



State of New Jersey

DEPARTMENT OF TRANSPORTATION
P.O. Box 600
Trenton, New Jersey 08625-0600

CHRIS CHRISTIE
Governor

JAMES S. SIMPSON
Commissioner

KIM GUADAGNO
Lt. Governor
June 14, 2013

Mr. James E. Johnston, President
Agate Construction Co., Inc.
1030 Route 83
Clermont, NJ 08210

Re: **NOTICE TO PROCEED**
FEDERAL PROJECT FUNDED BY SANDY RESTORATION FUNDS
Route 35, Restoration, Mantoloking to Point Pleasant (MP 9-12.5)
Contract No. 009950322; Ocean County
Federal Project Number: ER-7051(114), UPC Number: 950322
PE Number: 1506506, CE Number: 1506516, DP Number: 13114

Dear Mr. Johnston:

Attached is a conformed copy of the Contract and Bond on the above-indicated project. On **June 14, 2013**, the Commissioner of Transportation executed the contract.

This constitutes your Notice to Proceed with the work of this contract in accordance with the provisions of Subsection 108.02 of the Specifications. As per Section 109.05 of the Specifications, estimate certificates for this project shall be dated the **25th** of each month with first estimate date of **July 25, 2013**. Enclosed is your proposal bond, which was submitted with your bid.

All further communications in reference to the performance of this project shall be directed to:
Mr. Snehal Patel, Regional Construction Engineer
1035 Parkway Avenue
Trenton, NJ 08625
Telephone: 732-625-4207

Sincerely,

Anthony Genovese
Director
Division of Procurement
AG:eh

c: J. Sigle, S. Patel, A. Qureshi, J. Varrelmann, V.A. Brown, A. Genovese, K. Desai, Q. Viernes,
"IMPROVING LIVES BY IMPROVING TRANSPORTATION"
New Jersey Is An Equal Opportunity Employer • Printed on Recycled and Recyclable Paper

CONTRACT AND BOND

CONTRACTOR: Agate Construction Co., Inc.

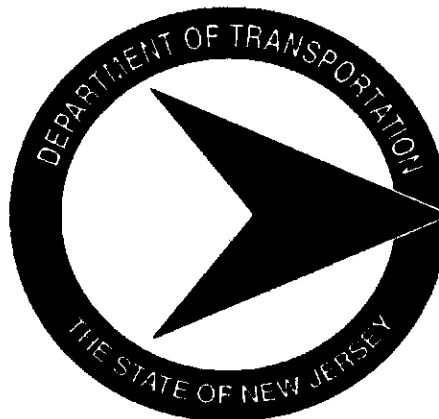
**PROJECT: FEDERAL PROJECT FUNDED BY SANDY
RESTORATION FUNDS**

**Route 35, Restoration, Mantoloking to Point Pleasant
(MP 9-12.5), Contract No. 009950322; Ocean County**

CONTRACT NUMBER: 009950322

FEDERAL PROJECT NUMBER: ER-7051(114)

DP NUMBER: 13114



NEW JERSEY DEPARTMENT OF TRANSPORTATION

**Mailing
PO Box 600
Trenton, NJ 08625-0600**

**UPS / FedEx / Courier
1035 Parkway Ave
Trenton, NJ 08618**

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FEDERAL PROJECT FUNDED BY SANDY RESTORATION FUNDS
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Ocean County; Federal Project Number: ER-7051(114)
UPC Number: 950322, PE Number: 1506506, CE Number: 1506516
DP Number: 13114

Correction Acknowledgement

Surety Letter

Certificate of Award

Pages 1 to 107 inclusive for General, Road, and Bridge Provisions.

The following FHWA funded project Attachments are located at the end of these Special Provisions

Required Contract Provisions, Federal-Aid Construction Contracts (Form FHWA-1273).

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246).

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).

State of New Jersey Equal Employment Opportunity for Contracts Funded by FHWA.

Disadvantaged Business Enterprise Utilization Attachment, FHWA Funded Contracts

The Incentive Program, Disadvantaged Business Enterprise Utilization Attachment for FHWA Funded Contracts.

Equal Employment Opportunity Special Provisions.

Special Contract Provisions for Investigating, Reporting, and Resolving Employment Discrimination and Sexual Harassment Complaints.

