract periods, the Consultant shall enter the “average rate” for each contract period at the bottom of the form (under “Level 1” rates). These average rates shall be derived by calculating the mathematical average of the rates for all seven Personnel Levels, for each contract period. These average rates are used by the State as a comparative tool to evaluate the respective rates for each Consultant.

All personnel listed at or above “**Level 5**” shall be designated as Key Personnel and considered a contractual commitment by the Consultant. Subsequent to contract award, any change in key personnel will require written approval from the DPMC.

The “Term Contract Rate Schedule by Personnel Level” form must be signed in ink by an authorized person and submitted with the bid proposal. Typed, stamped or penciled signatures are not acceptable. For a proposal by a joint venture, the rate schedule sheet must be signed by an officer of each joint

venture. Unsigned “Term Contract Rate Schedule by Personnel Level” forms will be deemed nonresponsive and rejected by the State.

5.2.5. CONSULTANT AFFIDAVIT

The attached “Rebuild By Design Term Contract – Hudson River Project - Consultant Affidavit” must be signed, dated, notarized and returned as part of the proposal. This form signifies acceptance of all terms, General Conditions, and specifications set forth and included with this RFP. All signatures must be in ink.

5.2.6. ADMINISTRATIVE FORMS

The Consultant must include the following completed forms with their proposal:

- A. **MacBride Principles Compliance Certification** (Complete form, sign and date)
- B. **Investment Activities in Iran** (Complete form, sign and date)
- C. **Certificate of Employee Information Report** – Pursuant to N.J.A.C. 17:27-1.1 et seq., all firms contracting with the State of New Jersey must comply with P.L. 1975, c. 127, regarding non-discrimination in employment. A copy of “Exhibit A” detailing these requirements has been attached. Also attached for your information is the State contract policy with respect to the Americans with Disabilities Act.

All firms contracting with the State of New Jersey must provide a copy of the firm’s Certificate of Employee Information Report, issued by the New Jersey Division of Contract Compliance and Equal Employment Opportunity. Please attach a copy of this certificate with your technical proposal. If your firm has not applied for a Certificate of Employee Information Report, please do so using the attached form (AA302). Send the form to:

**N.J. Department of the Treasury
Division of Purchase and Property
Contract Compliance Audit Unit
P.O. Box 026
Trenton, NJ 08625-026
Phone: 609-292-2146**

- D. **Source Disclosure Certification (N.J.S.A. 52:34-13.2)** – All Consultants submitting a proposal shall be required to submit a completed Source Disclosure Certification (form attached), certifying that all services under this Contract will be performed in the United States. The Consultant shall disclose the location by country where services under the Contract will be performed, and the location by country where any sub-consulting of services

will be performed. For more information, please visit the following website:
www.state.nj.us/infobank/circular/eom129.htm.

- E. **Certificates of required insurance coverage** – During the project, the Consultant is required to secure and maintain in force insurance coverage for: Comprehensive General Liability; Comprehensive Automobile Liability (if applicable); Workers Compensation; and Professional Liability. Proof of this coverage must be submitted by the Consultant prior to contract award.

6.0 PROPOSAL EVALUATION AND CONTRACT AWARD

6.1 GENERAL CRITERIA

Proposals will be evaluated by an Evaluation Committee convened by the DPMC Contracting Officer, comprised of representatives from the NJDEP and the Department of the Treasury.

Consistent with N.J.S.A. 52:34-12, award shall be made with reasonable promptness by written notice to the responsible Consultant whose proposal, conforming to the project solicitation, will be most advantageous to the State, price, and other factors considered. All proposals may be rejected when the Contracting Officer of the DPMC determines that it is in the public interest so to do.

Following receipt, proposals will be evaluated in accordance with the following procedure:

1. First, proposals will be checked for compliance with all mandatory requirements in the RFP. Those proposals that are automatically rejected for failure to comply with the mandatory requirements will not be further reviewed.
2. Second, the “Term Contract Rate Schedule by Personnel Level” of each proposal will be checked to ensure the “average rate” for each contract period is correct. Any mathematical errors will be corrected in accordance with Section 6.2.
3. Third, after the proposals are reviewed, one, some or all of the consultants may be asked to clarify certain aspects of their proposals. A request for clarification may be made in order to resolve minor ambiguities, informalities or clerical errors. Clarifications cannot correct any deficiencies or material omissions or revise or modify a proposal, except to the extent that correction of apparent clerical mistakes results in a modification. The Consultant may be required to give an oral presentation to the State concerning its proposal or to provide written responses to questions regarding its proposal.
4. Fourth, the Evaluation Committee will evaluate and score the proposals on their technical merit and review of proposed hourly rates, based upon the criteria and relative weights pre-determined on the “Evaluation Criteria” form. This qualitative technical evaluation, along with the acceptability of the rate schedule, will be the primary determining factors of the firm whose proposal is most advantageous to the State, and of the subsequent selection of Consultant to be awarded a term Contract.

Interviews of the top-ranked firms may be required prior to a final determination by the Evaluation Committee.

6.1.1. EVALUATION CRITERIA

The proposals of those Consultants who have been determined to be responsive and responsible will be ranked according to the technical quality of their proposal and acceptability of proposed hourly rates. The qualitative factors to be used in this evaluation are as follows:

1. The relative strengths of the Consultant's proposed project organizational plan and personnel/staffing capability including Sub-Consultants included in the proposal (25%).
2. The relative strengths of the Consultant's and Sub-consultant's proposed project personnel and their qualifications and experience on large scale projects/contracts of a similar nature (30%).
3. The Consultant's proposed approach to the Project and plan for adherence to the project schedule in completing all required activities and tasks on Rebuild by Design project Assignments as described in this RFP (30%).
4. The value and competitiveness of the Consultant's proposed hourly rates per the "Term Contract Rate Schedule by Personnel Level," both for the seven levels of personnel type/disciplines listed, and for the average rates derived from those disciplines (15%).

Consultants are advised that a contract will not necessarily be issued strictly to the lowest priced Consultant who has met the minimum established requirements. The final ranking of the firms by the Committee will determine the top-ranked Consultant.

6.2 AVERAGE RATE DISCREPANCIES

In evaluating bids, discrepancies between the indicated average rates for any contract period and the correct average thereof will be resolved in favor of the correct average of the submitted rates for the contract period.

6.3 RIGHT OF FINAL PROPOSAL ACCEPTANCE

The DPMC reserves the right to reject all proposals, or to award contracts to those firms deemed to be in the best interest of the State. The CO shall have authority to award contracts to the Consultants that best meet the contract specifications and proposal conditions, and are determined to have offered the most advantageous bid proposals to the State, price and other factors considered.

6.4 NOTICE OF INTENT TO AWARD

The DPMC will notify all competing Consultants in writing of the CO's intent to award term contracts. If a Consultant firm determines that it will seek a hearing or file a protest regarding the award, it must submit a letter setting forth its specific grounds for protesting the intended awards or rejection within five (5) days of issuance of the intent to award letter. The CO will review the request in accordance with N.J.A.C.17:19-5.2.

6.5 JOINT VENTURE REQUIREMENTS

In the event that the award-winning proposal is from a Joint Venture, a copy of the proposed joint venture agreement between the venture partners shall be submitted for review and approval by the State. This agreement shall address issues such as: 1) the management structure of the Joint Venture and the duties and authorities of the singular program manager who shall interface with the State on all contractual and technical matters; 2) the organization functioning to control all financial matters in interaction with the State and flow of payments between the Joint Venture partners under the Contract; and 3) the partner/corporate function assigned the lead position for quality control under the Contract.

6.6 CHAPTER 51 REQUIREMENTS

In accordance with P.L. 2005, Chapter 51 (formerly Executive Order 134), all Consultants with which the State intends to contract must complete and submit the "Contractor Certification and Disclosure of Political Contributions" form (Form DPPc51, copy and instructions attached). All firms selected for this Contract must be in compliance with Chapter 51 requirements, and must agree to adhere to all continuing obligations contained in this law regarding contributions and disclosures as required. For more information on Public Law 2005, Chapter 51, please visit the following website:
http://www.state.nj.us/treasury/purchase/forms/eo134/c51_eo117_cd_02_10_09.pdf.

