AGREEMENT NO. 17-007

BETWEEN

NEW JERSEY TRANSIT CORPORATION

AND

NAIK CONSULTING GROUP, PC

FOR PROFESSIONAL SERVICES

This Agreement made as of October 18, 2018 between the New Jersey Transit Corporation (hereinafter "NJ TRANSIT"), a public instrumentality of the State of New Jersey and Naik Consulting Group, PC having its principal place of business at 200 Metroplex Drive, Suite 403, Edison, NJ 08817 (hereinafter the "Consultant").

WITNESSETH:

WHEREAS, the Board of Directors of NJ TRANSIT, at its meeting of June 13, 2018 authorized the Executive Director to enter into this Agreement ("Agreement" or "Contract") with the Consultant for the Construction Management Services for the Hoboken Depot and Henderson Street Substation Rehabilitation; and

WHEREAS, the said Consultant, for and in consideration of the payments hereinafter specified and agreed to be made by NJ TRANSIT, hereby covenants and agrees to commence and complete the work as follows:

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto covenant and agree with each other as follows:

1. CONSULTANT SERVICES: The Consultant, at the direction of NJ TRANSIT, shall provide to NJ TRANSIT services in conformance with the description of services, deliverables,

standards of performance, and acceptance criteria set forth in Exhibit A (Scope of Services), annexed hereto and made a part hereof.

2. COMPENSATION: This Agreement is a cost plus fixed fee contract. NJ TRANSIT shall, subject to the availability of funds and audits, pay the Consultant for work identified in Exhibit A (Scope of Services). The Consultant's total costs and fees have been identified as an amount not to exceed $5,780,005.44 as set forth in Exhibit B (Cost Information), annexed hereto and made part hereof. The costs have been identified as $2,478,979.90 for direct labor, $2,709,043.55 for indirect costs, and $151,000.00 for direct expenses. The fixed fee has been identified as $440,981.99. Payment shall only be made for work which is actually performed and accepted by NJ TRANSIT. The Consultant shall render monthly invoices for direct and indirect charges incurred pursuant to this Agreement no later than two (2) weeks after the end of the month. NJ TRANSIT will make payment within thirty (30) days after approval of the Consultant's invoice. The invoices shall be detailed in accordance with procedures and formats prescribed by NJ TRANSIT.

Prompt Payment: The Consultant agrees to pay each Subconsultant and Supplier under this Contract for satisfactory performance of completed work under its subcontract no later than ten (10) days from the receipt of each payment the Consultant receives from NJ TRANSIT. The Consultant shall ensure that all lower tier Subconsultants and Suppliers are paid all invoiced amounts that meet all applicable requirements within fifteen (15) days from the time the Subconsultant receives payment from the Consultant.

All costs incurred under this Agreement by the Consultant and approved subconsultants, including those costs resulting from changes to, modifications of and termination of the Agreement, at a minimum, must be considered allowable and allocable in accordance with the cost principles of Part 31 of the Federal Acquisition Regulations (48 CFR, Part 31). The Contracting Officer's determination on the allowability, allocability and reasonableness of incurred costs shall be final and conclusive. The

Contracting Officer for NJ TRANSIT shall be the Chief of Procurement & Support Services or his/her designees within NJ TRANSIT's Procurement Department.

Direct labor rates shall be the wages or salaries actually paid to employees, principals or partners directly charging time to the project for work performed as required by Exhibit A (Scope of Services).

Maximum provisional indirect cost rates (e.g. fringes, overhead, G&A, etc.) have been computed by the Consultant for it and its Subconsultants and are considered acceptable by NJ TRANSIT. The following provisional rates shall be in effect for the duration of the Agreement unless revised as mutually agreed or adjusted as provided below:

Firm	*Rate*
Naik Consulting Group	108.40%
Burns Engineering	145.47%
Envision Consultants	103.59%
Roux Associates	173.00%
Lynn Drobbin & Associates	133.03%

Should the Consultant's or any of its Subconsultant's actual indirect cost rates for their fiscal year be determined to be less than the established maximum provisional indirect cost rates, and should the amount invoiced by and paid to the Consultant exceed those rates for that fiscal year, then the amounts invoiced shall be adjusted downward as compared to the actual indirect cost rate and overpayment amounts including the corresponding fixed fee shall be remitted to NJ TRANSIT.

Direct expenses shall be only those costs which are necessary to accomplish the scope of services and not excludable as direct costs by the Federal Acquisition Regulations or not otherwise compensated under the Consultant's direct labor and indirect cost rates. All direct expense purchases of goods, materials and services made by the Consultant on behalf of NJ TRANSIT shall be competitively procured wherever practicable.

Direct expense compensation for travel, subsistence and lodging costs shall comply with the NJ TRANSIT Travel and Business Reimbursement Guidelines (Exhibit C).

Direct labor rates, hours and costs, indirect labor rates and costs and direct expenses invoiced by the Consultant and paid by NJ TRANSIT are subject to audit and downward adjustment by NJ TRANSIT, in its sole discretion. Any determination of an overpayment by NJ TRANSIT as a result of an audit shall be final and conclusive of the amounts to be refunded. All overpayments shall be reimbursed to NJ TRANSIT within thirty (30) days of notification. Alternatively, NJ TRANSIT may deduct the overpayment amount from payments owed to the Consultant under this or any other agreement with NJ TRANSIT. No upward adjustments shall be allowed.

Within 180 calendar days after the end of the Consultant's and Subconsultant's fiscal year or for accounting periods of no less than three months should the contract terminate, the Consultant and Subconsultants shall furnish NJ TRANSIT with a Statement of Indirect Labor Costs (Statement of Overhead) attesting that the statement has been prepared in conformity with accounting principles generally accepted in the United States and reflect all adjustments required by Part 31 of the Federal Acquisition Regulations. Such fiscal year or stub period statements must be certified by an independent public accountant. Failure to provide the requisite Statement of Indirect Labor Costs (Statement of Overhead) in a format acceptable to NJ TRANSIT may result in NJ TRANSIT withholding payment of fee and all or a portion of Indirect Labor Costs in an amount determined by NJ TRANSIT.

Interest payable on excess direct labor cost, indirect labor costs (overhead) or any other excess amounts paid to the Consultant by NJ TRANSIT, and not previously remitted to NJ TRANSIT within thirty (30) calendar days of notification by NJ TRANSIT, shall accrue at the prime rate as established by the United States Federal Reserve and published in The Wall Street Journal. Interest shall be applied to balances owed to NJ TRANSIT in excess of $5,000. Application of interest to excess payments made in the preceding fiscal year shall begin six (6) months after the close of the Consultant's fiscal year. Interest shall continue to accrue monthly at the prime rate until all amounts have been

remitted to NJ TRANSIT, unless amounts owed NJ TRANSIT, including accrued interest, have been deducted by NJ TRANSIT from any payments owed the Consultant on this or any other agreement.

Costs incurred above the contract amounts identified in Exhibit B (Cost Information) are not reimbursable, except as authorized by the Contracting Officer in writing in accordance with Article 5, MODIFICATION OF AGREEMENT.

3. LIMITATION OF FUNDS:

A.) The Consultant estimates that performance of this Agreement will not cost NJ TRANSIT more than the estimated amount specified in Exhibit B (Cost Information). The Consultant agrees to make every effort to perform the work specified in Exhibit A (Scope of Services) and all obligations under this Agreement within the estimated amount specified in Exhibit B (Cost Information).

B.) The Purchase Order specifies the amount presently available for payment by NJ TRANSIT and allotted to the Scope of Services and the tasks the allotted amount will cover. The parties contemplate that NJ TRANSIT will allot additional funds incrementally to the Purchase Order up to the full estimated cost as specified in Exhibit B (Cost Information) inclusive of all fees. The Consultant agrees to perform, or have performed, work on the Agreement up to the point at which the total amount paid and payable by NJ TRANSIT under the Agreement approximates but does not exceed the total amount actually allotted by NJ TRANSIT for each of the tasks identified in the Agreement.

C.) The Consultant shall notify the Contracting Officer in writing whenever it has reason to believe that within the next sixty (60) calendar days the costs it expects to incur under this Agreement to complete the Scope of Services, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the total amount so far allotted by NJ TRANSIT. The notice shall state the estimated amount, if any of additional funds required to continue and complete performance of the Scope of Services, as specified in Exhibit A (Scope of Services), beyond the total allotted amount specified in Exhibit B (Cost Information).

D.) If, after notification by the Consultant pursuant to paragraph C above, additional funds are not allotted for the Scope of Services, the Contracting Officer may terminate this Agreement, in whole or in part, in accordance with the provisions of Article 14, TERMINATION OF THE AGREEMENT FOR CONVENIENCE.

