



State of New Jersey

DEPARTMENT OF TRANSPORTATION

P.O. Box 600

Trenton, New Jersey 08625-0600

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

DIANE GUTIERREZ-SCACCETTI

Commissioner

August 16, 2023

Zayibeth Carballo, PE, PLS, PP, CME, CFM, CFS
Assistant Municipal Engineer
Township of West Orange
25 Lakeside Avenue
West Orange, NJ 07052

Re: **PE AUTHORIZATION LETTER**

Washington Street Corridor Improvement Project
Township of West Orange, Essex County
Federal Project No.: D00S806
State Job No.: 6122315

Dear Mr. Carballo:

On August 7, 2023, the Federal Highway Administration (FHWA) authorized funding up to an amount of **\$ 199,070.68** for the above captioned Federal Aid Highway Program project. This authorization was based on the scope of work and budget agreed upon by the **West Orange Township** and the Division of Local Aid. The scope of work in this authorization includes Preliminary Engineering (PE) Activities. Final Design Activities will be authorized once PE activities have been completed. Any changes to same will require prior approval of the FHWA.

Award of Contract

- **West Orange Township** will include the following sections within the attached agreement in the design contract between the **West Orange Township** and GPI under Section 4 Plans and Specifications-4.1; Section 14 Equal Opportunity; Section 15 Nondiscrimination; Section 16 Disadvantaged Business Enterprises, and attachments in Appendices A through H.
- **WORK CANNOT BEGIN UNTIL THE ATTACHED FUNDING AGREEMENT IS EXECUTED BY NJDOT.**
- **West Orange Township** is required to submit the notice to proceed and approved project schedule.

Project Agreement

- Return **four (4) original signed and sealed copies** of the attached agreement along with **three (3) original signed/sealed Resolutions** for execution by the Department.
- **RESOLUTIONS MUST INCLUDE SIGNED/SEALED CERTIFICATION STATEMENT.** See attached highlighted example.
- **DO NOT** enter the date on Page 1 of the agreement.
- Please complete name, title, signature and date on Page 23 of the agreement which will have to be witnessed.
- Please complete name, title, signature and date on Page 29 of the agreement which will have to be witnessed.
- Attach Project Scope of Work & Cost Estimate under Appendices G & H respectively.
- Signed copies of the agreement should be returned within 45 days.

"IMPROVING LIVES BY IMPROVING TRANSPORTATION"

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2020 Streetscape Improvements to Main Avenue
Clifton City, Passaic County
Federal Project No.: 0601304
State Job No.: 7002327

- WORK CANNOT BEGIN UNTIL THE ATTACHED FUNDING AGREEMENT IS EXECUTED BY NJDOT.

Project Billing

- NJDOT must receive an initial billing (payment voucher) from the recipient for the design project no later than 3 months after NJDOT has concurred in the award of the design contract. NJDOT must receive subsequent billings (payment vouchers) on a monthly basis after the initial billing, but no later than 3 months thereafter as stipulated in the project agreement. Failure to meet the billing requirements may result in the restriction of authorization of any future FWA funding until such time as progress on timely billings is demonstrated.
- The project will be considered "Inactive" if **West Orange Township** fails to submit an invoice within the durations described in 23 CFR 630.106. It is the **West Orange Township's** responsibility to ensure that the federal funding is not jeopardized for this project due to an "Inactive" project status.

As a reminder, work cannot begin until the attached funding agreement is executed by NJDOT. Any costs incurred prior to NJDOT execution of the attached agreement will be deemed non-participating and ineligible for reimbursement. If you have any questions, please contact Julie Seaman at (609) 963-2004.