6.7 PERFORMANCE PERIOD

Services shall be provided under this Contract from the date of award until the completion of any or all options exercised under this Contract.

6.6.1. BASE PERIOD

The base period of performance of this Contract shall be three years commencing on the date of the contract award, during which time Work Orders may be issued by the State. Actual performance of Work Orders may extend beyond this Contract period until completion of all services are provided under the approved Work Orders, and the terms of this Contract shall extend until completion of the service(s).

6.6.2. RENEWAL OPTIONS

The State shall have the unilateral option of extending this Contract for one additional period of two (2) years, and shall have one last unilateral extension option of one (1)

year with the same terms and conditions as are contained in this Contract at the time said option(s), if any, are exercised.

The option period shall extend the performance period of the Contract commencing on the expiration of the preceding base contract performance period. The State may exercise an option to extend by issuing a written notification (mailed or otherwise furnished) to the Consultant(s) at least 30 calendar days prior to the expiration date of the preceding base or option performance period. In the event the services of the Consultant are still required past the last renewal period, the State and Consultant may enter into negotiations to extend the contract period and rates, in order to complete the required project work.

7.0 SCOPE OF WORK (SOW)

7.1 OVERVIEW OF SERVICES REQUIRED BY CONSULTANT

All services completed under any Work Order must comply with all applicable State and federal laws and policies, including but not limited to those specified in the applicable Federal Register notice, published at 79 Fed. Reg. 62182 (Oct. 16, 2014), NEPA (42 U.S.C. §4321 *et seq.*), HUD regulations implementing NEPA (24 C.F.R. Parts 50 & 58), and those listed in the Statement of Assurances. Under the Contract, the following services may be required by the Consultant through approved Work Orders to complete the design, bid documents including specifications, bidding and construction administration activities for the project. These services may include the following:

- Reviewing existing, relevant data and documents pertaining to the Project Area including the FS and DEIS.
- Filling data gaps and obtaining all information needed to complete the design, including gaining rights of access (with assistance from NJDEP).
- Preparing Health and Safety Plans.
- Organizing stakeholder outreach.
- Evaluating NJDEP Stakeholder comments on the design as needed.
- Working with the Federal Emergency Management Agency (FEMA) to obtain a certified flood elevation.
- Preparation of engineering design and construction plans, drawings, specifications and support documents that will precisely depict and define the selected flood protection design, components, construction materials and alignments.
- Performing the engineering design with submissions at the 30%, 65%, 95% and 100% design completion stages.
- Developing a detailed construction cost estimate for the selected project design at each design completion stage.
- Developing and preparing a complete construction bid package(s) to include, but not be limited to, the construction of the project components as designed.
- Performing construction administration and oversight services. The Director, in consultation with NJDEP and CMF will evaluate this Work Order proposal and associated costs at the time of submission and will make a determination regarding acceptance and continuation of work into the construction phase.
- Assist in obtaining access agreements and easements, as needed.
- Land surveying.

- Wetland delineation.
- Progress reporting to NJDEP on a monthly basis.
- Preparing progress reports as necessary to meet HUD reporting requirements.
- Regular meetings with NJDEP staff and CMF.
- Community relations and technical support. Community relations includes, but is not limited to, coordination with the many project stakeholders throughout the design, bidding, construction and close-out processes.
- Development of case study and lessons learned document.
- Statement of Assurances compliance.
- Integrity Monitor coordination and compliance.

7.2 POTENTIAL WORK ORDER ASSIGNMENTS

The potential work order assignments include, but are not necessarily limited to, the following general tasks

1. Development of Implementation Plan and Schedule

In order to develop an Implementation Plan, the Consultant will be required to obtain and review relevant existing information concerning the Project Area (including information about existing projects and plans) from the project's FS and DEIS. This information may require supplementation from local, county, State and Federal agencies, Authorities, property owners, private utility companies, and non-governmental organizations such as environmental or community advocacy groups. The data to be gathered may include, all relevant reports, studies, plans and information concerning: natural features; property ownership; easements; topography; subsurface conditions (geotechnical and contaminant); zoning and current land use; infrastructure; utilities; traffic/circulation patterns; environmental and historic resources; floodplain; hydrologic, tide and flood control structures and waterfront structures; known locations of critical wildlife habitats, endangered and threatened wildlife species and/or wildlife species of special concern; demographics and economic information needed to comply with Executive Order 12898 (which requires federal agencies to consider whether actions they might fund or approve may have any disproportionately high and adverse environmental or human health effects on low-income or minority populations); The Consultant must also review applicable master plans and consult municipalities and other stakeholders within the Project Area regarding their long-term goals for land use, economic development, growth, etc. Once relevant existing data is gathered, the Consultant shall utilize the data to formulate and submit an Implementation Plan and Schedule that outlines the need, where need exists, to collect additional data that may be needed for the Design Phase of the project.

2. Design Services (including all wetlands delineation and required surveys)

The Consultant shall prepare and deliver to the NJDEP a complete design package(s) for the Project. The design package shall be prepared in a format that complies with the requirements set forth in the DPMC Procedures Manual for Architects and Engineers, Second Edition, or subsequent editions. The Consultant shall use information and data obtained from the FS and DEIS in preparing the design package. All design documents shall be prepared, signed and sealed by a New Jersey Licensed Professional Engineer or Surveyor (as appropriate). This design package task shall include, at a minimum, the preparation of the following items:

- Design Report (30%, 65%, 95%, 100%)
- Design Drawings (30%, 65%, 95%, 100%)
- Construction Specifications (30%, 65%, 95%, 100%)
- Permits (30%, 65%, 95%, 100%)
- Bid Form (and supporting documents)

3. Bid Phase Services

The Consultant may be required to prepare and distribute the entire bid package. Preparation and distribution of the bid packages shall include printing, copying, reproducing, collating, affixing, binding, assembling, packaging, marking, transporting, mailing, and distributing the bid packages to potential bidders. Other services that may be needed could include: bid advertisement, preparing bid addenda, assistance with bid evaluation, bid protest/litigation witness, and revised drawing sets as a result of the bidding process. Reproduction and printing costs associated with the bid packages are not included in the loaded rates and an allowance will be designated at the time of work order development for reproduction and printing costs if necessary. The Consultant will be required to obtain three competitive vendor quotes for these reproduction costs and use the selected vendor for these services.

4. Construction Administration Services

The Consultant will be required to conduct visits to the site at intervals appropriate to the various stages of construction in order to inspect the progress and quality of the various aspects of the Awarded Contractor(s)' work. Based on information obtained during site visits and inspections, the Consultant shall generally determine if the Awarded Contractor's work is proceeding in accordance with the Contract Documents. The Consultant will be required to keep the NJDEP informed of the progress of the work by submitting written progress reports at intervals to be determined on a site specific basis. Tasks in this category can include: scheduling, payment request review, construction material review, permit compliance, conferences and meetings, contract document clarifications and modifications, shop drawings, product substitution review, field change review, inspections, and close-out. A Construction Management Firm (CMF) has been contracted separately to provide program and construction management services for the overall project. The CMF will provide day-to-day oversight of the design and construction projects with an emphasis on meeting goals relating to schedule, budget, scope and quality. The CMF will coordinate with the Consultant on design matters as necessary.

5. Community Relations and Technical Support

DEP is committed to a robust community and stakeholder outreach process throughout the course of what will be a multi-year effort to realize the RBD Project. For additional details regarding the anticipated outreach and public involvement, see Section 4 of Action Plan Amendment Number 12, Substantial Amendment for the Third Allocation of CDBG-DR Funds: Rebuild By Design (available online at <http://www.renewjerseystronger.org/wp-content/uploads/2015/04/APA-12-RBD-Amendment-4-22-15.pdf>), the Citizen Participation Plan applicable to CDBG-DR funded projects (available online at http://www.renewjerseystronger.org/wp-content/uploads/2014/11/CITIZEN_PARTICIPATION_PLAN_3-13-13.pdf), and the Citizen Outreach Plan (available online at <http://www.state.nj.us/dep/floodresilience/docs/rdb-hudson-coplan-final.pdf>) .