E.) Except as required by other provisions of this Agreement:

1.) NJ TRANSIT is not obligated to reimburse the Consultant for costs incurred in excess of the amount allotted in total by NJ TRANSIT for this Agreement; and

2.) The Consultant is not obligated to continue performance under this Agreement (excluding actions under Article 14, TERMINATION OF THE AGREEMENT FOR CONVENIENCE) or otherwise incur costs in excess of the amount then allotted to the Agreement by NJ TRANSIT until the Contracting Officer notifies the Consultant in writing that the amount allotted by NJ TRANSIT has been increased and specifies an increased amount, which shall then constitute the total amount allotted by task and in total by NJ TRANSIT for this Agreement.

F.) No notice, communication, or representation in any form other than that specified by the Contracting Officer in writing shall affect the amount allotted by NJ TRANSIT to this Agreement. In the absence of the notice specified in Paragraph C, NJ TRANSIT is not obligated to reimburse the Consultant for any costs in excess of the total costs and fees specified in Exhibit B (Cost Information) to this Agreement, whether incurred during the course of the Agreement or as a result of termination.

G.) Change Orders shall not be considered an authorization to exceed the amount allotted by NJ TRANSIT specified in Exhibit B (Cost Information), unless they contain a statement increasing the amount allotted.

H.) Nothing in this clause shall affect the right of NJ TRANSIT to terminate this Agreement.

I.) If NJ TRANSIT does not allot sufficient funds to allow completion of the work, the Consultant will be entitled to the actual costs incurred plus a percentage of the fixed fee specified in

Exhibit B (Cost Information) not to exceed the percentage of completion of the work contemplated by this Agreement.

4. EFFECTIVE DATE AND TERM OF AGREEMENT: This Agreement shall become binding upon the parties hereto when executed on behalf of NJ TRANSIT by the Contracting Officer or his designee. The Consultant shall commence work upon the Scope of Services within five (5) calendar days upon receipt of a written Notice to Proceed to that effect which shall be issued on behalf of NJ TRANSIT by its Contracting Officer or his designee upon the execution of the Agreement by NJ TRANSIT. The Consultant shall complete the Scope of Services in accordance with the terms and conditions within the Request for Proposal.

5. MODIFICATION OF AGREEMENT:

A.) The Scope of Services set forth in Exhibit A of this Agreement may be reduced, modified or expanded within the scope of this Agreement by written contract modifications executed by NJ TRANSIT and the Consultant.

Except as provided in Paragraph B, below, in the event that NJ TRANSIT requires a reduction, expansion, or modification of the Scope of Services, the Contracting Officer will issue to the Consultant a written notification which specifies such reduction, expansion, or modification. Within fifteen (15) calendar days after receipt of the written notification, the Consultant shall provide the Contracting Officer with a detailed cost and schedule proposal for the work to be performed or to be reduced. This proposal may be accepted by NJ TRANSIT or modified by negotiations between the Consultant and NJ TRANSIT. A contract modification (Change Order) shall be effective only if executed in writing by both parties.

B.) Notwithstanding Paragraph A. above, the Contracting Officer may at any time, by written order, make changes within the general scope of this Agreement to the work to be performed by the Consultant. If any such change causes an increase or decrease in the estimated cost of, or the time required for, the performance of any part of the work under this Agreement, whether or not changed by

the order, the Contracting Officer may make such adjustments as are appropriate and equitable and shall modify the Agreement in writing accordingly. Any claim by the Consultant for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Consultant of the notification of change; provided however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon such claim asserted at any time prior to final payment under this Agreement. Failure to agree to any adjustment shall be a dispute within the meaning of Article 34, DISPUTES. However, nothing in this clause shall excuse the Consultant from proceeding with the Agreement as changed.

C.) No services for which an additional cost or fee will be charged by the Consultant shall be furnished without the prior express written authorization of the Contracting Officer.

D.) Unless specified in a written contract modification, no change, reduction, modification or expansion of the Scope of Services within or beyond the scope of this Agreement shall serve to modify the terms and conditions of this Agreement.

E.) Whenever an "AS DIRECTED TASK" appears in Exhibit A (Scope of Services) and Exhibit B (Cost Information), NJ TRANSIT has provided an allowance for additional or supplemental work that has not yet been defined. This allowance is provided for the sole convenience of NJ TRANSIT and may only be used for work authorized by NJ TRANSIT.

All additional or supplemental work authorized under this provision will be incorporated into the Agreement by Change Order pursuant to Article 5, MODIFICATION OF AGREEMENT. The Change Order will describe the additional or supplemental work with any associated cost changes and will reduce the "AS DIRECTED TASK" allowance in the amount specified in the Change Order. Residual amounts remaining in the "AS DIRECTED TASK" allowance may be deleted from the Agreement by NJ TRANSIT at any time at NJ TRANSIT's sole discretion or at the completion of all work.

6. STATUS REPORTS: The Consultant shall submit to NJ TRANSIT a monthly or more frequently, at the discretion of NJ TRANSIT, a written status report outlining the status of the Project

to date. Each status report shall be a concise narrative description of activities to date and planned activities for the coming month or other period and include, at a minimum: the period's accomplishments by deliverable and/or task; status of deliverables; work-in-progress; next steps; listings and status of documents/data requested; potential impacts to the scope of work, cost or schedule; items or issues identified; total weekly and cumulative hours by task, deliverable, and person; projected hours to complete each task/deliverable; and any other information NJ TRANSIT may require. A final report, one (1) original and seven (7) copies, and one copy in an electronic format acceptable to NJ TRANSIT shall be submitted by the Consultant upon completion of the project.

7. REVIEWS: Until the completion of the Scope of Services by the Consultant and the final payment made by NJ TRANSIT, the Consultant shall allow representatives of NJ TRANSIT to visit the offices and other places of work of the Consultant periodically without prior notice to monitor the Consultant's work completed or in progress pursuant to this Agreement. NJ TRANSIT shall, within a reasonable time, review and act upon all documents submitted by the Consultant. Both parties agree that if either party deems it advisable to hold either a conference or any inspection of work in progress, all parties shall be notified and may participate.

8. ACCEPTANCE OF THE CONSULTANT'S WORK: All services and deliverables that the Consultant must provide and deliver to NJ TRANSIT as specified in Exhibit A (Scope of Services) shall be provided and delivered to the designated NJ TRANSIT Project Manager. The Project Manager shall examine and inspect the deliverables and shall have the right in his/her reasonable judgment to refuse to accept any services or deliverables if they do not meet the requirements of the Scope of Services. Such inspection does not relieve the Consultant of its liability regarding any deficiencies in the performance of the Scope of Services or deliverables, whether obvious or not. If any deliverables are not accepted, NJ TRANSIT may terminate this Agreement, in whole or in part, in accordance with Article 15, TERMINATION OF THE AGREEMENT FOR CAUSE.

9. OVERPAYMENTS: If at any point NJ TRANSIT determines that the Consultant has been overpaid, NJ TRANSIT shall notify the Consultant in writing of the overpayment. The Consultant shall repay the amount of overpayment to NJ TRANSIT within thirty (30) days of said notification including interest as applicable.

10. ASSIGNMENT, SUBCONTRACT AND DISPOSITION APPROVAL: The Consultant shall not sell, transfer or otherwise dispose of this Agreement or its interest therein to any other parties without the prior written consent of NJ TRANSIT. The Consultant shall not, without the prior written approval of NJ TRANSIT, assign or subcontract any of the Scope of Services under this Agreement. Neither shall any assignee or subconsultant, without the prior written approval of NJ TRANSIT, further assign or subcontract any of the work to be performed pursuant to this Agreement.

The terms of this Agreement shall be incorporated into and made part of any assignment or subcontract pursuant to this Agreement. As a condition of obtaining NJ TRANSIT's approval of any proposed assignee or Subconsultant, the Consultant shall provide NJ TRANSIT with sufficient documentation regarding the proposed Subconsultant or assignee for NJ TRANSIT's review and approval and shall provide to NJ TRANSIT a copy of the agreement established between the Consultant and its Subconsultant or assignee. Any assignment or subcontract of work to be performed under this Agreement, entered into without prior written approval by NJ TRANSIT, shall be void and unenforceable unless NJ TRANSIT subsequently gives written approval or consent.

If the Consultant's assignee or Subconsultant fails to perform in accordance with the terms of its assignment or subcontract, the Consultant shall complete or pay to have completed the work which the assignee or Subconsultant failed to complete at no additional cost to NJ TRANSIT.