Sincerely,



Julie A. Seaman
Project Management Specialist 3
Division of Local Aid and Economic Development

Enclosure

March 2022

**New Jersey Department of Transportation
Division of Local Aid and Economic Development
Federal Aid Cost Reimbursement Agreement**



FEDERAL AID AGREEMENT

Agreement No.: 2023-DT-DLA-507 Contract ID: 24 70007
Local Public Agency (LPA)/Subrecipient: West Orange Township
CFDA Name and Number: **Highway Planning and Construction 20.205**
LPA DUNS Number: 868481250 ; UEI Number: QK38C6DQM4
Contact Name and Phone Number: Julie A. Seaman (609) 963-2004

Project: Washington Street Corridor Improvement Project

Municipality: West Orange Township

County: Essex

This Cost Reimbursement Agreement ("Agreement") is made as of the _____ day of _____, by and between the West Orange Township, having its offices at West Orange Township 25 Lakeside Avenue, NJ 07052 "Subrecipient" or "Local Public Agency ('LPA')") and the State of New Jersey, Department of Transportation, Division of Local Aid and Economic Development, having its offices at 1035 Parkway Avenue, Trenton, NJ 08625 ("State" or "NJDOT");

WITNESSETH

WHEREAS, the Congress of the United States has enacted various Transportation Authorization Bills to fund transportation programs. These transportation programs include, but are not limited to, the National Highway Performance Program (NHPP), the Surface Transportation Program ("STP"), the Congestion Mitigation and Air Quality Improvement Program ("CMAQ"), the Transportation Alternatives Program ("TA"), the Highway Safety Improvement Program ("HSIP"), the Safe Routes to School Program, and the Emergency Relief Program (collectively the "Programs"); and

WHEREAS, the Legislature of the State of New Jersey has enacted legislation by which certain federal aid funds may be made available for use on local transportation related projects of public entities qualified to act as Subrecipients of these federal-aid funds in accordance with the intent of federal law; and

WHEREAS, before federal funds will be made available for a specific program project, the Subrecipient and State are required to enter into an agreement to establish terms and conditions applicable to the Subrecipient when receiving federal funds for a designated project facility and to the subsequent operation and maintenance of that completed facility.

WHEREAS, the Subrecipient proposes to be the Sponsor LPA of a project eligible for funding (the "Project") pursuant to the terms and conditions of this Agreement; and

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2. Description of Project – Scope of Work

A detailed Project description is included in the Project Scope of Work and a detailed Cost Estimate are attached to this Agreement.

Agreement Contract Terms

3. The State hereby awards a Grant of federal funds, available on a reimbursement basis, in the amount of \$ 199,070.68 for the period of performance ("Project Fund").

Neither the State, FHWA, nor USDOT shall provide funding greater than this amount under this Agreement. The Subrecipient acknowledges that neither the State, FHWA nor USDOT are liable for payments that exceed this amount.

- 3.2 The Period of Performance for this award begins on the date of this agreement and shall continue in effect until the Project is completed and all payment vouchers have been paid subject to Section 7 below or until, based on inactivity as defined in Section 7.5.2 below. The Project shall be completed by November 30, 2026, unless either terminated or extended by written authorization of the State. Under 2 C.F.R. § 200.309, the Subrecipient shall not charge to this award costs that are incurred prior to and/or after the Period of Performance. Once the Period of Performance has concluded all obligations of the State, USDOT, and FHWA are terminated under this Agreement.

- 3.3 Subject to the following, this Agreement may be terminated by either party upon thirty (30) days written notice to the other party.

3.3.1 The State may, in its sole discretion, terminate this Agreement for cause and all of

its obligations under this Agreement if any of the following occurs:

3.3.1.1 The Subrecipient fails to begin expenditure of award funds;

3.3.1.2 The Subrecipient fails to meet the conditions and obligations specified under this Agreement, including a material failure to comply with the Period of Performance in Section 3.2 even if it is beyond the reasonable control of the Subrecipient.

3.3.1.3 The State, USDOT, or FHWA, may terminate this Agreement for convenience if, in their sole discretion, they determine that termination of this Agreement is in the public interest. Costs incurred by the Subrecipient as a result of a termination for convenience by the State or FHWA may be included in the Subrecipient's claim for compensation.

3.3.1.4 The Subrecipient abandons the Project during any phase (planning, design, construction, etc.). The State may demand the return of all funds or the remaining funds, at its own discretion.

3.3.2 In the event the Subrecipient terminates the Agreement, the State in its discretion will determine compensation, if any, to be paid.