The Consultant will be required to coordinate with DEP to ensure compliance with the requirements of Action Plan Amendment No. 12, the Citizen Participation Plan and the Citizen Outreach Plan.

Local briefings, public information sessions, public meetings are expected to occur at major milestones throughout the project. Consultant shall prepare and present information and discuss technical activities involving the Project to a lay audience at the request of the State.

6. Studies and Investigations

Prepare other studies, investigations, support documents as described herein or as determined to be necessary.

7.3 BASIC SERVICES AND REQUIREMENTS FOR WORK ORDER ASSIGNMENTS

1. Progress Reporting

The Consultant shall prepare and submit monthly progress reports to NJDEP that contain the following information:

- Work accomplished during the reporting period
- Status of Work Orders and associated tasks Updated project schedule
- Percent of task completion including number of man-hours and cost expended
- Problems or delays experienced during the reporting period
- Actions being taken to address and/or rectify problems and delays
- Activities projected over the next month
- All personnel changes (key personnel changes will require prior approval)
- Billing to date showing detailed breakdown of costs incurred for the month on a task by task basis
- Financial reporting of invoices submitted and paid
- Other information necessary to satisfy reporting requirements imposed by HUD

2. Project Meetings

The Consultant shall prepare for and attend project meetings as required by NJDEP in Trenton, New Jersey or other locations as determined by the NJDEP. The meetings may include but not be limited to the following topics: data gathering issues, property access issues, regulatory issues, technical issues, localized or regional contamination, progress, budget, change orders and presentations. The Consultant will be required to prepare an agenda and follow up with minutes summarizing the meeting discussions. Additional meeting requirements are detailed under specific tasks below.

3. Consultant's Project Manager

The project management shall be assigned to one person on the Consultant team who will act as the main contact for the execution of this work. The Consultant's Project Manager shall be responsible for thorough knowledge of the day to day status of the work in progress. The

Consultant's Project Manager shall be present at all meetings requested by NJDEP. The Project Manager shall be a NJ Licensed Professional Engineer. The Consultant's Project Manager will be required to interact with, and report to the NJDEP Project Manager for the Rebuild by Design Hudson River Project and the Construction Management Firm (CMF), which has been contracted separately by the State for Program Management and project assignment oversight.

4. Licensed Site Remediation Professional

The Consultant's team shall include a Licensed Site Remediation Professional (LSRP) as required under N.J.S.A. 58:10C-1 et seq. to oversee remedial activities in accordance with New Jersey statutes and regulations. The LSRP may be provided by a subconsultant to the Consultant. LSRP services may include:

- Planning and oversight of sampling activities
- Preparation of Preliminary Assessment/Site Investigation Documents
- Preparation and submittal of all appropriate SRP plans, forms and reports, as necessary

8.0 METHOD OF ASSIGNMENT AND ENGAGEMENT

8.1 USE OF THE CONTRACT

- A. DPMC intends to award a Consultant Contract to the firm with the highest ranked proposal.
- B. The services engaged under this RFP may involve one Work Order of one or more tasks, or as necessary to develop the Project, it may involve multiple Work Orders, with each subsequent Work Order dependent on the results and findings of the previous Work Orders. No work shall commence until the Consultant is issued an approved Work Order for the specified tasks.

8.2 CONSULTANT PERFORMANCE

The Consultant will be required to proceed and complete each Work Order in accordance with the terms of the contract and in accordance with the specific requirements included in the Work Order. If the Consultant's performance during the course of an engagement is not satisfactory, the DPMC and/or the NJDEP will notify the Consultant's Project Manager of the issues and a timeframe for resolution.

The State may impose liquidated damages on the Consultant in the event its performance is not timely and/or adequate, however, liquidated damages will apply only to delays and errors caused by factors within the Consultant's control. At the time of the Work Order Assignment, DPMC and NJDEP will make a good faith effort to estimate the actual damage that will ensue from a breach and/or delay by Consultant, and include that estimate in the Work Order as liquidated damages to be paid by the Consultant in the event of breach and/or delay. The Consultant agrees that it shall be liable for liquidated damages as provided in the Work Order documents and that those liquidated damages shall be legally recoverable as agreed damages in the event of a breach or delay by Consultant. The State shall have the sole discretion to allow a grace period or toll the time periods for the failure by the Consultant to meet designated schedules and completion dates. The State shall assess liquidated damages and deduct the liquidated damages, if any, from any

payment made to the Consultant. If so imposed in the Work Order, these liquidated damages shall take precedence over any conflicting provisions in the General Conditions to the Consultant Agreement accompanying this RFP.

8.3 ASSIGNING AND EXECUTING SPECIFIC WORK ORDERS

8.3.1 Project Data

Specific project data will be provided to the Consultant for each Work Order, including:

- DPMC Project Number/Title/Location
- Scope of Work – General information regarding the scope of the Assignment will be provided to the Consultant at the time a Work Order is solicited. This may include information regarding existing site data, Assignment specifications, proposed schedule or completion dates and any specific services required.

8.3.2 Ordering of Services/Placement of Work Order Services

Delivery or performance of services by the Consultant shall be made only as authorized by Work Orders issued in accordance with this Contract. There is no limit on the total number of Work Orders that may be issued to the Consultant under this Contract. The DPMC may issue a Work Order requiring the performance of services involving multiple properties. The DPMC may elect to award a single Work Order Assignment, or to award multiple Work Order Assignments for the services required.

Any Work Order issued during the term of this Contract and not completed within that period shall continue and be completed by the Consultant within the time specified in the Work Order. This Contract shall govern the Consultant's and State's rights and obligations with respect to that Work Order to the same extent as if the order were completed during the Contract's effective period.

Each Work Order shall include all of the services to meet the obligations of the task(s) requiring delivery or performance. The Work Order shall be supplemented by a proposal that includes the team organization, staffing, Sub-Consultants included, approach to the project tasks, experience of the firm/team, and other necessary information. All Work Orders are subject to the terms and conditions of the Contract. In the event of a conflict between a Work Order and the Contract, the Contract shall control. A Work Order is considered "issued" when the DPMC emails or faxes the approved Work Order to the firm along with a Notice to Proceed for the specific Work Order Assignment.

The State reserves the right to perform work of the same type covered in this Contract, with its own forces or by contract.

8.3.3 Processing Work Orders

A DPMC Work Order form will be provided for use by the Consultant in providing a summary of the proposal for services and costs for each Assignment.

Each Work Order form and proposal should reference the following:

- A. Contract Number
- B. Work Order Number
- C. Date of Order

- D. Place or Location of Services
- E. Scope of work/services to be provided
- F. Start and Completion Dates – Each Work Order shall specify the start and completion date of the work or services. The starting date shall not be less than three (3) calendar days after the issuance of an approved Work Order and Notice to Proceed for the work.
- G. The applicable hourly rates for the personnel, services and any other cost items included in the Work Order. The hourly rates must correspond with those submitted by the Consultant in the “Term Contract Rate Schedule by Personnel Level.” Each Work Order must total the hourly rates and any required Sub-Consultant and or /subcontractor costs and be issued for a lump sum or not-to-exceed amount. .
- H. Approvals – Following submission of the Work Order proposal by the Consultant, the Work Order must be approved by NJDEP Project Manager and by the DPMC Contracting Officer.
- I. No work shall be performed under this Contract until an approved Work Order and Notice to Proceed have been issued to the Consultant. This Notice to Proceed will only be issued following approval of the Work Order by both NJDEP and DPMC and receipt of funding for the Assignment. For the purpose of the Contract, a Work Order shall be deemed to be “issued” at the time the DPMC authorizes the Notice to Proceed and emails or faxes it to the Consultant.

