



**Appendix L. New Jersey Office of Emergency  
Management Local Hazard Mitigation Planning  
Standard Operating Procedures**



**NEW JERSEY OFFICE OF EMERGENCY MANAGEMENT  
HAZARD MITIGATION PLANNING**

**STANDARD OPERATING PROCEDURES**

**Purpose:** To establish policy and procedures for the most efficient operation of the New Jersey Office of Emergency Management Hazard Mitigation Planning Section.

### **Hazard Mitigation Planning**

The Hazard Mitigation Planning process is the first step in supporting the mission of mitigation. The purpose of hazard mitigation planning is to identify policies and actions that can be implemented long term to reduce risk and future losses. Hazard Mitigation Plans form the foundation for a community's long-term strategy to reduce disaster losses and break the cycle of disaster damage, reconstruction, and repetitive damages. The planning process is as important as the plan itself. It creates a framework for risk-based decision making to reduce damages to lives, property, and the economy from future disasters. More importantly, it is meant to be an open process by which the community is actively involved in the development of their hazard mitigation plan. Community participation is a vital component of this process.

State and Local governments benefit from Mitigation Planning by:

- Identifying cost effective actions for risk reduction that are agreed upon by stakeholders and the public
- Focusing resources on the greatest risks and vulnerabilities
- Building partnerships by involving people, organizations, and businesses
- Increasing education and awareness of hazards and risk
- Communicating priorities to state and federal officials
- Aligning risk reduction with other community objectives

### **Procedures**

In an effort to facilitate the HM Planning process, the New Jersey Office of Emergency Management will adhere to the following procedures:

**Plans Received** - Local governments will submit all hazard mitigation plans to the NJOEM Hazard Mitigation Planning section for review. Once plans have been submitted to NJOEM, they will be entered into a spreadsheet that captures the ***name of plan, date received, stage of development, who reviewed the plan, and date the review was completed.*** Plans may be submitted in the following stages of development:

- **Preliminary HM Plan** – must include hazard identification, risk assessment and mitigation strategy. It is being submitted as it being developed to ensure the local government is adhering to the regulations as stipulated by 44 CFR 201.6 and is actually on track to becoming approvable pending adoption and subsequent approval status.
- **Draft Plan** – plan is complete, but has not been adopted yet.
- **Final Plan** – plan is complete, adopted with all resolutions and ready for final review.

**Documentation** – It is necessary to document the “life” of the project from application to closeout. This will assist in any potential auditing situations.

**Filing System** - All of the information will be documented in each plan’s file. The filing system will include, but will not be limited to the following documents: all correspondence (letters and pertinent emails), financial information, sub-grantee agreements, and closeout information.

**Letters** - Various letters will be created and disseminated according to the activity in an effort to document the review and approval process. The letters are as follows:

- Submittal letter for planning grant application to FEMA
- Transmittal letters
  - Preliminary HM Plan
  - Plan Update
  - CDs, adoption resolutions
- Extension request letter
- NJOEM Extension approval letter
- End of period of performance letter
- APA (approvable pending adoption) letter for HM Plan
- APP (approved) letter for HM Plan
- APP (approved) letter for additional jurisdictions
- APA (approvable pending adoption) letter for jurisdictions that have not adopted
- Closeout procedures

**Hazard Mitigation Plan Deliverables** will include the following:

- **Preliminary Plan** deliverable will be reviewed by NJOEM and FEMA Region II and will include:
  - Letter of Transmittal;
  - Two (2) hard copies, in three ring binders, including at a minimum the hazard identification/risk assessment and mitigation strategy sections of the plan.
- **Draft Plan** deliverable will be reviewed by NJOEM and FEMA Region II and will include:
  - Letter of Transmittal;
  - Two (2) hard copies, in three ring binders, including a complete hazard mitigation plan. This deliverable will incorporate review comments from the Preliminary Plan deliverable and will conform to all requirements of 44CFR Part 201.6 with the exception of resolution(s) of adoption.
- **Final Plan** deliverable will include the following:
  - Letter of Transmittal;
  - Two (2) hard copies, in three ring binders, including an entire adopted and approved hazard mitigation plan; and

- Two (2) CD's containing digital files of the plan that are identical to the hard copies.