11. INDEMNIFICATION: The Consultant shall defend, indemnify and save harmless the State of New Jersey, NJ TRANSIT, the U.S. Department of Transportation (USDOT), the Federal Transit Administration (FTA) (if the Agreement is in whole or part federally funded), , and their officers, employees, servants and agents ("Indemnified Parties") from all suits, actions, claims of any character

including, but not limited to, expenditures and costs of investigations, hiring of witnesses, court costs, counsel fees, settlements, judgments or otherwise, brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of said Consultant or its Subconsultant in the performance of the work, specified in this Agreement or because of any act, omission, neglect, or misconduct of said Consultant or its Subconsultant in the performance of the work specified in this Agreement; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or any other law, ordinance, order, or decree. So much of the money due the said Consultant under and by virtue of this Agreement as may be considered necessary by NJ TRANSIT for such purpose may be retained for the use of NJ TRANSIT; except that money due to the Consultant will not be withheld when the Consultant produces satisfactory evidence that it is adequately protected by the insurance coverages required in Article 12, INSURANCE. NJ TRANSIT shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Consultant along with full and complete particulars of the claim. If the suit is brought against NJ TRANSIT, NJ TRANSIT shall immediately forward to the Consultant every claim, demand, complaint, notice, summons, pleading or other process received by NJ TRANSIT. NJ TRANSIT shall have the right, but not the obligation, to participate, to the extent it deems appropriate, in the defense of the matter and must concur in the terms of any settlement or other voluntary disposition of the matter. In the defense of any such claims, demands, suits, actions and proceedings, the Consultant shall not raise or introduce, without the express written permission in advance of the Office of the Attorney General of the State of New Jersey, any defense involving in any way the immunity of NJ TRANSIT or the State of New Jersey, the jurisdiction of the tribunal over NJ TRANSIT or the State of New Jersey, or the provisions of any statutes respecting suits against NJ TRANSIT or the State of New Jersey.

The Consultant is an independent professional firm contracting with NJ TRANSIT to provide specialized services. The Consultant, its officers, partners, employees, agents and servants are not to be deemed employees, agents, extensions of staff or servants of NJ TRANSIT. The Consultant

assumes full responsibility for liability arising out of its conduct and the conduct of its Subconsultants whether by action or inaction. NJ TRANSIT assumes no liability or responsibility for the acts of the Consultant, its officers, partners, employees, agents, or servants, by virtue of entering into this Agreement.

12. INSURANCE: The Consultant agrees to carry and shall require its assignees and Subconsultants, if any, to carry professional liability insurance of the type necessary to protect the Consultant from professional liability arising out of the negligent acts, errors or omissions of the Consultant in connection with the performance of the Consultant's services pursuant to this Agreement. Said insurance shall be in an amount not less than $5,000,000 for any one claim and annual aggregate with a deductible not to exceed $50,000 for any one claim, unless approved otherwise by NJ TRANSIT. The Consultant agrees to maintain this coverage for three (3) years after completion of this Agreement including any amendments thereto. There shall be no exclusions in coverage for the insured's interest in a joint venture or Limited Liability Company or Limited Liability Partnership. There shall be no exclusions in coverage for pollution, mold or asbestos. The policy shall include contractual liability coverage.

The Consultant agrees to carry, and shall require its assignees and Subconsultants, if any, to carry, commercial general liability insurance using ISO Occurrence Form CG0001 10/93 or equivalent. The policy shall provide a minimum amount of $5,000,000 each occurrence, $5,000,000 personal and advertising injury, $5,000,000 general aggregate and $5,000,000 products completed operations aggregate. Coverage provided under this liability policy shall be on an occurrence basis and shall include, but not be limited to, bodily injury and property damage coverage including products liability/completed operations coverage, premises operations liability, blanket contractual liability, personal injury liability, advertising injury coverage, independent contractors liability, mobile equipment, damage from explosion, collapse and underground hazards, and cross liability and severability of interests clause. Additional insured endorsement CG2026 11/85, CG 2010 11/85 or CG 2010 10/93 (but only if modified to include both ongoing and completed operations) naming NJ TRANSIT and the State of New Jersey and

the Indemnified Parties and coverage must apply on a primary and non-contributory basis. The policy shall allow the Consultant to waive its and its insurer's rights of subrogation. There shall be no coverage exceptions for property containing or adjacent to railroad facilities or other transportation facilities. The Consultant shall furnish completed operations insurance written to the limits stipulated herein for Commercial General Liability Insurance. Coverage shall be required and maintained in force for a minimum of three (3) years following acceptance of the overall Contract, regardless of any beneficial occupancy by NJ TRANSIT during the Contract term.

The Consultant agrees to carry, and shall require its assignees and Subconsultants, if any, to carry automobile liability insurance applicable to all owned, non-owned, hired or leased vehicle with a minimum of $1,000,000 combined single limit for bodily injury and property damage. With respect to said insurance, NJ TRANSIT and the Indemnified Parties shall be named as an additional insured at no additional cost to NJ TRANSIT.

The Consultant shall take out, secure and maintain during the term of this Agreement and shall require its assignees and Subconsultants, if any, to secure and maintain during the term of this Agreement, a policy of workers' compensation insurance in compliance with the laws of the state where the work is to be performed. In case any class of employees on the project under this Agreement is not protected under the Worker's Compensation Statute, the Consultant shall provide and shall cause each Subconsultant to provide employer's liability insurance for the protection of each of its employees as are not otherwise protected. Limits of Employer Liability are as follows: Employer's Liability: $1,000,000 each accident / $1,000,000 each employee disease / $1,000,000 policy limit – disease.

The Consultant agrees to carry, and shall require its assignees and Subconsultants, if any, to carry, contractor's pollution liability insurance covering the liability arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up and disposal costs and defense that arise from the operation of Consultant or its Subconsultants. Coverage under this policy shall have limits of liability with a minimum of $2,000,000 per occurrence. Transport of any hazardous

waste generated under this Agreement shall require Hazardous Waste Haulers Insurance (MCS90) in an amount of $2,000,000 per occurrence or statutory minimum, whichever is greater. This policy shall name NJ TRANSIT and the Indemnified Parties as additional insured at no cost to NJ TRANSIT.

Should it be required, NJ TRANSIT will provide Railroad Protective Comprehensive General Liability Insurance coverage for this Agreement.

All policies are to be written by insurance companies authorized to do business in New Jersey with an A.M. Best and Company rating of "A-" or better (or equivalent rating). All policies shall contain an endorsement that if the policy is canceled, non-renewed or is subject to any material reduction in limits, the Insurer will provide written notice to NJ TRANSIT at least thirty (30) calendar days prior to the occurrence of such event in accordance with Article 33, NOTIFICATION with a copy to NJ TRANSIT's Senior Director of Risk Management as follows:

NJ TRANSIT
One Penn Plaza East
Newark, New Jersey 07105-2246
Attn: Senior Director, Risk Management

The foregoing insurance coverage is not intended to nor does it limit the liability of the Consultant to hold the Indemnified Parties harmless.

The Consultant shall provide NJ TRANSIT with evidence of the Consultant's insurance. Said insurance shall be maintained in full force and effect by the Consultant, Subconsultant and assignee, if any, from the effective date of this Agreement until completion of and final payment for the Scope of Services. If the Consultant (Subconsultant or assignee) shall fail or refuse to renew its insurance, as necessary, NJ TRANSIT may cancel or refuse to make payment of any further monies due under this Agreement. In lieu of requiring its assignees or Subconsultants to carry this coverage, the Consultant may elect to cover them under its policies of insurance.

13. AUDIT AND INSPECTION OF RECORDS: The Consultant shall retain all records and permit the authorized representatives of NJ TRANSIT, the State of New Jersey, the USDOT, the FTA and the Comptroller of the United States and their duly authorized representatives, such as

Project Management Oversight (PMO), Integrity Oversight Monitors (IOM) etc., to inspect and audit all financial data, operational data and other records of the Consultant including but not limited to disclosure forms, payment requests, change orders, invoices, certified payrolls, manifests, etc. related to products, transactions or services provided under this Agreement including the performance of its Subconsultants from the Advertisement of this Request for Proposal (RFP) and for five years after final payment under this Agreement has been made.