3.3.3 This Agreement terminates on Project Closeout.

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of the NJDOT Roadway Design Manual in effect at the time this agreement is executed. All workmanship and materials shall conform to the Standard Specifications. If there is a deviation from these standards, the Subrecipient shall notify the State in writing of any deviation from the standards and shall accept any and all responsibility for any injury and damage by such deviation to any person or property and shall indemnify the State as outlined in this Agreement. A Design Exception shall be executed when it can be documented to the State's satisfaction that a lesser design value is the best practical alternative. The factors to be considered when determining if a lesser design value should be elected shall include social economic and environmental impacts together with safe and efficient traffic operations.

- 4.2 Approval for the Design Exception shall be based upon Division of Local Aid and Economic Development Policy Number 005.00 as follows:
 - 4.2.1 All Design Exceptions for Local Aid projects on non-National Highways System (non-NHS) roadways must be prepared by a licensed professional engineer in the State of New Jersey and approved by the sponsor via a design exception certification.
 - 4.2.2 Projects that are on NHS roads must follow the procedure outlined in the NJDOT Design Exception manual including approval by the Director of Design Services and the Federal Highway Administration.
 - 4.2.3 The above applies regardless of funding source. The State shall notify Subrecipient when the Project is acceptable for bidding.
- 4.3 For reimbursement of allowable costs, Project limits cannot be exceeded, plans and specifications altered, construction change orders issued, or items added or deleted from Project without prior written approval of the State.

5. Projects Eligible for Funding Under this Agreement

5.1 Right of Way Acquisition Projects

- 5.1.1 Subrecipient shall acquire Right of Way parcels in accordance with applicable federal and state requirements, including, but not limited to, 49 C.F.R. Part 24, 23 C.F.R. § 710.203, N.J.S.A. 20:4-1 et seq., the NJDOT Right of Way Acquisition Manual and the NJDOT.
- 5.1.2 Subrecipient shall be responsible for preparing all maps and other documents required by the NJDOT Right of Way Acquisition Manual and Right of Way Engineering Manual.
- 5.1.3 Eligible costs for Right of Way acquisition projects shall include:
 - 5.1.3.1 Cost of real property which shall be based on the actual purchase price of the parcel or easement, after negotiating a purchase agreement, or the just compensation amount as determined by a court, and

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- 5.2.6 If Subrecipient is not performing design work in-house, Subrecipient shall solicit proposals in accordance with Section 3.8 of this Agreement. Upon receipt of proposals from responsible design consultants, Subrecipient shall select professional services based upon qualifications and shall furnish the name of such consultant to the State for concurrence. Subrecipient agrees not to contract with any consultant to whom the State has made a reasonable and timely objection.
- 5.2.7 If the design consultant is to be retained for construction engineering purposes during the construction phase, contracts with design consultants shall include stipulations on retaining the designer for that purpose during which the negotiated cost of the construction engineering activity should be part of the construction contract.
- 5.2.8 Subrecipient or its consultant shall be required to submit a design schedule to the State which should include, at a minimum, the submission dates for Project plans and descriptions for NEPA determination, environmental screening, environmental permits/approvals, preliminary plans specifications, and estimate, and for the funding authorization request package.
- 5.2.9 Funds for design work shall be authorized by the State once the design authorization submission has been approved. Within ten years of the date of design authorization, the Project must be awarded to a construction contractor. Failure to comply with the requirements of this provision will result in the recovery of all funds previously expended.
- 5.2.10 Subrecipient agrees that all pedestrian facilities shall be designed to provide safe and easy accessibility for all users. These facilities shall comply with the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, 28 C.F.R. § 35.151(e), and the current version of the NJDOT Roadway Design Manual in effect at the time this agreement is executed.
- 5.2.11 Subrecipient agrees that the monies requisitioned from the Project Fund will be used only to reimburse actual, eligible costs and for no other purpose. Subrecipient agrees that it shall provide to the State, upon demand and at no cost to the State, such documentation as will enable the State to determine that the proceeds of the Project Fund have been applied solely to Project Costs.
- 5.2.12 When the Subrecipient considers the design work to be finally complete, Subrecipient shall request that the State's representative make a final review of the plans, specifications and estimate. If it is determined, after such review, that the design work has been completed in accordance with all applicable laws and requirements, Subrecipient shall submit a final invoice to the State and the State shall disburse an amount equal to the approved final payment. Upon payment of the amount approved for final payment, the State shall be released from any further responsibility in connection with the Project Fund and the Project design work.