In an effort to receive official approval of an HM Plan, all items outlined in the Final Plan deliverable must be submitted. All counties and municipalities are required, per the 44 CFR 201.6, to officially adopt the HM Plan in order to receive official approval and qualify for the following FEMA funding:

- HMA Programs
  - HMGP (Hazard Mitigation Grant Program)
  - FMA (Flood Mitigation Assistance)
  - PDM (Pre Disaster Mitigation)

### **NJOEM State Hazard Mitigation Planners/Community Planners**

All of the activities mentioned heretofore will be facilitated by NJOEM State Hazard Mitigation Planners or Community Planners. Typical duties are as follows:

- Review local and Tribal mitigation plans for compliance with regulations, policies, and guidance
- Provide written recommendations to local governments for plan improvements
- Under the direction of the Team Lead or Senior Planner, provide technical assistance to local and State officials on the preparation, revision, or updating of mitigation plans to comply with Federal requirements
- Tracks assigned plans through all elements of the review process, including data entry, and drafting of crosswalk review, submittal letters, and approval letters, etc.
- Participates in team review sessions and coordinates closely with tribal and local contacts
- Provide planning related training to the other pertinent areas of the State as well as local governments.
- Working knowledge of pertinent laws, regulations, policies, and precedents that affect the use of program and related support resources in the State.
- Ensure that there is a comprehensive knowledge of the major issues, program goals and objectives, work processes, and administrative operations of the organization.
- Basic knowledge of the NFIP being that there has been an inclusion of those elements in the Planning Guidance.

### **Briefings and Meetings**

As part of their duties, State Hazard Mitigation Planners/Community Planners will travel to the county to explain the specifics of the Hazard Mitigation Planning Process funded through the Hazard Mitigation Grant Program – Federal programmatic requirements, local, state, and Federal reporting responsibilities, financial requirements, and procurement requirements.

Additionally, State Hazard Mitigation Planners/Community Planners will attend meetings (when available) to ensure locals are implementing the components of the grant to the specifications of Federal requirements and State guidelines.

## **PUBLIC NOTICE**

### **[Name] County Hazard Mitigation Planning Grant**

The [Name] County has been approved for the Hazard Mitigation Planning Grant through the State of New Jersey Office of Emergency Management (NJOEM). The [Name] County is seeking the services of a qualified consulting firm to create a Hazard Mitigation Plan.

The procedures for selection of the firm will be in accordance with procurement requirements set forth by the **State/Federal Governments**. All responses received will be evaluated in accordance with the selection criteria and corresponding point system, which is further explained in the Request for Qualifications Package. The package also identifies the scope of services to be performed by the chosen firm.

Interested parties are invited to secure a Request for Qualifications Package from **Contact Person, Address, City, New Jersey Zip Code** or by calling **000-000-0000** with your request or by emailing your request to [email address](#). The package is available beginning **Date**. The response to this request must be hand delivered or mailed to the Point of Contact at the address above in such a manner that it is received no later than **Date**.

The [Name] County is an Equal Opportunity Employer. We encourage all small and minority-owned businesses to apply.

# Name of County

## Request for Statements of Qualifications and Cost Proposals

### Implementation of FEMA Hazard Mitigation Planning Grant *Create a Multi Jurisdictional Hazard Mitigation Plan*

#### PROPOSAL PACKET

#### INTRODUCTION:

**Name of County** has secured a grant through the Hazard Mitigation Grant Program and is seeking a consulting firm for implementation purposes. This grant provides for the creation of a Multi-jurisdictional Hazard Mitigation Plan for the **Name of County** and its corresponding jurisdictions.

#### PART 1 – MANAGEMENT AND ADMINISTRATION:

**Name of County** will negotiate a fixed price basis contract. The **scope of services**, which the consultant must be prepared and qualified to provide, **are as follows**:

#### Project Scope of Work

**Planning Process** – documentation will identify:

- Who was involved as part of a Hazard Mitigation Planning Committee, the roles and responsibilities of each committee member and how they contributed to the process.
- Opportunities for public participation;
- Opportunities for participation by other agencies, communities, interested parties, etc.; and
- Integration of other related plans and documents.

#### ○ **Plan Update:**

- The plan **must** identify all participating jurisdictions, new or continuing and jurisdictions that no longer participate in the plan.
- The plan **shall** describe the process used to review and analyze each section of the plan (i.e. Planning Process, Risk Assessment, Mitigation Strategy, and Plan Maintenance).
- If the planning team or committee concludes that some sections of the plan warrant an update and others did not, the team or committee **must** document the process used to make that determination.
- The plan maintenance section requires a description of how the community was kept involved during the plan maintenance process (44 CFR 201.6(c)(4)(iii)) over the past five years. However, since this contributes to the planning process, the community may elect to describe this within the planning process section of the plan.