8.4 RESPONSIBILITY FOR CONTRACT ADMINISTRATION AND PAYMENTS

8.4.1 Contracting Officer (CO)

The Contracting Officer (CO) is the final authority in all contractual matters relating to the Contract and any Work Order placed against the Contract as well as to any design, construction or other type of contract associated with this Contract. The CO has overall responsibility for the administration of the Contract and is authorized to take action on behalf of the State to amend or modify an approved Work Order Assignment. The CO may delegate certain other responsibilities to authorized representatives.

8.4.2 Project Director (to be named for each Work Order)

A DPMC Project Director will be designated on each specific Work Order Assignment to assist the CO in the delegation of responsibilities when the CO is unable to be directly in touch with the contract work. Responsibilities of the Project Director include, but may not be limited to: determining the adequacy of performance by the Consultant in accordance with terms and conditions of the Contract; acting as the Director’s representative in charge of overseeing work at the site(s) and coordinating with the DEP Project Manager; and advising the CO of any factors or issues which may cause delay in performance of the work.

8.4.3 Invoicing Requirements

Invoices shall be submitted monthly to the DEP Project Manager specified in the Work Order on an original DPMC Invoice Form (DPMC-11). Invoices must include all required information, signatures and supporting back-up documentation prior to acceptance, approval and processing by the State. The invoices will be co-signed by the DPMC Project Director or CO prior to payment.

8.4.4 Adjusting Payments

Upon review of the invoices, the DEP Project Manager may adjust the payment of the invoice if any services do not conform to the Contract requirements of the Work Order and/or this Contract. The DEP Project Manager will inform the Consultant in writing of the type and dollar amount of the deductions prior to processing the remainder of the invoice. The Consultant may, after notification of the proposed deduction, present to the DEP Project Manager, in writing, specific reasons why any or all of the proposed deductions are not justified. Reasons must be solidly based and must provide specific facts that justify reconsideration and/or adjustment of the amount to be deducted. Failure to respond within ten (10) day period will be interpreted to mean that the Consultant accepts the deductions proposed. After consideration of the Consultant's reply, if any, the DEP Project Manager will make any adjustments in deduction which are warranted, determine the dollar amount of deductions, and notify the Consultant of the decision.

8.5 DISPOSITION OF MATERIALS

Upon termination or completion of work under a Work Order Assignment, the Consultant shall forward all deliverables, documents or materials produced in connection with the performance of this Contract to the DPMC Project Director or DEP Project Manager, as directed by the CO or as specified in other provisions of the Contract. All deliverables, documents and materials produced, or required to be provided under the Contract will become and remain the property of the State. The Consultant shall maintain all documentation and records in accordance with the Statement of Assurances annexed to this RFP. Such records shall be made available to the New Jersey Office of the State Comptroller or other State or federal agency with rights to audit or to review such records upon request.

END OF RFP

STATEMENT OF ASSURANCES FOR
REBUILD BY DESIGN – HUDSON RIVER PROJECT
(the “Project”)
DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES
TERM CONTRACT TC-003
(the “Contract”)
DPMC PROJECT P1155-00

The purpose of this Statement of Assurances is to list requirements applicable to programs funded in whole or in part by Community Development Block Grant-Disaster Recovery (“CDBG-DR”) funds received from the U.S. Department of Housing and Urban Development (“HUD”). Not all of the requirements listed herein shall apply to all activities or work under the Contract.

As used herein, “**Contractor**” and “**Consultant**” refer to any contractors or consultants awarded a Contract to provide goods or perform services in connection with the Project and paid with CDBG-DR funds.

Contractor/Consultant agrees to comply with all *applicable* federal CDBG-DR laws, guidelines and standards in a manner satisfactory to the State and HUD, including all administration and compliance requirements set forth by this Statement of Assurances. To the extent that Contractor/Consultant utilizes any subconsultants/subcontractors, Contractor/Consultant shall require and ensure that each subconsultant/subcontractor comply with all *applicable* federal CDBG-DR laws, guidelines and standards; any subcontracts entered into by Consultant shall set forth these requirements. Contractor/Consultant also agrees to comply with all *applicable* cross-cutting statutes and regulations, subject to waivers cited in the Federal Register, Docket No. FR-5696-N-01 (March 5, 2013) (Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving CDBG - DR funds in Response to Superstorm Sandy), as supplemented by additional applicable Notices published by HUD in the Federal Register.

Contractor/Consultant agrees to comply with the requirements of Title 24 of the CFR, Part 570 (HUD regulations concerning Community Development Block Grants).

The failure to list herein a legal requirement applicable to services performed by Contractor/Consultant does not relieve the Contractor/Consultant from complying with that requirement.

A. GENERAL PROVISIONS

1. Under provisions of the Hatch Act that limit the political activity of employees and HUD regulations governing political activity (24 CFR 570.207), CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

2. No federally appointed funds shall be used for lobbying purposes regardless of level of government, in accordance with 2 CFR 200.450.
 3. HUD rules prohibit the use of CDBG funds for inherently religious activities, as set forth in 24 CFR 570.200(j), except for circumstances specified in the Department of Housing and Urban Development Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving CDBG Disaster Recovery Funds in Response, 78 FR 14329 (March 5, 2013).
 4. HUD rules impose drug-free workplace requirements in Subpart B of 2 CFR part 2429, which adopts the government-wide implementation (2 CFR Part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988.
 5. Citizens will be provided with an appropriate address, phone number, and times during which they may submit complaints regarding activities carried out utilizing these CDBG-DR funds. The State will provide a written response to every citizen complaint within fifteen (15) working days of the complaint.
- B. **PERSONALLY IDENTIFIABLE INFORMATION:** To the extent the Contractor/Consultant receives personally identifiable information, it will comply with the Privacy Act of 1974 and HUD rules and regulations related to the protection of personally identifiable information. The term “personally identifiable information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc., either alone or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc. See 2 CFR 200.79 & OMB M-07-16. Contractor/Consultant shall require all persons that have access to personally identifiable information (including subcontractors/subconsultants and their employees) to sign a Non-Disclosure Agreement.

C. **FINANCIAL MANAGEMENT AND PROCUREMENT**

1. *To the extent applicable*, Contractor/Consultant shall adhere to the principles and standards governing federal grant distribution as set forth in the OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200).
2. Contractor/Consultant shall comply with all *applicable* laws pertaining to financial management, including 2 CFR Part 180 and 2 CFR Part 2424, which prohibit the making of any award or permitting any award (sub grant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs. To the extent that it uses subcontractors or subconsultants, Contractor must verify that none of them are on the List of Parties Excluded from Federal Procurement or Non-procurement Programs promulgated in accordance with Executive Orders 12549 and 12689, “Debarment and Suspension,” as set forth at 2 CFR Part 2424. No Contractors or Subcontractors that are on the List may receive any CDBG funds.
3. Conflict of interest rules, as set forth in 24 CFR 570.489, 24 CFR 570.611, and 2 CFR 200.112, apply. Contractor/Consultant shall disclose in writing any potential conflict of interest to DPMC and DEP.
4. *To the extent applicable*, Contractor/Consultant shall comply with 24 CFR Part 570 regarding the management and disposition of cash, real and personal property acquired with CDBG-DR funds.

5. *To the extent applicable*, Contractor/Consultant shall comply with 24 CFR 570.489(j) regarding change of use of real property. These standards apply to real property within its control (including activities undertaken by subcontractors/subconsultants). These standards apply from the date CDBG-DR funds are first spent until five years after the close-out of the Program.

D. RECORDS AND RECORDS RETENTION

1. The Contractor shall be responsible for maintaining records, in accordance with N.J.A.C. 17:44-2.2(b), 2 CFR 200.333, 24 CFR 570.502 and 570.506. Records shall be maintained for the longer of:
 - (a) a period of three (3) years from submission of the final expenditure report for the Rebuild by Design Program; and
 - (b) a period of seven (7) years from the date of final payment.
2. If any litigation, claim, or audit pertaining to the Contract has been started before the expiration of the five-year record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required five-year period, whichever is later.
3. Contractor/Consultant shall provide the State and HUD, including their representatives or agents, access to and the right to examine all records, books, papers, or documents related to the Contract and the use of CDBG funds.