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- 5.3.8 Subrecipient agrees that the monies requisitioned from the Project Fund will be used only to reimburse actual, eligible Project Costs and for no other purpose. Subrecipient agrees that it shall provide to the State, upon demand and at no cost to the State, such documentation as will enable the State to determine that the proceeds of the Project Fund have been applied solely to Project Costs.
- 5.3.9 Upon written request of the State, the Subrecipient shall cause its contractor to provide payment and performance bonds in an amount equal to 100% of the cost of the Project Work. A surety company satisfactory to the State and qualified to do business in the State of New Jersey shall execute such bonds. Copies of all bonds shall be delivered to the State upon request. Only those sureties listed in the US Treasury Department Circular 570 and authorized to do business in the State shall furnish the surety bonds. Payment and performance bonds shall be part of the contract standard items. Performance and/or Payment bonds shall be billed to the State upon award of contract.
- 5.3.10 Subrecipient agrees that it will cause its contractor to comply with the FHWA's Buy America policies that require a domestic manufacturing process for all steel or iron products that are permanently incorporated in a Federal-aid highway construction project pursuant to 23 U.S.C.A. § 313 and 23 C.F.R. § 635.410; comply with the current NJDOT Standard Roadway Specifications, and the current version of the NJDOT Construction Procedures Handbook. Buy America requirements apply to products installed permanently by utility companies for all contracts within the scope of the NEPA determination regardless of whether the contract uses FHWA funding. Subrecipient agrees that it shall cause its contractor to comply with Federal ADA requirements. All pedestrian facilities constructed or reconstructed shall provide safe and easy accessibility for all users. These facilities shall comply with the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973 and 28 C.F.R. § 35.151(e) and the current version of the NJDOT Roadway Design Manual in effect at the time this agreement is executed. Failure to comply may result in the loss of projects funds.
- 5.3.11 The Subrecipient agrees that it will ensure its contractors are aware of and are in compliance with 31 U.S.C.A. § 1352 prior to execution of any agreement in order to remain eligible for Federal funds.
- 5.3.12 When Subrecipient considers the Project to be finally complete, Subrecipient shall request that the State's representative make a final inspection of the Project. If it is determined, after such inspection, that the Project has been completed in accordance with the plans and specifications, Subrecipient shall prepare and submit to the State a certification that the final inspection has been made and the cost of the Project has actually been incurred in accordance with the provisions of the Agreement. Upon receipt, the State shall disburse an amount equal to the approved final payment. Upon payment of the amount approved for final payment, the State shall be released from any further responsibility in connection with the Project Fund

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6. Insurance

6.1 Subrecipient shall maintain or cause to be maintained:

6.1.1 General Comprehensive Liability Insurance in the minimum amount of \$1,000,000.00 combined single limit plus \$1,000,000.00 in an umbrella policy. This insurance shall specifically provide for coverage of the State as an additional insured and shall provide for coverage at least as broad as the standard, basic un-amended commercial general liability policy and shall be endorsed to include broad form contractual liability coverage, independent contractor's coverage and completed operations coverage.

6.1.2 Automobile Liability Insurance in the minimum amount of \$1,000,000.00.

6.1.3 Workers Compensation Insurance in the amount required by law.

6.2 A copy of each insurance policy shall be made available to the State upon request.

6.3 Subrecipient shall cause to be maintained Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance sufficient to protect against liabilities arising out of professional obligations performed pursuant to the requirements of this Agreement. This insurance shall be in the minimum amount of \$1,000,000.00

6.4 Subrecipient expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit the obligations assumed by Subrecipient pursuant to this Agreement and shall not be construed to relieve Subrecipient of liability in excess of such coverage, nor shall it preclude the State from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

7. Disbursement of Project Fund

7.1 It is agreed that any and all Project Costs incurred by the Subrecipient prior to the execution of this Agreement by all parties shall be non-participating by the State and FHWA.