**Risk Assessment** – the risk assessment will include:

- Description of all natural hazards that can affect the assets of our county;
- Identification of the location, extent, previous occurrences and probability of future occurrences for each of the identified hazards;
- Assessment of the vulnerability of assets and the potential impact of each hazard; and

- Estimates of potential losses based on best available data and predictive models and the risk assessment should address both existing and future assets.
- **Plan Update:**
  - The local risk assessment update **shall** address any newly identified hazards that have been determined to pose a threat.
  - The plan update **shall** continue to describe occurrences of hazards included in the previously approved plan, and discuss new occurrences of hazard events. The updated plan **shall** incorporate any new historical records, or hazard data related to profiling hazards.
  - Any maps included in the updated plan, **must** be consistent with the updated information.
  - The vulnerability overview in the updated plan **shall** describe any changes, clarifications, or refinements to the summary described in the previously approved plan. It **shall** continue to include, by type of hazard, a general description of the types of structures affected by the hazard.
  - **After October 1, 2008, all Local Mitigation Plans approved by FEMA must address repetitive loss structures in the risk assessment by describing the types (residential, commercial, institutional, etc.) and estimate the numbers of repetitive loss properties located in identified flood hazard areas.**
  - If new hazards and risks have been identified in the multi-jurisdictional risk assessment, the information **must** be attributed to the appropriate jurisdiction(s) or to the whole planning area or which ever applies.
  - Where vulnerability to previously identified hazards has changed, the plan **must** incorporate this information into the updated multi-jurisdictional risk assessment and it **must** be attributed to the appropriate jurisdiction(s) or to the whole planning area or which ever applies.
  - If the previously approved plan identified that data deficiencies would be addressed at a later time, then the deficiencies **shall** be incorporated in the updated plan. If the data deficiencies have not been resolved, they **must** be addressed along with an explanation of why they have not been resolved.

**Mitigation Strategy** – will include:

- Developing mitigation goals and identifying appropriate mitigation actions based on the results of the risk assessment;
- Actions that address the full range of identified hazards;
- Actions that address both existing and future assets;
- An implementation strategy that includes prioritization of mitigation actions including consideration of relative costs and benefits, identification of parties responsible for implementation, funding mechanisms and timelines for implementation.

○ **Plan Update:**

- It is not necessary to change the goals from the previous plan; however, the plan **must** document that the goals were re-evaluated and that they were determined to remain valid and effective.
- The plan update provides an opportunity for local jurisdictions to reconsider the range of specific actions. If the mitigation actions remain unchanged from



the previous plan, then the update **should** indicate why changes are not necessary.

- **All Local Mitigation Plans approved by FEMA after October 1, 2008, must describe each jurisdiction's participation in the NFIP and must identify, analyze, and prioritize actions related to continued compliance with the NFIP.**
- The updated single jurisdictional plan/multi-jurisdictional plan **must** identify the completed, deleted, or deferred actions or activities from the previously approved plan as a benchmark for progress. If the mitigation actions or activities remain unchanged from the previously approved plan, the updated plan **shall** include in its prioritization any new mitigation actions identified since the previous plan was approved or through the plan update process.

**Plan Maintenance** – will describe the process to be used after the plan is adopted and approved to:

- Incorporate the goals and actions of the mitigation plan into other available mechanisms and/or plans for implementation;
  - Provide for continued public involvement;
  - Monitor and evaluate the plan and its implementation; and
  - The method and schedule for future required plan updates.
- **Plan Update:**
    - As part of the planning process, the community reviews and analyzes the previously approved plan's method and schedule for monitoring and updating the plan, such as strengths and weaknesses and what elements, if any, have changes. The updated **plan** must include the method and schedule that will be used over the next five years to monitor, evaluate, and update the plan.
    - The updated plan shall continue to describe how the mitigation strategy, including goals and objectives, and mitigation actions will be incorporated into other planning mechanisms, and also indicate how information contained in the plan, including hazard identification and the risk assessment, will be integrated into other planning mechanisms.
    - When the community prepares the plan update, the process used to keep the community involved over the previous five years must be explained, but is suggested that it is captured in the planning process. However, the updated plan **shall** describe the process used to solicit public involvement during the plan maintenance process over the next five years.