NJ TRANSIT, the State of New Jersey, the USDOT, the FTA and the Comptroller General of the United States and their duly authorized representatives also shall have the right to inspect all services hereunder and specifically reserves the right to conduct on-site visits and perform financial audits and operational reviews. Any inspection, audit or review or lack thereof shall not relieve the Consultant of responsibility for satisfactory performance of the Scope of Services. Consultant shall maintain a true and correct set of Records for all financial and operational data in sufficient detail to permit reasonable verification or correction of charges and performance in accordance with this Agreement from the date of Advertisement of this RFP and for five (5) years after final payment under this Agreement has been made.

Any such audit shall be conducted at Consultant's principal place of business during Consultant's normal business hours and at NJ TRANSIT's expense, provided all costs incurred by NJ TRANSIT in conducting any such audit shall be reimbursed by Consultant in the event such audit reveals an aggregate discrepancy in any invoice or cumulative invoice not previously audited by NJ TRANSIT of more than two percent (2%) of the final total costs and fees for the period under audit as determined by NJ TRANSIT.

The Consultant further agrees to include in all its subcontracts hereunder a provision requiring the Subconsultant to keep all Contract records and that NJ TRANSIT, the State of New Jersey, the USDOT, the FTA and the Comptroller General of the United States or any of their duly authorized representatives, such as PMO, IOM, etc. shall, until the expiration of five (5) years after final payment

under the subcontract, have access to and the right to examine pertinent books, documents, papers and records of such subcontract, involving transactions related to the Subconsultant. The term "Subconsultant" as used in this clause excludes (1) purchase orders not exceeding $10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

Documents of every nature prepared pursuant to this Agreement shall be available to and become the property of NJ TRANSIT, and basic notes and other pertinent data shall be made available to NJ TRANSIT upon request without restriction as to their future use. Such documents shall be provided or made available within thirty (30) calendar days of NJ TRANSIT's request.

Pursuant to N.J.S.A. 52:15C-14(d), the Consultant shall maintain all documentation related to 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 to the New Jersey Office of State Comptroller upon request.

The periods of access and examination described above, for Records which relate to: (1) appeals under Article 34, DISPUTES; (2) litigation or the settlement of claims arising out of the performance of this Agreement; or (3) costs and expenses of this Agreement as to which exception has been taken by NJ TRANSIT, State of New Jersey, the Office of State Comptroller, USDOT, FTA or any of their authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

14. SUSPENSION OF WORK: NJ TRANSIT may, for valid reason, issue a stop order directing the Consultant to suspend work under the contract for a specific time. The Consultant shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Consultant shall resume work upon the date specified in the stop order, or upon such other date as the Contracting Officer or his or her designee, may thereafter direct in writing. The period of suspension shall be deemed added to the Consultant's approved schedule of performance. The

Contracting Officer or his or her designee shall make an equitable adjustment, if any is required, to the contract price. The Consultant shall provide whatever information that the Contracting Officer or his or her designee may require related to the equitable adjustment.

15. TERMINATION OF THE AGREEMENT FOR CONVENIENCE: NJ TRANSIT may terminate the Consultant's services in whole or in part for any reason at any time before completion. In that event, the Consultant will be given written notice by the Contracting Officer of such termination specifying the effective date thereof. Compensation will be paid to the Consultant pursuant to the terms of Article 2, COMPENSATION for the work actually performed prior to such date. All documents begun or completed by the Consultant pursuant to this Agreement shall become the property of NJ TRANSIT. After receipt of such written notice, the Consultant shall not incur any new obligations without the prior written approval of the Contracting Officer and shall cancel as many outstanding obligations so related as possible. NJ TRANSIT will evaluate each obligation deemed non-cancellable by the Consultant in order to determine its eligibility for inclusion in compensable costs. No damages of any nature shall be claimed against NJ TRANSIT in the event it exercises this right of termination.

16. TERMINATION OF THE AGREEMENT FOR CAUSE: NJ TRANSIT may terminate this Agreement in whole or in part at any time if the Consultant has materially failed to comply with terms of the Agreement. In the event of such failure, NJ TRANSIT shall promptly give written notification to the Consultant of its intent to terminate and the reasons therefor. The Consultant shall have ten (10) calendar days, or such additional time as NJ TRANSIT may grant, after receipt of notice to cure its failure. If the failure is not cured to the satisfaction of NJ TRANSIT, NJ TRANSIT may terminate this Agreement (in whole or in part) effective immediately.

After receipt of notice of termination, the Consultant shall not incur any new obligations without the approval of NJ TRANSIT and shall cancel as many outstanding obligations as possible. NJ TRANSIT will evaluate each obligation deemed non-cancelable by the Consultant in order to determine its eligibility for inclusion in compensable costs. Compensation shall be made for Scope of

Services identified in Exhibit A (Scope of Services) pursuant to the terms of this Agreement for work actually performed, completed and approved by NJ TRANSIT prior to the date of termination.

If this Agreement or any part thereof is terminated for cause, NJ TRANSIT may procure services similar to those so terminated. The Consultant shall be liable to NJ TRANSIT for any reasonable excess costs incurred for such similar services.

The Consultant shall not claim any damages of any nature against NJ TRANSIT in the event NJ TRANSIT exercises this right of termination. The rights and remedies available to NJ TRANSIT in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If, after notice of termination of this Agreement under the provisions of this Article, it is determined for any reason that the Consultant was not in default under the provisions of this Article, or that the default was excusable under the provisions of this Article, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article 14, TERMINATION FOR CONVENIENCE.

17. BUSINESS REGISTRATION NOTICE: In accordance with N.J.S.A. 52:32-44, all New Jersey and out of State business organizations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue. It is requested that proof of valid business registration be submitted by a proposer with its proposal. Failure to submit such valid business registration with a proposal will not render the proposal materially non-responsive. If not submitted with the proposal, the Business Registration Certificate (BRC) must be submitted prior to award of an Agreement. The certificate must be valid at time of award. The Business Registration Certificate (BRC) form (Form NJ-REG) can be found online at http://www.state.nj.us/treasury/revenue/gettingregistered.shtml.

No contract with a Subconsultant shall be entered into by any Consultant unless the Subconsultant first provides proof of valid business registration. The Consultant shall maintain a list of the

names of any Subconsultants and their current addresses, updated as necessary during the course of the contract performance and the Consultant shall submit the complete and accurate list to NJ TRANSIT before final payment is made for services rendered under the Agreement.

The Consultant and any Subconsultant performing services under the Agreement, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State.

18. SOURCE DISCLOSURE:

A. Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by NJ TRANSIT shall be performed within the United States, except when the Contracting Officer certifies in writing a finding that a required service cannot be provided by a Consultant or Subconsultant within the United States and the certification is approved by the Executive Director of NJ TRANSIT.

All Consultants seeking a contract primarily for services with NJ TRANSIT must disclose the location, by country, where services under the contract, including subcontracted services, will be performed.

If any of the services cannot be performed within the United States, the Consultant shall state with specificity the reasons why the services cannot be so performed. NJ TRANSIT's Contracting Officer shall determine whether sufficient justification has been provided by the proposer to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Executive Director.

B. Breach of Contract for Shift of Services outside the United States

If, during the term of the Agreement, the Consultant or Subconsultant, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside the United States, the Consultant shall be deemed to be in breach of the Agreement,

which shall be subject to termination for cause pursuant to Article 16, TERMINATION OF THE AGREEMENT FOR CAUSE, unless previously approved by NJ TRANSIT.

19. USE OF BRAND NAME PRODUCTS IN DESIGN: Consultants engaged to prepare specifications or to perform design work, or both, for NJ TRANSIT shall prepare such specifications to encourage full and open competition. A situation considered to be restrictive of competition involves specifying only a "brand name" product instead of allowing "an equal" product to be offered and listing the products' salient characteristics. Accordingly, Consultants engaged in preparing specifications or performing design work for NJ TRANSIT are required to include the salient characteristics of a product when it is identified by "brand name" and allow for an equivalent. Consultants may define salient characteristics by using language similar to the following:

(a) 'Original Equipment Manufacturer (OEM) part #123 or approved equal that complies with the original equipment manufacturer's requirements or specifications and will not compromise any OEM warranties'; or

(b) 'Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in [describe the bus, engine, or other].

20. PATENT RIGHTS AND RIGHTS IN DATA:

A.) Rights in Data

1.) The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related

performance or design-type documents; machine forms such as punched cards; magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

2.) All "subject data" first produced in the performance of this Agreement shall be the sole property of NJ TRANSIT. The Consultant agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for its own internal use, the Consultant shall not publish or reproduce such data in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of NJ TRANSIT until such time as NJ TRANSIT may have released such data to the public.

3.) The Consultant agrees to grant and does hereby grant to NJ TRANSIT and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world:

a.) To publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data not first produced or composed in the performance of this Agreement, but which is incorporated in the work furnished under this Agreement; and

b.) To authorize others so to do.