7.2 The State shall disburse monies from the Project Fund to Subrecipient in order to reimburse actual, eligible costs associated with Project Work in accordance with the terms and conditions of this Agreement. Only those costs specifically enumerated in the Project Scope of Work and Cost Estimate. Nothing contained herein shall impose upon the State any obligation to ensure the proper application of the monies paid to Subrecipient from the Project Fund. Furthermore, nothing contained herein shall impose any obligation upon the State to pay to Subrecipient any monies in excess of the Project Fund. The Subrecipient shall reimburse its consultants/contractors for allowable expenses after the receipt of properly prepared payment vouchers as outlined in Section 7.5 of this Agreement. All monies shall be subject to appropriations and availability of funds.

7.3 The Agreement may be adjusted and/or modified unilaterally by the State to reflect the Project Costs in accordance with 23 C.F.R. § 630.106.

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7.5.4.5 Copies of contract compliance documents as completed for the voucher payment period by the Resident Engineer that is designated by the Subrecipient, a complete set of which shall be furnished by the State at kickoff and/or preconstruction meetings.

7.5.5 The State shall review and verify such payment vouchers for payment and remunerate the Subrecipient for direct and indirect costs incurred up to a maximum Project approved budget for satisfactorily completing the Project.

7.6 Partial Payments

7.6.1 The State shall make partial payments to the Subrecipient toward the actual, eligible costs for the Project Work upon the receipt of properly drawn payment voucher for a percentage of work completed on the Project during the period as shown on the accompanying progress report. Where there is a disagreement between the State and the Subrecipient concerning the percentage of work completed during any given period, that dispute shall be resolved in accordance with Paragraph 22.3 of this Agreement.

7.6.2 Subrecipient may submit payment vouchers totaling up to 90% of the lesser of either the authorized amount or the amount eligible for State funding participation. Subrecipient shall submit a final payment voucher, within six months of final inspection, along with any necessary close out documents, for reimbursement of the remaining 10%, following receipt of written final acceptance of the Project by the State.

7.6.3 If the Subrecipient was found to be in good standing and compliance with the terms this Agreement, the Subrecipient can request compensation of a portion of the funds that were held as per Section 7.6.2 after a satisfactory final inspection by NJDOT and prior to the submittal of the final Payment voucher. Good standing can be defined as maintaining eligibility assessment, invoicing at a minimum of a quarterly basis, and receiving satisfactory reviews with regard to compliance with construction oversight inspections. This payment request will be accepted and processed at the sole discretion of the NJDOT.

7.7 Consultants and Contractors

7.7.1 The Subrecipient shall remain responsible for satisfactory performance of all work.

7.7.2 All work performed by consultant, contractors and subcontractors on the Project shall be treated as being performed by the Subrecipient.

7.7.3 Subrecipient will be paid the actual, eligible costs for the work of each contractor and consultant. The actual, eligible costs shall be considered full compensation for all costs incurred by the Subrecipient relative to the work performed by each

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Specifications. Failure to assess liquidated damages by the Subrecipient in accordance with the Standard Specifications, contract bid documents, and federal requirements may result in the loss of federal participation of funds.

- 9.2 Contract time extensions will only be granted for excusable delays specified in the Standard Specifications. Contract time extensions must be submitted and approved by Change Order as the project progresses and at the time an excusable delay occurs in accordance with the Standard Specifications.

10. Audit Requirements

- 10.1 The Subrecipient shall provide the State with a fiscal year, organization-wide audit that has been conducted in accordance with the requirements of OMB "Supercircular" 2 C.F.R. Part 200, Audits of States, Local Governments, and Non-Profit Organizations, and State Circular Letter 04-04-OMB, Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid. If the Subrecipient is to contract with a commercial organization they must follow 48 C.F.R. § 31.2, "Contracts with Commercial Organizations." The Subrecipient shall ensure that the State receives the audit within the prescribed submission period and that this Agreement is listed on the appropriate Schedule of Financial Assistance.
- 10.2 The State, or its agents, shall be entitled to perform an audit at the following times:
- 10.2.1 At any time during the performance of work set forth in this Agreement.
- 10.2.2 During a period of up to three (3) years after either the date of payment of the Final Invoice or a date mutually agreed to by the parties.
- 10.2.3 The Subrecipient acknowledges that changes in payment due the Subrecipient resulting from audits performed by the State shall be made as follows:
- 10.2.3.1 In the event of overpayment by the State, the Subrecipient shall refund the amount of such overpayment within thirty (30) days of the request by the State. In the event the Subrecipient fails to comply with said request, the State is hereby authorized to deduct such overpayment from other monies due the Subrecipient under the terms of this Agreement or any other agreement between the State and the Subrecipient. Furthermore, the Subrecipient expressly understands and agrees that the provisions of this Section shall in no way be construed to relieve the Subrecipient from any liability, or preclude the State from taking any other actions as are available to it under any other provisions of this Agreement or otherwise at law. The terms of this section shall survive the expiration or termination of the Agreement.
- 10.2.3.2 In the event of underpayment by the State, the State shall pay sufficient funds to the Subrecipient to correct the underpayment as soon as is practicable.