**Hazard Mitigation Plan Deliverables** will include the following:

**Preliminary Plan** deliverable will be reviewed by NJOEM and FEMA Region II and will include:

- Letter of Transmittal;
- Two (2) hard copies, in three ring binders, including at a minimum the hazard identification/risk assessment and mitigation strategy sections of the plan.

**Draft Plan** deliverable will be reviewed by NJOEM and FEMA Region II and will include:

- Letter of Transmittal;

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**Final Plan** deliverable will include the following:

- Letter of Transmittal;
- Two (2) hard copies, in three ring binders, including an entire adopted and approved hazard mitigation plan; and
- Two (2) CD’s containing digital files of the plan that are identical to the hard copies.

**PART 2 – PROPOSALS:**

Proposals will be accepted by the **Name of County**, in the **Name of Location** , **Address**, **City**, New Jersey **Zip Code** until **0:00 PM on Day, Month Date, Year**.

In order to be considered, proposals must be received prior to the time and date specified herein. The **County** reserves the right to reject any or all responses. All responses should be sealed and the outside of the envelope marked: REQUEST FOR STATEMENTS OF QUALIFICATIONS AND COST PROPOSALS, Implementation of FEMA Hazard Mitigation Planning Grant Program, Creation of **Name of County** Hazard Mitigation Plan.

Consultants should possess qualifications and expertise in the following areas:

- Hazard Mitigation Planning
- Hazard Mitigation Grant Program
- State of New Jersey Mitigation Priorities

All proposals will be scored and ranked with the highest rated firm being awarded a contract. The proposal must include a (1) A detailed budget (2) brief history of the firm and a resume’ of each person in the firm who will be assigned to the project; (3) documentation of the responder being a “qualified third party provider” or the responder must be in good standing with the Secretary of State; and (4) a list of projects and contact person name, address and telephone number for which the individual/firm has completed similar projects. This list will be used for reference purposes.

**Two (2) copies of the proposal and required supplemental information should be provided.**

**PART 3 – SELECTION CRITERIA:**

All responses to the solicitation will be evaluated according to the following criteria and corresponding point system. The proposal will be evaluated on the basis of written materials. Sufficient information must be included in the response to ensure that the correct numbers of points are assigned. Incomplete or incorrect information may result in a lower score.

Experience/Knowledge with Hazard Mitigation Planning and Hazard Mitigation Grant Program	25 points
Experience/Knowledge in Civil Engineering and Cost Estimation Hazard Mitigation Projects	25 points

Experience/Knowledge in Benefit Cost Analysis	25 points
Experience/Knowledge in Environmental and Cultural Resource considerations	<u>25 points</u>
<b>Total points for required and optional considerations</b>	<b>100 points</b>

**PART 4 – EVALUATION OF PROPOSALS:**

It is the intent of the **County** to conduct a fair and impartial evaluation of proposals received in response to this RFQ. The purpose of this evaluation will be to select the most qualified Consultant. The evaluation will be conducted in the stages as follows:

**A. Selection of Responsive Proposals**

The purpose of this stage is to determine whether each proposal meets the specifications of this RFQ and is sufficiently responsive to the RFQ to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFQ with regard to content, organization, number of copies and timely delivery.

**B. Evaluation of Proposals**

During this stage, the Evaluation Team members will individually review each responsive proposal, identifying areas requiring clarification and preliminary scoring the responses. Following these individual reviews, the Evaluation Team will meet to identify questions requiring clarifications, if any. The **County** will notify Proposers in writing if it has questions/issues requiring clarification. Proposers must respond in writing within a specific time.

**C. Selection of Best Qualified Proposer**

At the conclusion of the proposal evaluation, the best qualified Proposer will be identified by the Evaluation Team and notified that they have been selected.

**D. Recommendation of Award**

The Evaluation Team will document the results of the evaluation process and recommend the award of a contract to the selected Consultant.

**E. Contract Award**

The **County** will provide a contract agreement to the selected Consultant. Once the contract agreement is signed and returned to the **County**, an official “Notice to Proceed” will be issued. The Consultant will have ten (10) working days to initiate work after the Notice to Proceed is issued.