The following additional project specific Attachments are located at the end of these Special Provisions:

Building Specifications Route 35, Milepost 9 to 12.5, Ronald A Sebring Dated January 30, 2013.

Table of Contents (continued)

General wage determinations issued under Davis-Bacon and related acts, published by US Department of Labor, may be obtained from the Davis-Bacon web site at <http://www.wdol.gov/wdol/scafiles/davisbacon/nj.html> under the appropriate county, select the construction type heading: HIGHWAY.

Contractors are responsible to pay the prevailing wage rates determined by the United States Secretary of Labor and the New Jersey Department of Labor. If the prevailing wage rate prescribed for any contract service by the United States Secretary of Labor is not identical to the prevailing wage rate prescribed for that contract service by the New Jersey Department of Labor, the Contractor is required to pay the higher rate.

If an employee of the Contractor or subcontractor has been paid a rate of wages less than the higher prevailing wage, the Department may suspend the Work, and declare the Contractor in default.

Prevailing Wage Rate for Ocean County and Statewide

All additional State wage rates may be obtained from the New Jersey Department of Labor (Telephone: 609-292-2259) or by accessing the Department of Labor's web site at http://lwd.dol.state.nj.us/labor/wagehour/wagehour_index.html
The State wage rates in effect at the time of award will be made a part of this Contract, pursuant to Chapter 150, Laws of 1963 (NJSA 34:11-56.25, et seq.).

New Jersey Department of Transportation Code of Ethics for Vendors

Proposal Pages 1 to 21

Disclosure of Investment Activities in Iran

Addenda Nos. 1 through 14, inclusive with Acknowledgement

DBE Goals

Award Letter

Custody Agreement for Escrow of Bid Documents

Contract DC-81

Payment Bond

Performance Bond

Corporate Resolution

Proof of Valid Business Registration with the Division of Revenue

Certificate of Public Works Contractor Registration

Approval as to Form

CERTIFICATE OF AWARD-"FEDERALLY" FUNDED CONTRACT

PROJECT: FEDERAL PROJECT FUNDED BY SANDY RESTORATION FUNDS

Route 35, Restoration, Mantoloking to Point Pleasant (MP 9-12.5), Contract 009950322; Ocean County; Federal Project Number: ER-7051(114), UPC Number: 950322, PE Number: 1506506, CE Number: 1506516, DP Number: 13114.

DESIGNATION AND DESCRIPTION OF PROJECT

FEDERAL PROJECT FUNDED BY SANDY RESTORATION FUNDS

Route 35, Restoration, Mantoloking to Point Pleasant (MP 9-12.5), Contract 009950322; Ocean County; Federal Project Number: ER-7051(114), UPC Number: 950322, PE Number: 1506506, CE Number: 1506516, DP Number: 13114.

(B) CERTIFICATION AS TO PUBLICATION AND NOTICE

In accordance with action taken on **March 21, 2013** by the Commissioner of Transportation in approving plans and specifications for the project described herein, advertisements were placed in compliance with R.S. 27:7-29 for bids to be received on **May 02, 2013**.

Trenton Times on 3/28/2013, 4/4/2013, & 4/11/2013

Asbury Park Press on 3/28/2013, 4/4/2013, & 4/11/2013

The Beacons on 3/28/2013, 4/4/2013, & 4/11/2013

(C) SUMMARY OF BIDS RECEIVED

In compliance with R.S. 27:7-29-30-31 and R.S. 27:7-35.1 et seq., bids were received on **May 02, 2013**.

After receipt, all bids were examined for acceptability and accuracy. All bids were corrected when required and ranked as follows:

CONTRACTOR	BID AMOUNT
AGATE CONSTR CO INC (1)	\$35,967,014.05
UNION PAVING & CONSTR CO INC (2)	\$41,550,492.20
NORTHEAST REMSCO CONSTRUCTION INC	\$44,126,566.20
D'ANNUNZIO & SONS INC	\$70,727,000.00
EARLE ASPHALT COMPANY	\$76,035,013.13
MONTANA CONSTRUCTION CORP INC.	Irregular
FERREIRA CONSTRUCTION CO., INC AND CRISDEL GROUP INC. J-V	Irregular


Examiner, Bureau of Construction Services:

Quintin Viernes

Name

Senior Engineer

Title


Signature

CERTIFICATE OF AWARD-"FEDERALLY" FUNDED CONTRACT

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(D) AUTHORIZE TO THE Assistant Commissioner for Capital Program Management

It is recommended that the Contract for the Project described herein be Awarded to the lowest responsible bidder at his price bid.