14. Equal Opportunity

- 14.1 The parties to this Agreement do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. (PL 1975, c 127, as amended and supplemented) dealing with discrimination in employment on public contracts, and the rules and regulations promulgated pursuant thereto, are hereby made a part of this contract and are binding upon them.
- 14.2 During the performance of this contract, the Contractor agrees as follows:
- 14.2.1 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 or sex. The Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status or sex. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Division of Civil Rights/Affirmative Action setting forth provisions of this nondiscrimination clause;
- 14.2.2 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 or sex;
- 14.2.3 The Contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Division of Civil Rights/Affirmative Action, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 14.2.4 In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;



16. Disadvantaged Business Enterprises

Subrecipient hereby agrees to the following statements and agrees that these statements shall be included in all subsequent agreements between Subrecipient and any contractor:

- 16.1 It is the policy of NJDOT that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26; Titles I & V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA); the Transportation Equity Act for the 21st Century (TEA-21); and Section V, Part B below, shall have equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R., § 26(A), (C), and (F) apply to this Agreement.
- 16.2 The Subrecipient and its Contractor agree that Disadvantaged Business Enterprises, as defined in 49 C.F.R. § 26(A); and in the ISTEA and the TEA-21, and Section V, Part B below, have equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, the NJDOT and all Contractors shall take all necessary and reasonable steps in accordance with 49 C.F.R., Part 26 to ensure that Disadvantaged Businesses are given equal opportunity to compete for and to perform on NJDOT federally funded contracts. The NJDOT and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of USDOT assisted contracts.

17. No Oral Modifications

- 17.1 This Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.
- 17.2 The Subrecipient shall request State approval for any task or line item budget revision deemed necessary to carry out the Project. The Subrecipient shall submit the request in writing to the State. The State shall provide written authorization to the Subrecipient if the request is by the State and the applicable funding agency.

18. Notices and Demands

- 18.1 All notices, demands, requests or other communications required or permitted to be given pursuant to this Agreement must be in writing.
- 18.2 All notices, demands, requests or other communications required or permitted to be given pursuant to this Agreement shall be deemed to have been properly given or served by depositing the same in the United States mail, postpaid and registered or certified, return receipt requested, or by Federal Express or similar service providing receipt against delivery, as follows:



19. Partial Invalidity

To the extent that the intent and underlying purpose of this Agreement are not compromised, the invalidity or unenforceability of any term, covenant, condition or provision of this Agreement, or its application to any persons, entities or circumstances shall not render invalid or unenforceable the remainder of this Agreement, or the application of such term, covenant, condition or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, and each term, covenant, condition and provision of this Agreement shall remain valid and enforceable to the fullest extent permitted by applicable law.

20. Further Assurances

The parties agree to cooperate with each other and to execute and deliver such further documents and assurances as may be necessary to carry out the purpose of this Agreement.

21. Subject to FHWA Regulations

Notwithstanding anything contained herein to the contrary, so long as the Project is being financed out of proceeds from the Project Fund, this Agreement and the obligations of the parties hereunder are subject to the rules and regulations promulgated by the FHWA.

22. Entire Agreement; Counterparts; Disputes

- 22.1 This Agreement contains the entire agreement between the parties hereto and supersedes any and all prior understandings and agreements, oral or written, between the parties respecting the subject matter hereof.
- 22.2 This Agreement may be executed in two or more counterparts, each of which shall be deemed a duplicate original and all of which together shall constitute one and the same Agreement.
- 22.3 In the event a dispute arises concerning the meaning of any term used in this Agreement, or the work and services required to be performed under this Agreement, or as to compensation under this Agreement, the dispute shall be decided by the Commissioner of Transportation or his duly authorized representative.