Questions concerning this proposal should be addressed to:

**The Name of County**  
**Name of Location**  
**Address**  
**City, New Jersey Zip**

Proposals may be either mailed or hand-delivered to:

**The Name of County**  
**Name of Location**  
**Address**  
**City, New Jersey Zip**

**The deadline for submission is Month Date, Year at 0:00 PM.**

**Name of County OEM**  
**OEM**  
**County**

**PUBLICATION DATES: Month Date, Year; Month Date, Year**

## Contract for Professional Services

Contract#: \_\_\_\_\_

This Contract is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between \_\_\_\_\_, county government located in the State of New Jersey, by and through its Board of Freeholders, hereinafter referred to as the (CLIENT), and (name of business) doing business as an individual [ ], a partnership [ ], or a corporation [ ], authorized to do business in the State of New Jersey, hereinafter referred to as the CONSULTANT, whose Federal ID or Social Security Number is \_\_\_\_\_.

### **ARTICLE 1 – SERVICES**

The CONSULTANTS responsibility under this Contract is to provide professional/consultation services in the area of Hazard Mitigation Planning, as more specifically set forth in the Scope of Work detailed in Exhibit "A".

(CLIENT) representative/liaison during the performance of this Contract shall be \_\_\_\_\_, whose contact number is \_\_\_\_\_.

### **ARTICLE 2 – SCHEDULE**

The CONSULTANT shall commence services on \_\_\_\_\_, 2013.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

Any order issued during the effective date of this contract, but not completed within that period, shall be completed by the CONSULTANT within the time specified in the order. The Contract shall govern the CONSULTANT and (CLIENT)'s rights and obligations with respect to the extent as if the order were completed during the contract's performance period.

### **ARTICLE 3 – PAYMENT TO CONSULTANT**

- A. The total amount to be paid by the (CLIENT) under this Contract for services and minor materials shall not exceed \$250,000. The CONSULTANT will bill (CLIENT) in progress payments of 10% Start-Up, 30% Upon Acceptance of First Draft, 30% upon acceptance of second draft and 30% upon Final acceptance. Specifics of each payment are outlined in Exhibit "A".
- B. Invoices received from the CONSULTANT pursuant to the Contract will be reviewed and approved by the initiating (CLIENT) Department, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment. Invoices must reference this contract number.
- C. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the (CLIENT). This certifies that all services have been properly performed and all charges and costs have been

invoiced to the  (CLIENT) . Since this account will be thereupon be closed, any and other further changes if not properly included on this final invoice are waived by the CONSULTANT.

#### **ARTICLE 4 – TRUTH IN NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall act as the execution of the truth-in negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT’S most favored customer for the same substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should \_\_\_\_\_ determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside consultants. \_\_\_\_\_ shall exercise its rights under this “Certificate” within one year (1) following final payment.

#### **ARTICLE 5 – TERMINATION**

##### **A. Termination for Default:**

\_\_\_\_\_ may, by written notice to the CONSULTANT, terminate this contract for default in whole or in part (release orders, if applicable) if the CONSULTANT fails to:

1. Provide products or services that comply with the specifications herein or fails to meet the  (CLIENT)  performance standards.
2. Deliver the supplies or perform the services within the time specified in this contract or any extension.
3. Make progress so as to endanger performance of this contract.
4. Perform any of the other provisions of this contract.

Prior to termination for default,  (CLIENT)  will provide adequate written notice to the CONSULTANT through the Purchasing Director, affording him/her the opportunity to cure the deficiencies or to submit a specific plan to resolve the deficiencies within ten (10) days (or the period specified in the notice) after receipt of the notice. Failure to adequately cure the deficiency shall result in termination action. Such termination may also result in suspension or debarment of the CONSULTANT in accordance with applicable Louisiana procurement statutes. The CONSULTANT and its sureties (if any) shall be liable for any damage to the  (CLIENT)  resulting from the CONSULTANT’S default of the contract. This liability includes any increased costs incurred by the  (CLIENT)  in completing contract performance.

In the event of termination by the  (CLIENT)  for any cause, the  (CLIENT)  will have, in no event, any claim against the  (CLIENT)  for lost profits or compensation for lost opportunities.

After a receipt of a Termination Notice and except as otherwise directed by  (CLIENT)  the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all order and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in progress, completed work, and other materials related to the terminated work as directed by the  (CLIENT) .
- D. Continue and complete all parts of that work that have not been terminated (if applicable).