E. FEDERAL LABOR STANDARDS: *To the extent applicable*, Contractor/Consultant shall comply with Federal Labor Standards, including:

1. Section 110 of the Housing and Community Development Act of 1974, 42 U.S.C. §5310, 24 CFR §570.603 and HUD Handbook 1344.1 Federal Labor Standards Requirements in Housing and Urban Development Programs, as revised, which require that all laborers and mechanics (as defined at 29 CFR §5.2) employed by Contractor/Consultant (including its subcontractors/subconsultants) in connection with construction contracts over \$2,000, are paid wages at rates not less than those prevailing on similar construction in the locality as per the Davis-Bacon Act (40 U.S.C. §3141 *et seq.*), as amended; except that these requirements do not apply to the rehabilitation of residential property if such property contains less than 8 units;
2. The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts of \$100,000 or greater be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work-week, and projects must comply with safety standards;
3. The Federal Fair Labor Standards Act (29 U.S.C. 201 *et seq.*), requiring that covered nonexempt employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week;
4. The Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3), which apply to contracts and subcontracts for construction, prosecution, completion, or repair of public buildings, public works or buildings, or works financed in whole or in part by Federal loans or grants, and requires payment of wages once a week and allows only permissible payroll deductions;
5. Department of Labor regulations in parallel with HUD requirements above:

- a. 29 CFR part 1: Procedures for Predetermination of Wage Rates
 - b. 29 CFR part 5: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)
 - c. 29 CFR part 6: Rules of Practice for Administrative Proceedings Enforcing Labor Standards In Federal and Federally Assisted Construction Contracts and Federal Service Contracts
 - d. 29 CFR part 7: Practice Before the Administrative Review Board With Regard to Federal and Federally Assisted Construction Contracts.
6. All applicable Federal Labor Standards provisions set forth in form HUD-4010. Consultant/Contractor will ensure that form HUD-4010 is included in all bid packages and subcontracts entered into with contractors, consultants, or other third parties to supply goods or perform services in connection with the Contract activities and paid with CDBG-DR funds.

F. SECTION 3 REQUIREMENTS

1. *To the extent applicable, Contractor/Consultant shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended ("Section 3"). Section 3 is intended to encourage recipients of HUD funding to direct new employment, training, and contracting opportunities to the greatest extent feasible to low- and very low-income persons, and to businesses that employ these persons, within their community. Section 3 applies to grantees and subrecipients that receive assistance exceeding \$200,000 in certain types of HUD funding, including CDBG funding, and to contractors and subcontractors that enter into contracts in excess of \$100,000 funded by certain types of HUD funding, including CDBG funds, for any activity that involves housing construction, rehabilitation, and demolition, or other public construction. A guide to Section 3 applicability and compliance requirements is located at HUD's website, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3, under Frequently Asked Questions (FAQs).*
2. **Pursuant to 24 CFR 135.38, the following language shall be included in all contracts and subcontracts:**
 - a. *The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*
 - b. *The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with 24 CFR part 135.*
 - c. *The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and shall post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set*

forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- d. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor shall not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.*
- e. The contractor shall certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.*
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).*

G. FAIR HOUSING AND NON-DISCRIMINATION

- 1. *To the extent applicable, Contractor/Consultant shall comply with the following fair housing and non-discrimination laws. Any act of unlawful discrimination committed by Contractor/Consultant or failure to comply with applicable laws shall be grounds for termination of the Contract.*
 - a. *Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §200d et seq., and the regulations issued pursuant thereto (24 CFR Part 1), which provide that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which it receives federal financial assistance and shall immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to it this assurance shall obligate it, or in the case of any transfer of such property, and transferee, for the period during which the property or structure is used for another purpose involving the provision of similar services or benefits.*
 - b. *Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619), which requires administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Title VIII further prohibits discrimination against any person in the sale or rental of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status.*

- c. Title II of the Civil Rights Act of 1968 (25 U.S.C. 1301-1303), which prohibits discrimination because of race, color, religion, or natural origin in certain places of public accommodation.
- d. Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 *et seq.* The ABA requires access to buildings designed, built, altered, or leased by or on behalf of the federal government or with loans or grants, in whole or in part, from the federal government. As used in the ABA, the term “building” does not include privately owned residential structures not leased by the government for subsidized housing programs.
- e. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 *et seq.*, which prohibits discrimination on the basis of sex in any federally funded education program or activity.
- f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, which provides that no otherwise qualified individual shall solely by reason of his or her handicap be excluded from participation, denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.
- g. Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794d, which requires Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities, and applies to all federal agencies when they develop, procure, maintain or use electronic and information technology.
- h. Section 109 of Title I of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under that Part. Section 109 further prohibits discrimination to an otherwise qualified individual with a handicap, as provided under Section 504 of the Rehabilitation Act of 1973, as amended, and prohibits discrimination based on age as provided under the Age Discrimination Act of 1975. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR 6.
- i. Section 104(b)(2) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304(b), which requires communities receiving community development block grants to certify that the grantee is in compliance with various specified requirements.
- j. Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*, which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.
- k. Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 *et seq.*, as amended by the ADA Amendments Act of 2008, which prohibits discrimination against people with disabilities by public entities, which includes any state or local government and any of its departments, agencies or other instrumentalities.
- l. Housing for Older Persons Act of 1995 (“HOPA”) (42 U.S.C. 3607), which governs housing developments that qualify as housing for persons age 55 or older.
- m. Accessibility requirements contained in Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181 *et seq.*).
- n. Executive Order 11063: Equal Opportunity in Housing, November 20, 1962, as amended by Executive Order 12259, and the regulations issued pursuant thereto, which pertain to equal opportunity in housing and non-discrimination in the sale or rental of housing built with federal assistance.
- o. Executive Order 11246 (Johnson), September 24, 1965, as amended by Executive Order 11375 (Johnson), October 13, 1967, as amended by Executive Order 13672 (Obama), July 21, 2014, which prohibit discrimination in employment on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. Further, contractors and subcontractors on federal and federally assisted construction contracts shall take affirmative action to insure that equal opportunity is provided in all aspects of their employment,

- including, but not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training and apprenticeship.
- p. Executive Order 12086: Consolidation of contract compliance functions for equal employment opportunity, October 5, 1978.
 - q. Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, January 17, 1994.
 - r. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.
 - s. Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency (LEP), August 11, 2000, and Federal Register Notice FR-4878-N-02 (available online at <http://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>), which require recipients of federal financial assistance to ensure meaningful access to programs and activities by LEP persons. (The State's Language Access Plan (LAP) is available online at http://www.renewjerseystronger.org/wp-content/uploads/2014/08/NJ-DCA-LAP_Version-1.0_2015.01.14-for-RenewJerseyStronger.pdf).
 - t. Executive Order 13217: Community-Based Alternatives for Individuals with Disabilities, June 19, 2001.
 - u. Executive Order 13330: Human Service Transportation Coordination, February 24, 2004.
 - v. Implementing regulations for the above:
 - i. 24 CFR part 1: Nondiscrimination in Federally Assisted Programs of HUD.
 - ii. 24 CFR part 3: Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance.
 - iii. 24 CFR 5.105: Other Federal Requirements.
 - iv. 24 CFR part 6: Nondiscrimination in Programs, Activities Receiving Assistance under Title I of the Housing and Development Act of 1974.
 - v. 24 CFR part 8: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.
 - vi. 24 CFR 50.4(l) and 58.5 (j): Environmental Justice.
 - vii. 24 CFR 91.225(a)(1): Affirmatively Furthering Fair Housing.
 - viii. 24 CFR 91.325(a)(1): Affirmatively Furthering Fair Housing.
 - ix. 24 CFR 91.325(b)(5): Compliance with Anti-discrimination laws.
 - x. 24 CFR 91.520: Performance Reports.
 - xi. 24 CFR part 100 – part 125: Fair Housing.
 - xii. 24 CFR part 107: Non-discrimination and Equal Opportunity in Housing under Executive Order 11063 (State Community Development Block Grant Grantees).
 - xiii. 24 CFR part 121: Collection of Data.
 - xiv. 24 CFR part 135: Economic Opportunities for Low- and Very Low-Income Persons.
 - xv. 24 CFR part 146: Non-discrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.
 - xvi. 24 CFR 570.206(c): Fair Housing Activities.
 - xvii. 24 CFR 570.487(b): Affirmatively Furthering Fair Housing.
 - xviii. 24 CFR 570.487(e): Architectural Barriers Act and Americans with Disabilities Act (State Community Development Block Grant Grantees).
 - xix. 24 CFR 570.490(a)-(b): Recordkeeping requirements.
 - xx. 24 CFR 570.491: Performance Reviews and Audits.
 - xxi. 24 CFR 570.495(b): HCDA Section 109 nondiscrimination.
 - xxii. 24 CFR 570.506(g): Fair Housing and equal opportunity records.
 - xxiii. 24 CFR 570.601: Affirmatively Further Fair Housing.
 - xxiv. 24 CFR 570.608 and Part 35: Lead-Based Paint.
 - xxv. 24 CFR 570.614: Architectural Barriers Act and Americans with Disabilities Act.