4.) The Consultant shall indemnify and save and hold harmless NJ TRANSIT, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Consultant of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this Agreement.

5.) Nothing contained in this Article shall imply a license to NJ TRANSIT under any patent or be construed as affecting the scope of any license or other right otherwise granted to NJ TRANSIT under any patent.

6.) Paragraphs 3 and 4, above, are not applicable to material furnished to the Consultant by NJ TRANSIT and incorporated in the work furnished under the Agreement; provided that such incorporated material is identified by the Consultant at the time of delivery of such work.

7.) In the event that the project, which is the subject of this Agreement, is not completed, for any reason whatsoever, all data generated under this Agreement shall become subject data as defined in this clause and shall be delivered as NJ TRANSIT may direct.

B.) Patent Rights

1.) If any invention, improvement, or discovery of the Consultant is conceived or first actually reduced to practice in the course of or under this Agreement, which invention, improvement or discovery may be patentable under the laws of the United States of America or any foreign country, the Consultant shall immediately notify NJ TRANSIT and provide a detailed report to FTA.

2.) The rights and responsibilities of NJ TRANSIT, the Consultant and the FTA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies and any waiver thereof.

21. PUBLICATION AND PUBLICITY: The Consultant, its Subconsultants, assignees, employees or agents shall not release or publish any information or material generated from this project to others outside of NJ TRANSIT without the express written permission of NJ TRANSIT except as specified in the Scope of Services.

22. EQUAL EMPLOYMENT OPPORTUNITY: The Consultant hereby acknowledges that pursuant to N.J.A.C. 17:27-3.1, NJ TRANSIT cannot award a contract or pay money to any Consultant or Subconsultant which has not agreed and guaranteed to afford equal employment

opportunity in performance of the contract in accordance with an affirmative action program and, except with respect to affectional or sexual orientation, approved under the terms established in N.J.A.C. 17:27.

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE FOR GOODS, GENERAL SERVICES, AND PROFESSIONAL SERVICES CONTRACTS (required by N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1.1 et seq.) – EXHIBIT A (last revised 4/10)

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

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, affection-al 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 apprentice-ship. 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, col-or, 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:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at: http://www.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 N.J.A.C. 17:27-1.1 et seq.

22.1 Non-Discrimination: In accordance with the provisions of N.J.S.A. 10:2-1 the Consultant agrees that:

a. In the hiring of persons for the performance of work under this Agreement 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 Agreement, no Consultant, nor any person acting on behalf of such Consultant or Subconsultant, shall, by reason of race, creed, color, national original, 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 Consultant, Subconsultant, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this Agreement 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 Agreement, on

account of age, race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation, disability, nationality, or sex;

c. There may be deducted from the amount payable to the Consultant by the contracting public agency, under this Agreement, 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 Agreement; and

d. This Agreement 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 Article of the Agreement occurring after notice to the Consultant from the contracting public agency of any prior violation of this Article of the Consultant.

e. No provision in this section shall be construed to prevent a board of education from designating that a contract, subcontract or other means of procurement of goods, services, equipment or construction shall be awarded to a small business enterprise, minority business enterprise or a women's business enterprise pursuant to P.L.1985, c.490 (C.18A:18A-51 et seq.).

23. EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES: The Consultant and NJ TRANSIT agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. 12101 et seq.), which prohibit discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated thereto, are made a part of this Agreement. In providing any aid, benefit, or service on behalf of NJ TRANSIT pursuant to this Agreement, the Consultant agrees that the performance shall be in strict compliance with the Act. In the event that the Consultant, its agents, servants, employees, or Subconsultants violate or are alleged to have violated the Act during the performance of this Agreement, the Consultant shall defend NJ TRANSIT and the State of New Jersey in any action or administrative proceeding commenced pursuant to this Act. The Consultant shall indemnify, protect, and save harmless NJ TRANSIT and the State, their agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of

or claimed to arise out of the alleged violation. The Consultant shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith In any and all complaints brought pursuant to the owner's grievance procedure, the Consultant agrees to abide by any decision of the owner which is rendered pursuant to such said grievance procedure. If any action or administrative proceeding results in an award of damages against NJ TRANSIT or the State or if NJ TRANSIT or the State incur any expense to cure a violation of the Act which has been brought pursuant to its grievance procedure, the Consultant shall satisfy and discharge the same at its own expense.

NJ TRANSIT shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Consultant along with full and complete particulars of the claim. If any action or administrative proceeding is brought against NJ TRANSIT or any of its agents, servants, and employees, NJ TRANSIT will forward or have forwarded to the Consultant every demand, complaint, notice, summons, pleading, or other process received by it or its representatives.

It is expressly agreed and understood that any approval by NJ TRANSIT of the services provided by the Consultant pursuant to this Agreement will not relieve the Consultant of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless NJ TRANSIT pursuant to this paragraph.

The Consultant expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the Consultant from any liability, nor preclude NJ TRANSIT from taking any other actions available to it under any other provisions of this Agreement or otherwise at law.

24. DISADVANTAGED BUSINESS ENTERPRISES: Disadvantaged Business Enterprises, as defined in 49 C.F.R. Part 26, shall have the maximum opportunity to participate in the performance of this Agreement and any subcontract under it. NJ TRANSIT and the Consultant shall take all necessary and reasonable steps, in accordance with 49 C.F.R. Part 26 and the provisions set forth in

Exhibit E, annexed hereto, to ensure that Disadvantaged Businesses have equal opportunity to participate.

The term "disadvantaged business enterprise" means a for-profit small business concern that is owned and controlled by one or more socially and economically disadvantaged persons, as defined by 49 C.F.R., Part 26. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons would include, but not be limited to, Black Americans (not of Hispanic origin); Hispanic Americans; Native Americans; Asian-Pacific Americans; Subcontinent Asian Americans; and Women, regardless of race or ethnicity.

NJ TRANSIT's DBE Program is accorded the same priority as compliance with all other legal obligations required by the USDOT. Consultants shall comply with the DBE Program requirements in the award and administration of NJ TRANSIT contracts. Failure by the Consultant to carry out these requirements shall constitute a breach of the contract, which may result in the termination of the contract or other such remedy, as NJ TRANSIT deems appropriate.

Should the actual contract amount increase or decrease, through approved change order(s), the Office of Business Development (OBD) must be informed. OBD will determine if this will result in an adjustment to DBE participation to reflect the assigned DBE goal.

The Consultant shall fully comply with the requirements and provisions set forth in the New Jersey Transit Corporation DBE Requirements for Federal Procurement Activities set forth in Exhibit E, annexed hereto.

25. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW:

(a) The Consultant shall comply with applicable laws, ordinances, and codes of the United States, the State of New Jersey and local governments within the State. If NJ TRANSIT determines that the Consultant has violated or failed to comply with applicable federal, state or local laws with respect to its performance under this Agreement, NJ TRANSIT may withhold payments for such performance and take such other action that it deems appropriate under the circumstances until

compliance or remedial action has been accomplished by the Consultant to the satisfaction of NJ TRANSIT.

(b) Incorporation of FTA Terms

This Professional Service Agreement includes, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in this Agreement. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any NJ TRANSIT requests which would cause NJ TRANSIT to be in violation of the FTA Master Agreement between NJ TRANSIT and the FTA.

(c) Changes to Federal Requirements

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NJ TRANSIT and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Consultant's failure to so comply shall constitute a material breach of this Agreement unless the FTA determines otherwise.

26. CONFLICT OF INTEREST: In the event that the Consultant deems that any work currently being performed by it on other projects or any work to be performed on future projects is in conflict directly or indirectly with this Agreement, the Consultant shall immediately so notify NJ TRANSIT. NJ TRANSIT, in its sole discretion, shall have the right to terminate this Agreement in accordance with Article 14, TERMINATION OF THE AGREEMENT FOR CONVENIENCE hereof.

27. CONSULTANT'S EMPLOYEES: All personnel employed on this project and their daily rates shall be approved in writing by NJ TRANSIT prior to assignment to this project and, in addition,

any employee of the Consultant or its Subconsultants declared undesirable by NJ TRANSIT shall be relieved of any work under this Agreement.

The Consultant must receive NJ TRANSIT's prior written approval of any change in the project organization/manpower and Subconsultant project team approved for this project.