Neither CONSULTANT nor  (CLIENT)  shall be liable, nor may cancel this contract for default, when delays arise out of causes beyond the control of CONSULTANT or  (CLIENT) . Such causes may include, but are not restricted to acts of God, acts of  (CLIENT)  in sovereign capacity, fires, floods, lightning strikes, epidemics, quarantine restrictions, strikes, freight embargoes, wars, civil disturbances, work stoppage, power failures, laws, regulations, ordinances, acts or orders of any governmental agency or official thereof, and unusually severe weather. In every case, the delay must be beyond the control of the claiming party. If CONSULTANT is delayed in its performance as a result of the above causes,  (CLIENT) , shall upon written request of CONSULTANT, agree to equitably adjust the provisions of this contract, including price and delivery, as may be affected by such delay. However, this provision shall not be interpreted to limit the  (CLIENT) 's right to terminate for convenience.

**B. Termination for Convenience**

(CLIENT) , by written notice, may terminate this contract, in whole or in part, when it is in the best interest for  (CLIENT) . If this contract is terminated,  (CLIENT)  shall be liable only for goods and services delivered and accepted.  (CLIENT)  Notice of Termination may provide the CONSULTANT thirty (30) days prior notice before it becomes effective. However, at  (CLIENT) 's sole option, a termination for convenience may be effective immediately and may apply to release orders (if applicable) or to the contract in whole.

**ARTICLE 6 – PERSONNEL**

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with  (CLIENT) .

All of the services required hereinunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in Exhibit "A", must be made known to the (CLIENT)'s representative and written approval must be granted by (CLIENT) before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

#### **ARTICLE 7 – SUBCONTRACTING**

(CLIENT) reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities. If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the (CLIENT).

#### **ARTICLE 8 – FEDERAL AND STATE TAX**

(CLIENT) is exempt from payment of New Jersey State Sales and Use Taxes *(do not know if this law applies)*. (CLIENT) will sign an exemption certificate and submit to the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with (CLIENT), not is the CONSULTANT authorized to use (CLIENT)'s Tax Exemption letter in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employee FICA and Social Security benefits with respect to this Contract.

#### **ARTICLE 9 – AVAILABILITY OF FUNDS**

(CLIENT)'s performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose.

#### **ARTICLE 10 – INSURANCE**

- A. Before execution of the contract by (CLIENT) and commencement of the operations and/or services to be provided, during the duration of the contract, the CONSULTANT shall file with (CLIENT), current certificates of all required insurance on forms acceptable to (CLIENT), with the Certificate Holder listed as (CLIENT NAME OF BUSINESS), which shall include the following provisions:
1. All insurance policies shall be issued by companies authorized to do business under the laws of the State of New Jersey and acceptable to (CLIENT).
  2. The Certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount and classification as required for strict compliance with the insurance section.



3. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to  (CLIENT) .
- B. The CONSULTANT shall require and ensure that each of its subcontractors providing services hereunder (if any) procures and maintains, until the completion of the services, insurance of the types and to the limits specified herein.
- C. Coverages Required:
1. Worker's Compensation – The CONSULTANT shall provide coverage for its employees with statutory workers' compensation limits, and no less than \$100,000.00 for Employer's Liability.
  2. Commercial General Liability – The CONSULTANT shall provide coverage for all operations including, but not limited to Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than \$250,000.00, per occurrence, Combined Single Limits (CSL) or its equivalent. The General Aggregate limit shall either apply separately to this Contract or shall be at least twice the required occurrence limit.
  3. Business Automobile Liability – The CONSULTANT shall provide coverage for all owned, non-owned and hired vehicles with limits of not less than \$25,000, per occurrence, Combined Single Limits (CSL) or its equivalent.

#### **ARTICLE 11 – INDEMNIFICATION**

If there are any claims for damages attributable to the negligence, errors or omissions of the CONSULTANT, their agents or employees while providing the services called for herein, it is understood and agreed the CONSULTANT shall indemnify and hold harmless AUDUBON from any and all losses, costs, liability, damages and expenses arising out of such claims or litigation asserted as a result hereof. However, the CONSULTANT shall not be responsible for acts or omissions of  (CLIENT) , its agents or employees, or of third parties which result in bodily injury to persons or property.

#### **ARTICLE 12 – SUCCESSORS AND ASSIGNS**

(CLIENT)  and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither  (CLIENT)  nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of  (CLIENT)  which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than  (CLIENT)  and the CONSULTANT.