- xxvi. 24 CFR 570.904: Equal Opportunity and Fair Housing Review
- xxvii. 24 CFR 570.912: Nondiscrimination compliance

H. CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISES

1. Contractor/Consultant shall take all necessary affirmative steps to ensure contracting opportunities are provided to small, minority-owned, woman-owned, and veteran-owned businesses, and labor area surplus firms. As used in this contract, the terms "minority-owned business," "women-owned business," and "veteran-owned business" means a business that is at least fifty-one percent (51%) owned and controlled by minority group members, women, or veterans. For purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native Americans. Consultant may rely on written representations by businesses regarding their status as minority, women and veteran businesses in lieu of an independent investigation.
2. Affirmative steps shall include:
 - a. Placing qualified small and minority-, veteran- and women-owned businesses on solicitation lists;
 - b. Ensuring that small and minority-, veteran- and women-owned businesses are solicited whenever they are potential sources, for goods and/or services required in furtherance of the Contract;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority-, veteran- and women-owned businesses;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority-, veteran- and women-owned businesses; and
 - e. Using the service and assistance, as appropriate, of organizations such as the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce; and
 - f. Requiring the subcontractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (a) through (e) of this section.

I. ENVIRONMENTAL REGULATORY COMPLIANCE

To the extent applicable, Contractor/Consultant must comply with HUD regulations found at 24 CFR Parts 50 and 58, implementing the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321 *et seq.*, and other Federal environmental requirements, including but not limited to:

1. Floodplain management and wetland protection:
 - a. Executive Order 11990, Protection of Wetlands (May 24, 1977) (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted by HUD regulations at 24 CFR 55, particularly sections 2 and 5 of the order;
 - b. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order;
2. The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. §§1456(c) and(d));
3. In relation to water quality:

- a. Executive Order 12088, as amended by Executive Order 12580, relating to the prevention, control and abatement of water pollution;
 - b. The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f) et seq. and U.S.C. §349), as amended, particularly Section 1424(e) (42 U.S.C. §§ 300h-303(e)), which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency (“EPA”) determines may contaminate an aquifer which is the sole or principal drinking water source for an area (40 CFR 149); and
 - c. The Federal Water Pollution Control Act of 1972, as amended, including the Clean Water Act of 1977, Public Law 92-212 (33 U.S.C. §1251, et seq.) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation’s water.
4. Endangered Species Act of 1973 (16 U.S.C. §1531 et seq.), as amended, particularly section 7 (16 U.S.C. §1536);
 5. The Fish and Wildlife Coordination Act of 1958, as amended;
 6. Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.), particularly sections 7(b) and (c) (16 U.S.C. §1278(b) and (c));
 7. Executive Order 11738 (Nixon), Sept. 10, 1973, providing for administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans, and EPA regulations (40 CFR 15);
 8. The Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)), and 40 CFR 6, 51, 93, which prohibits engaging in, supporting in any way, providing financial assistance for, licensing or permitting, or approving any activity which does not conform to State or Federal implementation plans for national primary and secondary ambient air quality standards.
 9. The Farmland Protection Policy Act of 1981, 7 U.S.C.A. §4201 et seq., particularly sections 1540(b) and 1541 (7 U.S.C. §4201(b) and §4202), and Farmland Protection Policy, 7 CFR 658, which require recipients of federal assistance to minimize the extent to which their projects contribute to the unnecessary and irreversible commitment of farmland to nonagricultural uses;
 10. Noise abatement and control requirements at 24 CFR 51B;
 11. Explosive and flammable operations requirements at 24 CFR 51C;
 12. Requirements at 24 CFR 58.5(i) relating to toxic chemicals and radioactive materials;
 13. Environmental Justice, Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

J. EQUAL EMPLOYMENT OPPORTUNITY

1. All federally assisted construction contracts must include the equal opportunity clause provided under 41 CFR §60-1.4(b). Federally assisted construction contracts include any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the federal government. Construction work is defined as “the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including

facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.” 41 CFR §60-1.3.

2. Pursuant to 41 CFR §60-1.4(b), the following language shall be included in all federally assisted construction contracts and subcontracts:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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 contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of

September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

**AGREEMENT
BETWEEN THE STATE OF NEW JERSEY AND THE
CONSULTANT FOR TERM CONTRACT TC-003**

REBUILD BY DESIGN – HUDSON RIVER PROJECT

DPMC PROJECT P1155-00

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In this AGREEMENT made upon notice of acceptance by the Owner of the Consultant's Proposal

BETWEEN the Owner: State of New Jersey, by and through its
Contracting Agent, the Deputy Director of the
Division of Property Management and Construction in
the Department of Treasury

and the Consultant, as noted in the Notice of Award for Term Contract TC-003:

The Owner and the Consultant agree as set forth below:

A. CONSULTANT'S RESPONSIBILITIES

A.1 GENERAL

- A.1.1 The Consultant shall become fully familiar with the contractual obligations of all entities doing work for the Project and all relevant Project documentation.
- A.1.2 The Consultant shall be responsible for satisfying all of the obligations described in this AGREEMENT and the RFP, even if such obligations are not addressed in the Consultant's proposal(s). This AGREEMENT establishes the minimum obligations of the Consultant which obligations may be supplemented by the Consultant in its proposal(s). If the services promised in the Consultant's proposal(s) exceed those described in the articles of this AGREEMENT, then the Consultant shall be responsible for satisfying additional obligations described in its proposal(s).
- A.1.3 The consultant shall comply with all requirements in the Procedures for Architects and Engineers, Second Edition, or subsequent editions.
- A.1.4 The Consultant services consist of those services performed by the Consultant, the Consultant's employees, the Consultant's sub-consultants and contractors. The Consultant shall utilize the key staff members identified in its Technical Proposal. The Consultant shall notify the Owner in advance of any proposed change in its key staff members identified in its Work Order proposal. The Consultant shall submit to the Owner for approval the name and qualifications of proposed replacement with equal or superior qualifications at no additional cost to the Owner. No change shall take effect unless the Owner approves the change in writing. The Owner may also determine, in the Owner's sole discretion, to terminate the Project, and/or to terminate the Consultant AGREEMENT, and/or claim all damages against the Consultant resulting from the Project termination or from the Consultant AGREEMENT termination.
- A.1.5 Notwithstanding any other provisions contained herein, the Consultant shall not be relieved of liability for actual damages sustained by the owner resulting from errors, omissions or any breach of this contract or any other obligation owed by the Consultant. The Owner's representative, immediately upon the discovery of any error, omission or breach, will give written notification thereof to the Consultant and/or to the Consultant's Professional Liability Insurance carrier. The Owner may withhold and/or deduct a reasonable portion of payments due, not to exceed the amount of the deductible identified in the liability policy, for the purpose of establishing a reserve until such time as the exact amount of such actual damages is determined. The Owner may convene a hearing or conference to determine the amount, if any, of the actual damages arising from errors, omissions or any other breach of contract by the Consultant. Such moneys withheld by the owner shall be retained until the negotiated value of said damages shall be paid by the Consultant and/or the Consultant's insurance carrier or any other party that shall pay damages. Acceptance, approval or payment for any of the drawings, specifications or other work product and services provided or performed by the Consultant hereunder shall not constitute a release or

waiver of any claim that the Owner has or may have for latent defects, errors, omissions or other breach of this contract on the part of the Consultant.