28. PROHIBITED INTEREST: No member, officer, or employee of NJ TRANSIT or its subsidiaries shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No former member, officer or employee of NJ TRANSIT or its subsidiaries who, during his tenure, had a direct, substantial involvement with matters that are closely related to this Agreement, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

29. INTERESTS OF MEMBERS OF OR DELEGATES TO CONGRESS: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

30. NJ TRANSIT CODE OF ETHICS FOR CONSULTANTS:

It is NJ TRANSIT policy that Consultants must avoid all situations where proprietary or financial interest, or the opportunity for financial gain, could lead an officer or employee of NJ TRANSIT to secure favored treatment for any organization or individual. Consultants must also avoid circumstances and conduct which may not constitute actual wrongdoing, or conflict of interest, but might nevertheless appear questionable to the general public, thus compromising the integrity of NJ TRANSIT. For the purposes of this Article only, NJ TRANSIT shall be deemed to include any person contracting with NJ TRANSIT to perform services on the Project. All Consultants must comply with NJ TRANSIT's Code of Ethics contained in this Article.

A.) The Consultant shall not employ any NJ TRANSIT officer or employee in the business of the Consultant or in professional activity in which the Consultant is involved with the NJ TRANSIT officer or employee.

The Consultant shall not offer or provide any interest, financial or otherwise, direct or indirect, to any NJ TRANSIT officer or employee, in the business of the Consultant or professional activity in which the Consultant is involved with the NJ TRANSIT officer or employee.

The Consultant shall not cause or influence, or attempt to cause or influence, any NJ TRANSIT officer or employee to act in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that NJ TRANSIT officer or employee.

The Consultant shall not cause or influence, or attempt to cause or influence, any NJ TRANSIT officer or employee to use or attempt to use his or her official position to secure any unwarranted privileges or advantages for that Consultant or any other person.

The Consultant shall not offer any NJ TRANSIT officer or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. In addition, employees or officers of NJ TRANSIT will not be permitted to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events, or any other item which could be construed as having more than nominal value.

B.) In accordance with N.J.A.C. 16:72-4.1, the Consultant may be suspended and/or debarred if the Consultant:

1.) Makes any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any NJ TRANSIT Board member, officer, or employee or to any member of the immediate family of such Board member, officer, or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such Board member, officer, or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

2.) Fails to report to the Attorney General and to the Executive Commission on Ethical Standards in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any NJ TRANSIT Board member, officer, or employee;

3.) Undertakes, directly or indirectly, any private business, commercial, or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sale, directly or indirectly of any interest in such Consultant to, any NJ TRANSIT Board member, officer, or employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to NJ TRANSIT, 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 relationship 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 NJ TRANSIT Board member, 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;

4.) Influences or attempts to influence or causes to be influenced, any NJ TRANSIT Board member, officer, or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of such Board member, officer, or employee; or

5.) Causes or influences or attempts to cause or influence, any NJ TRANSIT Board member, officer, or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Consultant or any other person.

31. POLITICAL ACTIVITY PROHIBITED: None of the funds or services contributed by NJ TRANSIT or the Consultant under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

32. NONSOLICITATION: The Consultant warrants that it has not retained any party other than a bona fide employee working for the Consultant to solicit this Agreement, and that it has not paid or agreed to pay any outside party consideration in any form contingent upon securing this

Agreement. For breach of this warranty, NJ TRANSIT shall have the right to terminate this Agreement for cause.

33. MERGER AND SEVERABILITY: This Agreement embodies the entire agreement between the parties. If any provision herein is held invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions hereof.

34. NOTIFICATION: Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by another party shall be in writing and shall be delivered by hand or by deposit in the mails of the United States, postage paid, in an envelope addressed as follows:

If to NJ TRANSIT:

Ms. Jignasa Desai-McCleary
Chief of Procurement & Support Services
NJ TRANSIT
One Penn Plaza East
Newark, New Jersey 07105-2246
Attn: Maggie Sotolongo

With a copy to:

NJ TRANSIT
One Penn Plaza East
Newark, New Jersey 07105-2246
Attn: Premala Raj
Project Manager

If to the Consultant:

Attn: Moe Soliman

Either party to the Agreement may redesignate the recipient or change the address of the recipient of notifications hereunder by notifying the other party to this Agreement, in writing, of such change.

35. DISPUTES: Disputes regarding whether a party has failed to make payments may be submitted to a process of alternative dispute resolution. Disputes arising in the performance of

this Agreement which are not resolved by agreement of the parties will be decided in writing by the authorized representative of the Contracting Officer. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. Pending final decision of a dispute hereunder, the Consultant shall proceed diligently with performance of the Contract in accordance with the decision of the authorized representative of the Contracting Officer.

36. OUT OF STATE CORPORATIONS: If the Consultant is a corporation organized under laws of a state other than New Jersey, the Consultant shall have a certificate of authority to do business in New Jersey in accordance with N.J.S.A. 14A:13-3. In addition, pursuant to N.J.S.A. 14A:4-1 et seq., the Consultant shall maintain a registered office in New Jersey, have a registered agent with a business office in New Jersey and shall file with the Secretary of State the name of said agent and address of said office and provide a copy thereof to NJ TRANSIT.

Inquiries should be directed to:

State of New Jersey
Department of State
Division of Commercial Recording
CN-308
Trenton, New Jersey 08625
www.state.nj.us/njbgs

37. SUCCESSORS: This Agreement shall bind the heirs, representatives, successors, and assignees of the Consultant.

38. GOVERNING LAW: The Agreement shall be governed by and interpreted pursuant to the laws of the State of New Jersey.

39. QUALITY ASSURANCE PLAN: The Consultant shall perform all work according to the highest standards of professional care. The Consultant shall establish and maintain a Quality Assurance Plan, subject to NJ TRANSIT's approval, setting forth the Consultant's policy for quality assurance and procedures for implementing that policy. Such plan must apply to all persons engaged in

work under this Agreement, include regular and written procedures for performance of all Project activities, and provide sufficient information to senior managers to enable effective supervision of the Project. The procedures shall provide for sufficient documentation to allow review and audit by NJ TRANSIT, and NJ TRANSIT may, in its discretion, review the Consultant's implementation of the procedures.

40. PROJECT SUPERVISION: If engineering, design, architectural or surveying services are provided under this Agreement, the Consultant shall assign an engineer or architect authorized to practice in the State of New Jersey to supervise the Scope of Services. The design and engineering services for this project shall be performed and/or approved by a Professional Engineer or Registered Architect licensed to practice in the State of New Jersey.

The Consultant shall exercise all due care in the preparation of contract documents for construction to ensure that they conform to all applicable legal and other requirements in effect at the time of issuance of the contract documents. The approval of plans and specifications which have been submitted to NJ TRANSIT is not to be construed as authority to violate, cancel or set aside any provisions of such requirements or this Agreement. Nothing contained in this Agreement is intended to relieve the Consultant of responsibility for maintaining adequate supervision over the design in order to guard against deficiencies in the design work.

The Consultant shall be liable to NJ TRANSIT for any reasonable costs incurred by NJ TRANSIT to correct, modify or redesign any drawings submitted by the Consultant that are found to be defective or not in accordance with the provisions of this Agreement as a result of any act, error or omission on the part of the Consultant, or its agents, servants or employees. The Consultant shall be given reasonable opportunity to correct any deficiencies at no additional cost to NJ TRANSIT.

The Consultant shall also be liable to NJ TRANSIT for any reasonable costs incurred to correct, modify or reconstruct contractor work which was done based on any drawings submitted by the Consultant that are found to be defective or not in accordance with the provisions of this Agreement as a

result of any act, error or omission on the part of the Consultant, or its agents, servants or employees. The Consultant shall be given reasonable opportunity to correct any deficiencies at no additional cost to NJ TRANSIT.

41. HISTORIC PRESERVATION: The Consultant shall submit to NJ TRANSIT, pursuant to this Agreement, a final design which meets the "Standards for Rehabilitation" established and published by the United States Department of the Interior at 36 C.F.R. Part 67, which standards are applied by the Commissioner of Environmental Protection in the statutory review, required by N.J.S.A. 13:1B-15.131, of projects which will encroach upon a site included in the New Jersey Register of Historic Places. In the event that the final design for the Project is submitted for review pursuant to N.J.S.A. 13:1B-15.131 and is not approved or is approved with conditions by the Commissioner of Environmental Protection, for reasons that the final design does not meet said standards, the Consultant shall correct or modify said design immediately upon notification of non-approval, or shall reimburse NJ TRANSIT for any reasonable costs incurred by NJ TRANSIT to correct or modify the design, so that it may be approved by the Commissioner of Environmental Protection.

42. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS:

A.) The Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the project. Accordingly, by signing the Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Agreement. In addition to other penalties that may be applicable, the Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Consultant to the extent the Federal Government deems appropriate.