**ARTICLE 13 – REMEDIES**

This Contract shall be governed by the laws of the State of New Jersey. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or at equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**ARTICLE 14 – CONFLICT OF INTEREST**

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for, the CONSULTANT further represents that no person having any interest shall be employed for said performance.

The CONSULTANT shall promptly notify (CLIENT) in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT’S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of (CLIENT) as to whether the association, interest or circumstance would, in the opinion of (CLIENT), constitute a conflict of interest if entered into by the CONSULTANT. (CLIENT) agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of the notification by the CONSULTANT. If, in the opinion of (CLIENT), the prospective business association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to (CLIENT) by the CONSULTANT under the terms of this Contract.

**ARTICLE 15 – EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: actions of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONSULTANT’S request, (CLIENT) shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT’S failure to perform was without it or its subcontractor’s fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the (CLIENT) ’s right to change, terminate, or stop any or all work at any time.

**ARTICLE 16 – ARREARS**

The CONSULTANT shall not pledge the (CLIENT) ’s credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT

further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this contract.

**ARTICLE 17 – DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall deliver to (CLIENT) for approval and acceptance, and before being eligible for final payment or any amounts due, all documents and materials prepared by and for (CLIENT) under this Contract.

All oral and written information not in the public domain or not previously known, and all information and data obtained, developed or supplied by the (CLIENT), or at its expense, will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the (CLIENT)'s prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the (CLIENT)'s expense shall be and remain the (CLIENT)'s property and may be reproduced at the discretion of the (CLIENT).

All covenants, agreements, representations, and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

**ARTICLE 18 – INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole discretion, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to (CLIENT) shall be that of an Independent Contractor and not as employees or agents of (CLIENT).

The CONSULTANT does not have the power of authority to bind (CLIENT) in any promise, agreement or representation other than as specifically provided for in this Agreement.

**ARTICLE 19 – CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retrained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

#### **ARTICLE 20 – ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of the contract, (CLIENT) shall have access to all records, documents and information collected and/or maintained by others in the course of the administration of the contract. This information shall be made accessible at the CONSULTANT'S local place of business to (CLIENT), including the Comptroller's Office and/or designees, for purposes of inspection, reproduction and audit without restriction. If records are unavailable local, it shall be the CONSULTANT'S responsibility to insure that all required records are provided to (CLIENT) at the CONSULTANT'S expense.

#### **ARTICLE 21 – NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical disabilities, sex, sexual orientation, age, or national origin.

#### **ARTICLE 22 – ENTIRETY OF CONTRACTUAL AGREEMENT**

(CLIENT) and the CONSULTANT agree that this Contract sets for the entire agreement between parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to deleted, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

#### **ARTICLE 23 – ENFORCEMENT COSTS**

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court costs (including without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

#### **ARTICLE 24 – AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to (CLIENT) upon request.

#### **ARTICLE 25 – SEVERABILITY**

If any term or provision of the Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

**ARTICLE 26 – MODIFICATIONS OF WORK**

(CLIENT) reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT OF (CLIENT)'s notification of a contemplated change, the CONSULTANT shall (1) if requested by (CLIENT), provided an estimate for the increase or decrease in cost due to the contemplated change, (2) notify (CLIENT) of any estimated change in the completion date, and (3) advise (CLIENT) in writing if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If (CLIENT) so instructs, in writing, the CONSULTANT shall suspend work on that portion of the work affected by a contemplated change, pending (CLIENT)'s decision to proceed with the change.

If (CLIENT) elects to make the change, (CLIENT) shall issue a Modification or Change Order and the CONSULTANT shall not commence work on any such change until written amendment or change order has been issued and signed by each of the parties.

**ARTICLE 27 – NOTICE**

All notices required in this Contract shall be sent to (CLIENT) shall be mailed to:  
(CLIENT)

Street Address  
\_\_\_\_\_, New Jersey [Zip Code]

IN WITNESS WHEREOF, (CLIENT) has made and executed this Contract as hereunto set its hand the day and year above written.

By: \_\_\_\_\_ [NAME], [TITLE]

Date: \_\_\_\_\_

By: \_\_\_\_\_ [NAME], [TITLE]

Date: \_\_\_\_\_

CONSULTANT: \_\_\_\_\_ [NAME], [TITLE]

Company Name:

Date: \_\_\_\_\_

**EXHIBIT "A"**  
**REQUEST FOR QUALIFICATIONS**