- A.1.6 The errors and omissions curve and the corresponding sections in the Procedures for Architects and Engineers Manual are eliminated. The Consultant will be held responsible for each error and omission on an individual basis as outlined in A.1.6.
- A.1.7 Any changes to this AGREEMENT must be made in writing in the form of an approved Amendment. The Amendment must be approved by the Owner's Contracting Officer.
- A.1.8 Any Work Order services performed by the Consultant without an Amendment from the Owner that differs from their approved Work Order is done at the Consultant's own financial risk.
- A.1.9 The Consultant shall promptly notify the Owner of any changes to the scope of services which increase or decrease the Consultant services. No such change in scope shall be performed by the Consultant, without prior written approval by the Owner. Notice of request for additional compensation shall be given to the Owner within 30 working days of the event giving rise to such a request with accompanying justification for the change and a detailed breakdown of the basis for the costs.
- A.1.10 The Consultant shall maintain all documentation related to deliverables, products, transactions or services under this contract for a period of seven (7) years from the date of final payment. Such records shall be made available for audit to the New Jersey Office of the State Comptroller or any other State audit agency upon reasonable demand.

A.2 DESIGN PHASE SERVICES

- A.2.1 All documents including drawings and specifications, any changes, revisions or amplifications thereof, as well as all construction cost estimates, shall be subject to the written approval of the Owner before the documents are accepted. The approval of drawings by the Owner is not to be construed as authority to violate, cancel or set aside any provisions of applicable codes.
- A.2.2 Construction documents for the Project must comply with the latest adopted edition of the Uniform Construction Code in effect at the time of approval by the Owner at the final review phase (100%) prior to bid advertisement.
- A.2.3 Unless otherwise provided in the AGREEMENT documents or an approved Work Order, the Consultant will be requested to secure and be reimbursed for payment of all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the work and which are legally required at the time of receipt of bids.
- A.2.4 In the event that the construction bids received are in excess of 5% of the approved Consultant's final estimate for construction of the Project, and changes to drawings and/or specifications are required to meet such approved estimate, the Consultant shall redesign and/or set up sufficient approved alternate designs, plans and specifications for the Project work, to secure a bid that will come within the allocation specified by the Owner without impacting the programmatic requirements of the Project. Such redesign work and changes to plans, including reproduction costs for submission in order to obtain final approval and permits, shall be undertaken by the Consultant at no additional cost to the Owner.

A.3 CONSTRUCTION ADMINISTRATION PHASE

- A.3.1 If a Work Order s assignment for the Project includes construction administration services, the following shall apply:

- A.3.2 The Consultant shall visit the site at scheduled intervals appropriate to the stage of construction of the Project to become generally familiar with the quality and progress of the construction work that has been completed and to determine, in general, if the construction work is being performed in a manner indicating that, when completed, the work will be in accordance with the contract documents. The Consultant shall not be required to make continuous and/or exhaustive on-site inspections to check the quality or the quantity of the construction work. On the basis of the on-site observations, the Consultant shall keep the Owner informed of the progress and quality of the construction work in order to endeavor to guard the Owner against defects and deficiencies in the work.
- A.3.3 At all times the Consultant shall have access to the work to determine if it is proceeding in accordance with the Contract documents. However, neither the Consultant nor its sub-consultants shall have control over or be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work; these are solely the Construction Contractor's obligations under the contracts for construction. The Consultant shall not be responsible for Construction Contractor's schedules or failure to carry out the work in accordance with the contract documents. Except as otherwise provided in this AGREEMENT, the Consultant shall not have control over or charge of acts and omissions of the contractor's, construction subcontractors, or their agents or employees, or any other persons performing the work.
- A.3.4 Based on the Consultant's observations and evaluations of the construction contractor's Applications for Payment, the Consultant shall certify the amounts due to the construction contractor(s).
- The Consultant's certification of payment shall constitute a representation to the Owner, based on the Consultant's observations at the Project site(s), and the data contained in the construction contractor's Applications for Payment, that the construction contractor's work on the Project has progressed to the point indicated and the quality of the construction work is generally in accordance with the contract documents. The former representations are subject to an evaluation of the construction work for conformance with the contract documents upon substantial completion, to results of subsequent tests prior to completion and specific qualifications expressed by the Consultant. The issuance of Certificate of Payment shall further constitute a representation that the construction contractor's subcontractors for the Project are entitled to payment in the amount certified. Issuance of Certificates of Payments are not a representation that the Consultant has (1) made continuous and exhaustive inspections to check the quality or quantity of work, (2) reviewed the construction contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from construction contractor's subcontractors and material suppliers and other data requested by the Owner to substantiate construction contractor's right to payment or (4) ascertained how and for what purpose the construction contractor's has used money previously paid on account of contract sum. These are the construction contractor's responsibilities under the contracts for construction.
- A.3.5 Within ten (10) working days of the date that it receives a change order request from the Owner, the Consultant shall evaluate and make specific written recommendations, including verification of costs, on all contractor change orders that relate to the execution and progress of the work and on all matters or questions related thereto and, upon notification, shall attend and actively participate at administrative hearings or settlement conferences in connection with such change orders. If the nature of the work described in the change order is complex, the Owner representative may grant the Consultant additional time, if requested in writing by the Consultant, to evaluate the change order.
- A.3.6 The Consultant shall have the authority to reject construction work on the Project that does not conform to the contract documents. In such cases the Consultant will advise the Owner of the rejection. Whenever the Consultant considers it necessary or advisable for implementation of the intent of the contract documents, the Consultant will have the authority to require additional

inspection or testing of the work in accordance with the contract documents, whether or not such work is fabricated, installed or completed. However, neither the authority of the Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall create a duty or responsibility of or by the Consultant to the construction contractor's construction subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the construction work on the Project.

A.3.7 The Consultant shall review and approve or take other appropriate action upon the construction contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents. The Consultant's action shall be taken with such reasonable promptness as to cause no delay on the construction work on the Project, while allowing for sufficient time in the Consultant's professional judgment for adequate review. Since it is the construction contractor's responsibility to do so under the contracts for construction, review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation and performance of equipment or systems designed by the construction contractor's. Unless otherwise provided in this AGREEMENT, these remain the responsibility of the construction contractor's to the extent required by the contract documents. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of construction means, manners, methods, techniques, sequences or procedures. The consultant's approval of specific items shall not indicate approval of an assembly of which the item is component. When professional certification of performance characteristics of materials, systems or equipment is required by the contract documents, the Consultant shall be entitled to rely upon such certifications to establish that the materials, systems, or equipment will meet performance criteria required by the contract documents.

A.3.8 The Consultant's responsibilities for Construction Administration commences with the award of the construction contract by the Owner and terminates at the earlier of the issuance to the Contractor of a Final Certificate of Payment or sixty (60) working days after the date of substantial completion of the construction work.

B. OWNER'S RIGHTS AND RESPONSIBILITIES

B.1 OWNER'S RIGHTS

B.1.1 The Owner shall have the right to perform work related to the Project and to award contracts in connection with the Project that are not part of the Consultant's responsibilities under the AGREEMENT. The consultant shall notify the Owner in writing if any such independent action will in any way compromise the Consultants' ability to meet their responsibilities under the AGREEMENT.

B.1.2 The Owner reserves the right to approve the Consultant's personnel and to require a replacement satisfactory to the Owner. The Owner reserves the right to have such person replaced if, in the judgment of the Owner, any such person proves unsatisfactory. However, such replacement must fit within the rate/fee structure or the Owner has the option for a higher rate person for which the Consultant shall be compensated.