Eli D. Lambert III

Eli D. Lambert, III P.E., Director, Division of Project Management

(E) CERTIFICATION OF CONCURRENCE BY FEDERAL HIGHWAY ADMINISTRATION

Notice of concurrence in recommendation to "Award" this Federal Project to the lowest responsible bidder at his price bid was received from the Federal Highway Administration on 5/29/13.

Karen Abbott

Karen Abbott, Supervising Engineer II, Capital Program Coordination

5/29/13

Date

(F) STATUS OF FUNDS

Approved as to funds.

Anna Maria Rossi

~~ACTING~~ Anna Maria Rossi - Director of Accounting & Auditing

(G) CERTIFICATE OF AWARD

I have examined the bids received for the named project. There has been compliance with N.J.S.A. 27:7-29 through 33 N.J.S.A. 27:7-35.1 et seq. and the Standard Specifications of the Highway Department, as amended and supplemented which were vested in the New Jersey Department of Transportation pursuant to Chapter 301 Laws of 1966 (27:1A-1 et seq.).

The Contract is awarded to AGATE CONSTRUCTION CO., INC., the lowest responsible bidder.

Eli D. Lambert III

Eli D. Lambert, III P.E., State Transportation Engineer

5/30/13

Date

ACTING

Eli D. Lambert III

~~Richard T. Hammer~~, Assistant Commissioner, Capital Program Management
ELI D. LAMBERT III

5/30/13

Date

(H) CERTIFICATION OF AWARD

The Contract was awarded to the lowest responsible bidder by the authorized representative of the Commissioner of New Jersey Department of Transportation on May 30, 2013

Date

Jacqueline Trausi
Jacqueline Trausi - Secretary,
New Jersey Department of Transportation

AFFIX SEAL

June 13, 2013

Mr. Quintin Viernes, Jr.
NJDOT-Construction Services
1035 Parkway Avenue
Trenton, NJ 08625-0605

Re: FEDERAL PROJECT FUNDED BY SANDY RESTORATION FUNDS
Route 35, Restoration, Mantoloking to Point Pleasant (MP 9-12.5), Contract 009950322;
Ocean County; Federal Project Number: ER-7051(114), UPC Number: 950322,
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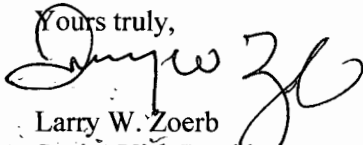
Dear Mr. Viernes:

The undersigned hereby acknowledges the following corrective matter in reference to the subject project.

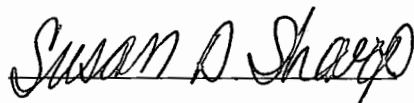
- *Addendum No. 2 was inadvertently numbered as Page 1 of 6, page 2 of 6..... and page 5 of 6. Addendum No. 2 should read as Page 1 of 5 , page 2 of 5, and page 5 of 5*

It is hereby acknowledged that none of the foregoing correction involves any change of specifications, quantities and other aspects of the project and that the error does not affect the terms and conditions of the contract.

Yours truly,


Larry W. Zoerb
Senior Vice President

Sworn to and subscribed
before me this
13 day of June, 2013



Notary Public

SUSAN D. SHARP

My Commission Expires

NOTARY PUBLIC OF NEW JERSEY

ID # 2290665

My Commission Expires 4/25/2018

An Equal Opportunity Employer

CUSTODY AGREEMENT
FOR ESCROW OF BID DOCUMENTS
IN ACCORDANCE WITH NEW JERSEY
DEPARTMENT OF TRANSPORTATION
CONSTRUCTION CONTRACT

This Agreement made this 7th day of June, 2013 by and between Agate Construction Co., Inc. (contractor) and Powell, Birchmeier & Powell custodian) for the purpose of escrowing bid preparation documents specifically identified on the list attached and made a part of this agreement in accord with the terms of the contract between Agate Construction Co., Inc. (contractor) and New Jersey Department of Transportation for the project identified as Route 35 Restoration, Mantoloking to Point Pleasant (MP 9-12.5) Contract No. 009950322; Ocean County; Federal Project No.: ER-7051 (114), UPC No. 950322, PE No: 1506506, CE No: 1506516, DP No: 13114. The terms of this custody agreement are set forth below.