B.) The Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal Assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

43. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES: The Consultant agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the contract in connection with the performance of the project. Notwithstanding any concurrence provided by the Federal Government in the approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including the subrecipient and third party contractor.

44. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS: Apart from inconsistent requirements imposed by Federal statute or regulations, the Consultant agrees that it will comply with the requirements of 49 U.S.C. § 5323(h) (3) by refraining from using any Federal Assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

45. CLEAN WATER AND CLEAN AIR ACTS:

45.1 The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.:

(a) With the notification of violating facilities provisions of Executive Order No. 11738; "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans", 42 U.S.C. S 7606. The Contractor agrees to report each violation to NJ TRANSIT and understands and agrees that NJ TRANSIT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) With the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300h et seq.

45.2 The Contractor agrees to comply with all applicable, standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to NJ TRANSIT and understands and agrees that NJ TRANSIT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

45.3 The Contractor agrees to include both the Clean Water and Clean Air requirements in each subcontract exceeding $100,000. The $100,000 limit includes indefinite quantities where the amount is expected to exceed $100,000 in any year.

46. ENERGY CONSERVATION: The Consultant shall comply with mandatory standards and policies relating to energy efficiency contained in applicable State of New Jersey Energy Conservation Plans issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

47. CIVIL RIGHTS: During the performance of this Contract, the Consultant, for itself, its assignees and successors in interest and its Subconsultant at every tier (hereinafter referred to as the "Consultant") agrees as follows:

(a) Compliance with Regulations

The Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

(b) Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the

Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, and N.J.S.A. 10:3-1, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(c) Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Religion, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, or age. 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. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(2) Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332 and N.J.S.A. 10:3-1, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with N.J.S.A. 10:5-29.1 and any implementing requirements FTA may issue.

(d) The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(e) Information and Reports

The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or NJ TRANSIT or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instruction. Where any information is required or a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to NJ TRANSIT, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(f) Sanctions for Noncompliance

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Contract, NJ TRANSIT shall impose such contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:

(1) Withholding of payments to the Consultant under the Contract until the Consultant complies; and/or

(2) Cancellation, termination or suspension of the Contract, in whole or in part.

48. CONTRACT WORK HOURS AND SAFETY STANDARDS: During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

A.) Overtime Requirements: No Consultant or Subconsultant contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at rate not less than one and one-half (1 ½) times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week, whichever is greater.

B.) Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in subparagraph (b)(1) of 29 C.F.R. Section 5.5, the Consultant and any Subconsultant responsible therefore shall be liable for the unpaid wages. In addition, such Consultant and Subconsultant shall be liable to the United States (in case the work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b)(1) of 29 C.F.R. Section 5.5 in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in subparagraph (b)(1) of 29 C.F.R. Section 5.5.

C.) Withholding for Unpaid Wages and Liquidated Damages: NJ TRANSIT shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Consultant or Subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other Federally-assigned contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or Subconsultant for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (B)(2) of 29 C.F.R. Section 5.5.

D.) Nonconstruction Grants: The Consultant or Subconsultant shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Agreement for all laborers and mechanics, including guards and watchmen, working on the Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. These records shall be made available by the Consultant or Subconsultant for inspection, copying, or transcription by authorized representatives of NJ TRANSIT, the FTA and the Department of Labor, and the Consultant or Subconsultant will permit such representatives to interview employees during working hours on the job.

E.) Subcontracts: The Consultant or Subconsultant shall insert in any subcontracts the clauses set forth in Paragraphs A through E of this Section and also a clause requiring the Subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any Subconsultant or lower tier Subconsultant with the clauses set forth in Paragraphs A through E of this Section.

49. CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTION

By signing this agreement, the lower tier participant, defined as the Consultant and its Subconsultants, is providing the certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, NJ TRANSIT may pursue available remedies, including suspension and/or debarment.

The lower tier participant shall provide immediate written notice to NJ TRANSIT if at any time the lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Certain terms used in this clause have the meanings set out in 2 C.F.R. Part 1200 and 2 C.F.R. Part 180.

The lower tier participant agrees by signing this agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by NJ TRANSIT.

The lower tier participant further agrees by signing this agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction", without modification, in all lower tier covered transactions (valued at $25,000 or more) and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. Each participant shall check the U.S. Government System for Award Management (SAM) database.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under the fifth paragraph above, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, NJ TRANSIT may pursue available remedies including suspension and/or debarment.

The lower tier participant certifies by signing this agreement that neither it nor its "principals" (as defined 2 C.F.R. 180.995) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. A participant may decide the method and frequency by which it determines the eligibility of its principals.

When the lower tier participant is unable to certify to the statements in this certification, such participant shall submit a written explanation.

The lower tier participant shall also be currently registered and active with no exclusion on the U.S. Government System for Award Management (SAM) database.

50. LIMITATIONS ON LOBBYING: The Consultant and its Subconsultants shall comply with 31 U.S.C. 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions".

A.) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with any of the following covered Federal actions: the

awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

B.) Any Consultant and any Subconsultant at any tier who requests or receives a Federally-assisted contract or subcontract in excess of $100,000 from NJ TRANSIT shall file with NJ TRANSIT the certification attached to this Agreement and entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements" which certifies that the Consultant or Subconsultant, as applicable, has not made, and will not make, any payment prohibited by paragraph A.) of this Section.

C.) Any Consultant and any Subconsultant who has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action) which would be prohibited under paragraph A.) of this Section if paid for with appropriated funds, shall file with NJ TRANSIT a disclosure form entitled "Disclosure of Lobbying Activities", which is available from NJ TRANSIT.

D.) Any certification or disclosure form filed under paragraphs B.) and C.) of this Section shall be forwarded from tier to tier until received by NJ TRANSIT. Any certification or disclosure form shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded.

E.) The prohibition on the use of appropriated funds does not apply in the case of a payment of reasonable compensation to an officer or employee of the Consultant or Subconsultant if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

F.) The prohibition on the use of appropriated funds does not apply in the case of any reasonable payment to an officer or employee of a Consultant or Subconsultant or to a person, other than an officer or employee of a Consultant or Subconsultant, if the payment is for professional or

technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for a Federal contract, grant, loan or cooperative agreement.

51. BUY AMERICA DESIGN REQUIREMENTS: The Consultant shall design the project to ensure that the plans and specifications produced by the Consultant under this Agreement permit compliance with Section 165 of the Surface Transportation Assistance Act of 1982 (P.L. 97-424). All iron, steel and manufactured products specified by the Consultant shall be of domestic manufacture or origin, except as otherwise approved by NJ TRANSIT. Whenever the Consultant lists a product by make, manufacturer or model number in the specifications, the Consultant shall first ensure that the product is of domestic manufacture or origin. Should the Consultant find it necessary to specify iron, steel, or manufactured products which are not produced in the United States in sufficient and reasonably available quantities, then the Consultant shall submit a written justification to the Contracting Officer describing in detail the product, its estimated cost, the rationale for its use in the project and the basis for the Consultant's belief that the product is of limited domestic availability. NJ TRANSIT, in its sole discretion, will determine whether to seek a waiver of the Buy America requirements from the U.S. Secretary of Transportation. Should NJ TRANSIT determine that there is insufficient basis for seeking a waiver or if a waiver request is denied by USDOT, the Consultant shall redesign the project to conform with Buy America requirements at no additional cost to NJ TRANSIT.

52. FLY AMERICA REQUIREMENTS: The Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their Consultant s are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to

use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

53. SEISMIC SAFETY: The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this contract including work performed by a Subconsultant is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

54. SETTING OFF TAX ARREARS AGAINST SUMS OWED: Whenever a taxpayer under contract with the State of New Jersey is indebted for any State Tax in accordance with N.J.S.A. 54:49-19, the State of New Jersey shall seek to set off the indebtedness as follows:

Whenever any taxpayer under contract to provide goods or services to the State of New Jersey or its agencies or instrumentalities, and including the legislative and judicial branches of State government, is entitled to payment for the goods or services or on that construction project and at the same time the taxpayer is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as may be necessary to satisfy the indebtedness. The Director, in consultation with the Director of the Division of Budget and Accounting in the Department of the Treasury, shall establish procedures and methods to effect a set-off. The Director shall give notice of the set-off to the taxpayer, the provider of goods or services or the Contractor or Subcontractor of construction projects and provide an opportunity for a hearing within thirty (30) calendar days of such notice under the procedures for protests established under N.J.S.A 54:49-18, but no request for conference, protest, or subsequent appeal to the Tax Court from any protest under this Article shall stay the collection of the indebtedness. No payment shall be made to the taxpayer, the provider of goods or services or the

Contractor or Subcontractor of construction projects pending resolution of the indebtedness. Interest that may be payable by the State pursuant to N.J.S.A. 52:32-32 et seq. to the taxpayer, the provider of goods and services or the Contractor or Subcontractor of construction projects shall be stayed.

55. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN: Pursuant to N.J.S.A. 52:32-55 et seq., any person or entity that submits a proposal or otherwise proposes to enter into or renew a contract must complete the certification 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's website at http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf. Consultants must review this list prior to completing the Disclosure of Investment Activities In Iran Certification. If NJ TRANSIT finds a person or entity to be in violation of law, NJ TRANSIT 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.

56. ATTACHMENTS/EXHIBITS: All Appendices, Attachments and Exhibits, as listed below, are incorporated into this Contract:

Exhibit A: - Scope of Services

Exhibit B – Cost Information

Exhibit C – Travel & Business Reimbursement Guidelines

Exhibit D – Equal Employment Opportunity Language

Exhibit E – DBE Requirements

Exhibit F – Addenda

Exhibit G – Consultant Certifications

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the _____ day of _____ to be effective as of the day and year first above written.

WITNESS:

By: _____
Title
Designee

NEW JERSEY TRANSIT CORPORATION

By: _____
Contracting Officer or Duly Authorized

WITNESS:

By: Nicole Waterman
Nicole Waterman, Director of Marketing

NAIK CONSULTING GROUP, PC

By: _____
Moe Soliman, Vice President

The aforementioned Agreement has been reviewed and approved as to form only.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: _____ 9/14/18
Deputy Attorney General
Aziz D. Nekoukar

NJ TRANSIT
The Way To Go.
ONE PENN PLAZA EAST
NEWARK, NJ 07105-2246

HOW TO CONTACT ACCOUNTS PAYABLE CUSTOMER CARE (APCC)
E-MAIL: APCC@NJTRANSIT.COM
VOICE: 973-491-8399 FAX: 973-491-4621

PURCHASE ORDER INSTRUCTIONS

ALL PACKAGES MUST BE ACCOMPANIED BY A PACKING SLIP.
REFERENCE PURCHASE ORDER NUMBER, PURCHASE ORDER LINE NUMBER, AND NJT CATLOG NUMBER ON ALL INVOICES, PACKING SLIPS AND BILLS OF LADING.
INVOICES WITHOUT PURCHASE ORDER NUMBERS WILL BE RETURNED. VENDOR MUST SUPPLY ORIGINAL NON CONSTRUCTION INVOICE AND ANY FREIGHT BILLS IN EXCESS OF $100 TO:
E-MAIL: INVOICES@NJTRANSIT.COM OR FAX: 973-833-8132
IMPORTANT - ONE INVOICE AND ALL OF ITS SUPPORTING DOCUMENTS MUST BE INCLUDED IN A FILE USING THE FILE NAMING FORMAT: PURCHASE ORDER NUMBER -INVOICE NUMBER. MULTIPLE FILES MAY BE INCLUDED IN ONE E-MAIL.
CONSTRUCTION INVOICES SHOULD CONTINUE TO BE SENT TO THE CONSTRUCTION MANAGER.
VENDOR MUST ALSO SUPPLY A COPY OF INVOICE(S) TO CONSIGNEE.
VENDOR: IF PRICE ON PO DOES NOT MATCH, DO NOT SHIP MATERIAL, CONTACT BUYER.

PURCHASE ORDER NO	REV NO
190008306	0
VENDOR NO: 80016242	ISSUE DATE: 09/25/18
DATE CHANGED:	PAGE NO: 1

SUPPLIER:
Naik Consulting Group PC
200 METROPLEX DRIVE
SUITE 403
EDISON, NJ, , 08817

SHIP TO:
NEWARK HEADQUARTERS
NJ TRANSIT HEADQUARTERS
ONE PENN PLAZA EAST
NEWARK, NJ 07105-2246

BILL TO:
NEWARK HEADQUARTERS
NJ TRANSIT HEADQUARTERS
ONE PENN PLAZA EAST
NEWARK, NJ 07105-2246

BUYER: Margarita Sotolongo MSOTOLONGO@NJTRANSIT.COM

TERMS	FREIGHT TERMS	FOB	QUOTATION NO
NET 45			

NJ TRANSIT IS EXEMPT FROM NJ SALES & USE TAXES PURSUANT TO SECT 9(A)(1), OF NJSA 54:32B-1 ET SEQ.
FEDERAL T.I.N.: 22-228-1352
TAX EXEMPT #'S 21-60000928 (NJ)
22-75-0050K (FEDERAL)

NJ TRANSIT ETHICS CODE: NJ TRANSIT IS AN INSTRUMENTALITY OF THE STATE OF NEW JERSEY AND ITS EMPLOYEES AND OFFICERS AND MEMBERS OF THE NJ TRANSIT BOARD OF DIRECTORS ARE PUBLIC SERVANTS AND ARE GOVERNED BY CIVIL AND CRIMINAL LAWS THAT CONTROL HOW NJ TRANSIT AND ITS PERSONNEL CONDUCT BUSINESS WITH VENDORS, CONTRACTORS AND CONSULTANTS. THESE PROVISIONS INCLUDE THE CONFLICTS OF INTEREST LAW, NJSA 52:13D-12, THE GIFTS TO PUBLIC SERVANTS LAW, NJSA 2C:27-6, AND THE COMPENSATION FOR PAST OFFICIAL BEHAVIOR LAW, NJSA 2C:27-4. THESE PROVISONS CONTAIN UNEQUIVOCAL AND STRINGENT RESTRICTIONS RELATING TO GIFTS AND GRATUITIES BY ANY NJ TRANSIT EMPLOYEE OR ANY PERSON, COMPANY OR ENTITY DOING BUSINESS WITH OR WANTING TO DO BUSINESS WITH NJ TRANSIT. THE TERM "GIFT" INCLUDES ALL THINGS AND OBJECTS, TANGIBLE OR INTANGIBLE INCLUDING SERVICES, GRATUITIES, MEALS, ENTERTAINMENT, EVENT TICKETS, MEMBERSHIP CLUB ACCESS, TRAVEL COSTS AND LODGING. ALSO, NJ TRANSIT'S CODE OF ETHICS AND CODE OF CONTRACTORS AND CONSULTANTS FROM OFFERING ANY GIFTS TO ANY NJ TRANSIT EMPLOYEE. DO NOT, UNDER ANY CIRCUMSTANCES, TEMPT OR PUT AN NJ TRANSIT EMPLOYEE IN THE AWKWARD POSITION OF HAVING TO REFUSE A GIFT OR RETURN A GIFT NO MATTER HOW WELL INTENTIONED OR INNOCUOUS THE GIFT MAY BE.

LINE NUMBER	ITEM NUMBER/ MPN/MFR /DESCRIPTION	DELIVERY DATE	QUANTITY	UOM	UNIT PRICE	AMOUNT
	CONTRACT #:17-007 SOURCE DOCUMENT: ALL WORK TO BE PEROFRMED IN ACCORDANCE WITH THE TERMS AND CONDITIONS AND SPECIFICATIONS OF THE CONSTRUCTION MANAGEMENT SERVICES FOR THE HOBOKEN DEPOT AND HENDERSON STREET SUBSTATIONS. AS PER BOARD RESOLUTION 1806-41 DATED 6/13/2018. TOTAL EXPENDITURE LIMITATIONS NOT TO EXCEED $5,780,005.44.					
1	MR #500000128454 GL #1.8851.50306.NXF8000.E.000.00000.00000 CSONTRUCTION MANAGEMENT SERVICES FOR HOBOKEN DEPOT AND HENDERSON STREET SUBSTATIONS	10/19/18	5780005.44	$	1	5,780,005.44
					** TOTAL:	$ 5,780,005.44

VENDOR COPY

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NEWARK, NJ 07105-2246

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BILL TO:
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NJ TRANSIT HEADQUARTERS
ONE PENN PLAZA EAST
NEWARK, NJ 07105-2246

BUYER: Margarita Sotolongo MSOTOLONGO@NJTRANSIT.COM

TERMS	FREIGHT TERMS	FOB	QUOTATION NO
NET 45			

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☑ WHEN THIS BOX IS CHECKED, THE TERMS AND CONDITIONS OF THE ATTACHED CONTRACT REPLACES THOSE SHOWN ON THE REVERSE SIDE OF THIS PURCHASE ORDER.

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