B.1.3 The Owner shall have the right to effect the removal of any of the Consultant's employees at any time during the duration of the AGREEMENT if that employee is deemed not to be of the level of competence or ability required under the AGREEMENT, or said employee is for any reason found to be unsuitable for the work. In such case, the Consultant shall promptly submit the name and qualifications of a replacement for approval by the Owner.

B.1.4 The Owner shall have the right to assign the administration of any or all contracts related to the Project from the Owner to another State Agency, Authority or Commission at any time during the

life of the Project. In doing so, the Consultant agrees to continue to perform all contractual work under the AGREEMENT. The Consultant shall make no claim against the Owner in the event of such assignment.

- B.1.5 The Owner may make changes to the scope of the Project or a Work Order assignment related to the Project which may give rise to changes in the scope of the Consultant services. In such case, the Consultant shall be entitled to an adjustment in fee and in other terms and conditions of the AGREEMENT.

B.2 OWNER'S RESPONSIBILITIES

- B.2.1 The Owner is contracting for the Consultant's services through the Contracting Officer of the Owner, the Division of Property Management and Construction (DPMC). The Contracting Officer is an officer of the State Department of the Treasury, DPMC and is responsible for the administration of the work of the DPMC. The Contracting Officer represents the Owner, either directly or through an appointed representative, in all dealings with the Consultant.
- B.2.2 The Owner shall provide information regarding the requirements of the Project or a Work Order assignment related to the Project, including a scope of work which shall set forth the Owner's objectives, constraints and criteria, including space requirements, special equipment, systems and site requirements, budget constraints and the required date of completion.
- B.2.3 The Contracting Officer shall designate a Project Manager authorized to act on the Owner's behalf with respect to the Project. The Contracting Officer's representative has only those duties which are required of an Owner. The responsibility for completion of the Project pursuant to the contract documents remains that of the Contractor(s). The responsibility for performance of the Consultant contractual obligations remains with the Consultant.
- B.2.4 The information required in the above paragraphs in this Article shall be furnished at the Owner's expense.

C. CONTRACT DOCUMENTS

- C.1 The following items identify the contract documents comprising the AGREEMENT.
1. AGREEMENT BETWEEN THE STATE OF NEW JERSEY AND THE CONSULTANT FOR TERM CONTRACT TC-003
 2. GENERAL CONDITIONS TO THE CONSULTANT AGREEMENT.
 3. REQUEST FOR PROPOSAL AND ADDENDA
 4. PROCEDURES FOR ARCHITECTS AND ENGINEERS, CURRENT EDITION
 5. CONSULTANT'S PROPOSAL & RATE SCHEDULE
 6. NOTICE OF AWARD LETTER

D. PROFESSIONAL LIABILITY INSURANCE

- D.1 The Consultant shall maintain Professional Liability Insurance with a \$2,000,000 minimum limit and a \$100,000 maximum deductible. The insurance carrier shall be registered with the N. J. 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 any 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.

E. CONSTRUCTION COST

- E.1 It is understood that the cost of construction will be determined by the Consultant as an approved deliverable of the Consultant's Work Order assignment. The Owner will make the final decision for the funding of the construction of the Project based on available funds to complete the scope of the Project.

F. CONSULTANT COMPENSATION

- F.1 The Consultant will be compensated for professional services in accordance with the Term Contract TC-003 Rate Schedule submitted by the Consultant and subsequent approved Work Order assignments. The Owner will compensate the Consultant in accordance with the following terms and conditions:
- F.1.1 The Not-to-Exceed or lump sum payable to the Consultant as established in their Work Order proposal shall compensate the consultant in full for all services as described in the Notice to Proceed of each approved Work Order Assignment. The start of compensation shall commence with the issuance of the project's Notice to Proceed for the approved Work Order.
- F.1.2 The Consultant shall submit a payment schedule to the Owner's representative for approval prior to submittal of the Consultant first invoice. The schedule should be in detail, assigning a dollar value for each phase of work anticipated on a monthly basis throughout the entire contract.
- F.1.3 The monthly compensation to the Consultant shall be paid in accordance with the payment schedule submitted by the Consultant and approved by the Owner.
- F.1.4 Duration of services shall be as defined in the scope of work for each approved Work Order commencing on the date of the issuance of the Notice to Proceed for the Work Order.
- F.1.5 Services provided under this AGREEMENT and Term Contract shall commence on the date of the written Notice of Award issued by the Owner.
- F.1.6 Should the Project duration be extended for a Work Order assignment and the Owner requests continuation of services beyond the contracted duration, then the Consultant agrees to furnish services in accordance with the terms of the Consultant AGREEMENT for the additional period required for completion of the Work Order Assignment. The Owner shall reimburse the Consultant for Owner requested continuation of services beyond the specified contract period based upon the values identified in the approved Term Contract Rate Schedule for TC-003 and the approved Amended Work Order Assignment.
- F.1.7 The Owner shall not be liable to the Consultant for indemnification, damages, or costs of any kind sustained by the Consultant as the result of the negligence or breaches of contractual obligations committed by the Consultants Sub Consultant(s), Contractor(s) or any other third party.
- F.1.8 To the extent that the Consultant's services are required beyond the time identified in this AGREEMENT and/or to the extent that the Consultant is required to perform services not required under the AGREEMENT, the Consultant shall be entitled to an additional fee. However, the Consultant shall not be entitled to any additional compensation to the extent that delay in completion of the project is the result of the negligent or wrongful acts or omissions of the Consultant.

END OF AGREEMENT

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

GENERAL CONDITIONS

TO THE

**REBUILD BY DESIGN
HUDSON RIVER PROJECT**

TERM CONTRACT TC-003

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

**GENERAL CONDITIONS
TO THE
REBUILD BY DESIGN
HUDSON RIVER PROJECT
TERM CONTRACT TC-003**

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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.

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

b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of *N.J.S.A. 52:13D-13g.* Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

f. The provisions cited above in paragraph 3a. through 3e. shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c.

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

During the performance of this contract, the contractor agrees to comply with the following Mandatory Equal Employment Opportunity Language (N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)):

For Goods, Professional Service and General Service Contracts: The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity 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 contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for

employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- 1) Letter of Federal Affirmative Action Plan Approval
- 2) Certificate of Employee Information Report
- 3) Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at ww.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program 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 Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

For Construction Contracts: The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be

limited to the following: employment, up- grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27- 7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27- 7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5- 31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union 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 for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, 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 for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA 201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on- the- job and/or off- the- job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program 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 Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

5A. Anti-Discrimination Provisions (NJSA 10:2-1)

Every contract for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that:

- a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

- c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$ 50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

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 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, then 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 found to be incomplete or deficient upon delivery, the Owner may withhold from each invoice an amount equivalent to the value of the technical data, or any part thereof not delivered or deficient.
- 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. 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.

11A. MUTUAL RESPONSIBILITY OF CONSULTANT, CONTRACTORS

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 to the extent caused by the Consultant's intentional, reckless or negligent acts, errors or omissions. Nothing contained in this paragraph shall be construed to relieve the culpable Consultant

from any liability or damage sustained on account of its intentional, reckless or negligent 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 not limited to, loss of profit or revenues, costs of capital, interest of any nature, or attorneys' fees.

13. DISPUTES

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. However, it shall not be a condition precedent to the Consultant's right to file a legal action upon such claim, dispute or matter that it be first considered and addressed at a Contracting Officer's Conference.

Disputes regarding whether a party has failed to make payments required under the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-1, et seq., shall be governed by the provisions of paragraph 8.4.1 of these General Conditions.

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 shall indemnify and hold harmless the Owner, its employees, representatives, and agents from and against any and all losses, suits, 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 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 Workforce Development 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 five (5) years after final payment. The consultant shall also maintain all documentation related to deliverables, products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available for audit to the New Jersey Office of the State Comptroller or any other State audit agency 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 N.J.S.A. 54:49-19, 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 amended 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.