1. The custodian certifies that the contractor has delivered to him all of those documents set forth on the attached list. The custodian certifies that it has reviewed the attached list and the documents surrendered to the custodian are accurately set forth on the list as to number of documents, description, date and number of pages contained in each document. The custodian further certifies that the listed documents have been placed within a secured, locked, water and fire resistant container for safekeeping in accord with the agreement.

2. The custodian shall ensure that the documents are kept in a safe and secure place and that upon taking custody, the custodian shall not permit anyone including, but not limited to, the contractor to open the container in which they are placed. However, an employee of the custodian may release the documents when requested to do so by the Chairman of the Claims Review Board of the Department of Transportation or they may be removed when necessitated by an emergency or other reasonable need. Furthermore, the custodian may

release the documents upon written request by the contractor but not until 30 days after written notice has been given by certified mail to the Chairman of the Claims Review Board.

3. The custodian, upon receipt of written notice by the Chairman of the Claims Review Board, shall forward all the documents contained on the attached list by courier or by certified mail, return receipt requested to the attention of the Chairman. The costs of delivery shall be charged to the contractor. Notice of release shall be sent by the custodian to the contractor and Claims Review Board. Prior to sending the documents, the custodian shall open the container and inventory the documents. The written inventory or verification of a copy of the attached list shall accompany the documents. A copy of the inventory shall also be sent to the contractor.

4. If the documents are in any manner affected by fire, water, theft or other cause, notice shall be provided to the contractor and the Review Board Chairman. All remains of any destroyed or partially destroyed documents shall be turned over to the Review Board Chairman after the custodian has inventoried such documents.

5. Any inventory that is required to be performed by the custodian under this agreement shall be signed by an officer of the custodian under oath and shall be notarized.

6. Notice under this agreement where required shall be sent to the following entities by regular and certified mail return receipt requested:

1. Contractor
Agate Construction Co., Inc.
P.O. Box 107, 1030 Route 83
Ocean View, NJ 08230
2. Executive Director/Regional Construction Engineer
New Jersey Department of Transportation
Central Region
1035 Parkway Avenue
Trenton, NJ 08625

1. Chairman, Claims Review Board
Department of Transportation
1035 Parkway Ave.
Trenton, NJ 08625

7. It is understood and intended by the parties that this be a third party beneficiary agreement and is entered into for the benefit of the New Jersey Department of Transportation and the Claims Review Board. However, the parties do not intend that this agreement be for the benefit of any other party other than as set forth above.

8. All fees charged by the custodian including but not limited to administrative, inventory, and security costs shall be borne solely by the contractor. If the contractor fails to pay any agreed fee, the custodian shall not release the document until after thirty days notice has been given to the Chairman of the Claims Review Board by certified mail, return receipt requested. The fee schedule and terms of payment are: **Fee: \$250.00** , **Terms of Payment: 30 Days from receipt of invoice** . In no event shall the Department be responsible for any costs incurred even where the contractor is in default of payment.

9. The written terms set forth herein shall constitute the full extent of the custody agreement between the contractor and custodian. No changes of any kind may be made to this agreement except in writing and with the consent of the New Jersey Department of Transportation. Any changes made without such prior written consent shall be null and void and of no effect.

10. Upon receipt of the documents, the custodian shall ensure that the container is labeled with the words in bold print - "**Escrowed Bid Documents.**" Additionally, the date of receipt shall be placed thereon. Furthermore, a notice shall be placed upon the container stating that it shall not be opened or released except as provided by the terms of this agreement.

11. The custodian certified that it has no financial or other interest or relation with the contractor, its principals or officers except that it may be

the depositor of certain monetary accounts. The custodian further certifies that the employees of the custodian who have access to the documents also have no such interest or relation with the contractor, its principals or officers.

12. The parties acknowledge that this document is to be provided to the New Jersey Department of Transportation ten State business days after the award or conditional award of contract fully executed by all parties. Failure by the contractor to submit an escrow agreement in accord with this form shall constitute a waiver by the contractor of any rights to have claims arising under the contract reviewed by the Claims Review Board.

13. The documents stored by the custodian shall remain in New Jersey at the following address: 1891 State Highway 50, P.O. Box 582, Tuckahoe, NJ 08250.