23. Choice of Law

This Agreement is being executed and is intended to be performed in the State of New Jersey and shall be governed in all respects by the laws of the State of New Jersey.

March 2022

New Jersey Department of Transportation
Division of Local Aid and Economic Development
Federal Aid Cost Reimbursement Agreement



IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to duly execute this Agreement on and as of the day and year first above written.

Project: Washington Street Corridor Improvement Project

Municipality: West Orange Township, County: Essex

Agreement Number: 2023-DT-DLA-507

Federal Project Number: D00S806

ATTEST/WITNESSED/AFFIX SEAL: SUBRECIPIENT(LPA)

Name: Date
Title

By:_____
Name: Date
Title

ATTEST/WITNESSED/AFFIX SEAL: NEW JERSEY DEPARTMENT OF
TRANSPORTATION

Anika James Date
Department Secretary, New Jersey
Department of Transportation

By:_____
Laine Rankin Date
Director, Division of Local Aid &
Economic Development

THIS DOCUMENT HAS BEEN REVIEWED AND APPROVED AS TO FORM

ATTORNEY GENERAL OF NEW JERSEY
MATTHEW J. PLATKIN

**See DAG e-Signature
Next page**

By:_____
Brad M. Reiter
Deputy Attorney General

Date

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Federal Aid Cost Reimbursement Agreement**



8. This Agreement is subject to all federal, State, and local laws, rules, and regulations, including, but not limited to, those pertaining to nondiscrimination in employment and affirmative action for equal employment opportunity.
9. The SUBRECIPIENT agrees to ensure that Disadvantaged Business Enterprises (DBE's) as defined in 49 C.F.R., Part 23 and FTA Circular 4716.1A, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. Failure to make a good faith effort to meet the established DBE goal may result in sanctions as defined under paragraph 5 of this Appendix.
10. If at any time following the execution of this Agreement, the SUBRECIPIENT intends to sublet any additional portion(s) of the work or intends to purchase materials or lease equipment not contemplated during the original proposal preparation, the SUBRECIPIENT shall:
 - (a) Notify the Project initiator, in writing, of the type and approximate value of the work which the SUBRECIPIENT intends to accomplish by such subcontract, purchase order or lease.
 - (b) Give DBE firms equal consideration with non-minority firms in negotiations for any such subcontracts, purchase orders or leases.
11. Incorporation of Provisions: The SUBRECIPIENT will include the provisions of paragraph (1) through (9) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders or instructions, issued pursuant thereto.



APPENDIX C

CERTIFICATION OF NEW JERSEY DEPARTMENT OF TRANSPORTATION

In executing the Agreement the STATE'S signatory certifies that to the best of his knowledge, the SUBRECIPIENT or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

1. employ or retain, or agree to employ or retain, any firm or person, or
2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

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APPENDIX E

CERTIFICATION OF SUBRECIPIENT ELIGIBILITY

I _____ hereby certify under penalty of perjury under the laws of the United States, that except as noted below, the company or any person associated therewith in the capacity of owner, partner, director, officer, principal, Project director, manager, auditor, or any position involving the administration of State funds:

is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal, State or local government agency;

has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal, State or local government agency within the past 3 years;

does not have a proposed debarment pending; and

has not been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

(Insert exceptions - for any exception noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. If no exceptions, insert "None".)

Attest:

SUBRECIPIENT

Name/Title

Name/Title

Date: _____

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FEDERAL AID AGREEMENT

Agreement No.: 2023-DT-DLA-507 Contract ID: 24 70007

Local Public Agency (LPA)/Subrecipient: West Orange Township

CFDA Name and Number: **Highway Planning and Construction 20.205**

LPA DUNS Number: 868481250 ; UEI Number: QK38C6DQMQ4

Contact Name and Phone Number: Julie A. Seaman (609) 963-2004

Project: Washington Street Corridor Improvement Project

Municipality: West Orange Township

County: Essex

This Cost Reimbursement Agreement ("Agreement") is made as of the _____ day of _____, by and between the West Orange Township, having its offices at West Orange Township 25 Lakeside Avenue, NJ 07052 "Subrecipient" or "Local Public Agency ('LPA')") and the State of New Jersey, Department of Transportation, Division of Local Aid and Economic Development, having its offices at 1035 Parkway Avenue, Trenton, NJ 08625 ("State" or "NJDOT");