If the custodian moves or suspends business, notice shall be directed to the contractor, Department of Transportation and the Claims Review Board. The documents shall not be moved until written notice is received from the Claims Review Board* approving a new location within the State of New Jersey or a substitute custodian, and only after an approved custodian agreement is executed between the contractor and the new custodian.

14. The bid documents shall be kept confidential. If the custodian receives a subpoena for such documents, immediate notice shall be given to the contractor, Department of Transportation and the Claims Review Board. The custodian shall not reveal the contents of the documents to anyone except as provided herein.

15. Should any part or portion of this Agreement be held invalid, illegal, or void, the remainder of the Agreement shall continue in full force and effect as if the void, illegal or invalid provision had been deleted or never included. This agreement constitutes the full terms of the custody agreement for the documents set forth on the attached list.

In witness whereof, the parties hereto have set here their hands and seals as of the day and year written above.

LAW OFFICES OF POWELL BIRCHMEIER
+ POWELL

(name)

ATTEST:

Custodian (attach corporate seal)

Edward N. Romanik

(Secretary) EDWARD N. ROMANIK

By:

[Signature]
(Officer)
PARTNER

JAMES R. BIRCHMEIER
ATTORNEY AT LAW
1891 STATE HIGHWAY 50
TUCKAHOE, N.J. 08250

Sworn to and subscribed before me on the 7th day of June, 2013 that the
above named person is the ~~secretary~~ ^{PARTNER} of POWELL BIRCHMEIER + POWELL and that
Edward N. Romanik witnessed the signature of JAMES R. BIRCHMEIER (authorized
corporate officer) and is authorized to attach the corporate seal as an
official corporate act.

Anne M. Terwilliger
Notary Public

My Commission Expires 2/19/2014

Anne M. Terwilliger
Notary Public State of New Jersey
No: 2382543
My Commission Expires February 19, 2014

LIST OF BID DOCUMENTS

PLACED IN ESCROW

<u>DESCRIPTION OF DOCUMENTS</u>	<u>DATES (S) IF ANY</u>	<u>NUMBER OF PAGES</u>
1. Estimate information Report	06-04-13	2
2. Labor Rates	06-04-13	1
3. Labor Rates Breakdown	06-04-13	5
4. Workers Compensation Listing	06-04-13	2
5. Overtime Rule Listing	06-04-13	1
6. Standard Equipment List	06-04-13	3
7. Detailed Cost Report by Bid Item	06-04-13	199
8. Estimate Summary - Costs & Bid Prices	06-04-13	17
9. Bid Schedule	04-22-13	3
10. Work Zone Durations	04-22-13	1

ATTEST:

Agate Construction Co., Inc.

J. Johnston
James E. Johnston, III
Secretary

By: *Larry W. Zoerb*
Larry W. Zoerb
Sr. Vice President

Sworn to and subscribed before me on the 7th day of June, 2013 that the above named person is the secretary of Agate Construction Co., Inc. and that James E. Johnston, III witnessed the signature of Larry W. Zoerb, Sr. Vice President (authorized corporate officer) and is authorized to attach the corporate seal as an official corporate act.

Susan D. Sharp
Notary Public

My Commission Expires _____.

SUSAN D. SHARP
NOTARY PUBLIC OF NEW JERSEY
ID # 2299665
My Commission Expires 4/25/2018

CONTRACT

THIS AGREEMENT Made this 12th day of June in the year two thousand thirteen, 2013 between the Department of Transportation of the State of New Jersey, herein after referred to as the Department, and **Agate Construction Co., Inc.** with a principal office location at **1030 Route 83 Clermont, NJ 08210.** herein after referred to as the Contractor.

WITNESSETH, that the said Contractor, for and in consideration of the payments hereinafter specified and agreed to be made by the Department, hereby covenants and agrees to furnish and deliver all the materials, to do and perform all the work and labor required to be furnished and delivered, done and performed in and about the improvement of

FEDERAL PROJECT FUNDED BY SANDY RESTORATION FUNDS
Route 35, Restoration Mantoloking to Point Pleasant (MP 9-12.5), Contract 009950322;
Ocean County; Federal Project Number: ER-7051(114), UPC Number: 950322,
PE Number: 1506506, CE Number: 1506516, DP Number: 13114.

in strict and entire conformity with the plans on file at the office of the Department in Trenton and with the specifications of the New Jersey Department of Transportation as amended by the Supplementary Specifications applying to this particular work, which were duly approved by the State Commissioner of Transportation under the power and authority vested in the Department under Chapter 301, Laws of 1966, approved December 12, 1966 (27:1A-1, et seq.), and which said plans and specifications are hereby made part of this agreement as fully and with the same effect as if the same had been set forth at length in the body of this agreement.

In consideration of the covenants contained herein the Department hereby agrees to pay the Contractor for the said work, when completed in accordance with the said plans and specifications, the sum of **thirty five million, nine hundred sixty seven thousand, fourteen dollars and five cents (\$35,967,014.05).**

OVER

FEDERAL PROJECT FUNDED BY SANDY RESTORATION FUNDS
Route 35, Restoration Mantoloking to Point Pleasant (MP 9-12.5), Contract 009950322; Ocean
County; Federal Project Number: ER-7051(114), UPC Number: 950322, PE Number: 1506506,
CE Number: 1506516, DP Number: 13114.

IN WITNESS WHEREOF, the parties have caused this instrument to be signed, attested to and sealed.

Department of Transportation
of the State of New Jersey

Eric D. Fahst

State Transportation Engineer

Date: 6/14/13

Witness, Attest, Affix, Seal:

by Jacqueline L. Sauer
Secretary

New Jersey Department of Transportation

Date: June 14, 2013

Witness or attest:

J. Johnston
Secretary

James E. Johnston, III

(Also print or type name)

Agate Construction Co., Inc.

Larry W. Zoerb
Authorized Officer
Senior Vice President

Title of Officer

Larry W. Zoerb

(Also print or type name)

AFFIX SEAL IF A CORPORATION



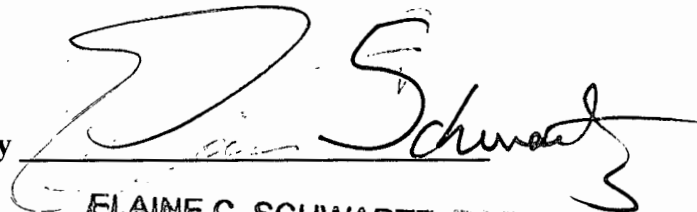
Description

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DP Number: 13114

OFFICE OF THE ATTORNEY GENERAL

The foregoing contract and bonds has been reviewed and approved as to form.

John Jay Hoffman
Acting Attorney General of New Jersey

By 
Name: **ELAINE C. SCHWARTZ, DAG**

Deputy Attorney General

Date 6/13/13

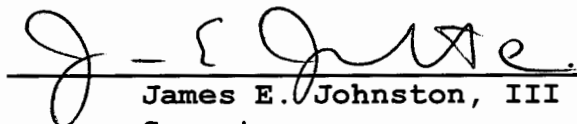
AGATE CONSTRUCTION COMPANY, INC. CORPORARATE RESOLUTION

BE IT RESOLVED that the transaction herein to, being herewith approved, that **James E. Johnston, Jr., Chief Executive Officer, James E. Johnston, III, President and/or Larry W. Zoerb, Sr. Vice President** of this corporation each individually has the ability to bind the corporation to the contract and is hereby directed, authorized and empowered to execute, acknowledge and deliver such documents, instructions and papers and perform such acts as may be legally, properly and reasonably required or necessary for the purpose of procuring and executing any bid, bid bonds or contracts which may be awarded by the New Jersey Department of Transportation, specifically:

**Route 35 Restoration, Mantoloking to Point Pleasant (MP 9-12.5)
Contract No. 009950322; Ocean County; Federal Project No.:
ER-7051 (114), UPC No. 950322, PE No: 1506506, CE No: 1506516,
DP No: 13114.**

I, James E. Johnston, III, Secretary of a Corporation of New Jersey CERTIFY that this is a true copy of a Resolution as it appears in the records of the corporation and as was duly and legally adopted at a meeting of the Board of Directors of October Construction Company, Inc. for that purpose and held on October 20, 2011, pursuant to and in accordance with the Certificate of Incorporation and By-Laws thereof; that it has not been modified, amended or rescinded, and is in full force and effect as of the date hereof.

Dated: June 4, 2013


James E. Johnston, III
Secretary