WITNESSETH

WHEREAS, the Congress of the United States has enacted various Transportation Authorization Bills to fund transportation programs. These transportation programs include, but are not limited to, the National Highway Performance Program (NHPP), the Surface Transportation Program ("STP"), the Congestion Mitigation and Air Quality Improvement Program ("CMAQ"), the Transportation Alternatives Program ("TA"), the Highway Safety Improvement Program ("HSIP"), the Safe Routes to School Program, and the Emergency Relief Program (collectively the "Programs"); and

WHEREAS, the Legislature of the State of New Jersey has enacted legislation by which certain federal aid funds may be made available for use on local transportation related projects of public entities qualified to act as Subrecipients of these federal-aid funds in accordance with the intent of federal law; and

WHEREAS, before federal funds will be made available for a specific program project, the Subrecipient and State are required to enter into an agreement to establish terms and conditions applicable to the Subrecipient when receiving federal funds for a designated project facility and to the subsequent operation and maintenance of that completed facility.

WHEREAS, the Subrecipient proposes to be the Sponsor LPA of a project eligible for funding (the "Project") pursuant to the terms and conditions of this Agreement; and

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WHEREAS, the Project may be included in the Metropolitan Planning Organization's Transportation Improvement Program and the State Transportation Improvement Program; and

WHEREAS, the State may award Subrecipient funds to finance the Project ("Project Fund") pursuant to the applicable federal and State law; and

WHEREAS, Subrecipient and the State desire to specify the conditions applicable to the financing of the costs of the Project ("Project Costs") out of the Project Fund and the obligations of the Subrecipient and the State with respect to the Project; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and pursuant to all federal, state, and local laws and ordinances, the Subrecipient and the State hereby agree as follows:

1. Definitions

As used in this Agreement, the following terms are defined in the manner indicated below:

- 1.1 Local Public Agency ("LPA"): The contracting agency that is the subrecipient of Federal-aid funds administered through the NJDOT.
- 1.2 FHWA: Federal Highway Administration.
- 1.3 USDOT: United States Department of Transportation
- 1.4 Useful Life of the Project: the period of time assigned to the project for purposes of determining a repayment schedule or reimbursement in the event of default.
- 1.5 Responsible Charge: A full time public employee of the Subrecipient, who is not a consultant, and is responsible for the Project.
- 1.6 Construction Engineering: construction related design services including review of contractor's working drawings, responding to contractor questions regarding design, and reviewing design changes.
- 1.7 Construction Inspection: Subrecipient is responsible for ensuring that the project is being inspected on a full time basis throughout construction of the project. Federally funded construction projects must be built and inspected in accordance to the pertinent federal and state requirements and contract documents.
- 1.8 Standard Specifications: the NJDOT Standard Specifications for Road and Bridge Construction, including all Baseline Document Change ("BDC") Announcements, in effect at the time of the execution of this Agreement. The Standard Specifications are incorporated into this Agreement by reference.
- 1.9 Period of Performance: the period of time during which the Subrecipient is to complete the activities described herein and to incur and expend approved funds.

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2. Description of Project – Scope of Work

A detailed Project description is included in the Project Scope of Work and a detailed Cost Estimate are attached to this Agreement.

Agreement Contract Terms

3. The State hereby awards a Grant of federal funds, available on a reimbursement basis, in the amount of \$ 199,070.68 for the period of performance (“Project Fund”).

Neither the State, FHWA, nor USDOT shall provide funding greater than this amount under this Agreement. The Subrecipient acknowledges that neither the State, FHWA nor USDOT are liable for payments that exceed this amount.

- 3.2 The Period of Performance for this award begins on the date of this agreement and shall continue in effect until the Project is completed and all payment vouchers have been paid subject to Section 7 below or until, based on inactivity as defined in Section 7.5.2 below. The Project shall be completed by November 30, 2026, unless either terminated or extended by written authorization of the State. Under 2 C.F.R. § 200.309, the Subrecipient shall not charge to this award costs that are incurred prior to and/or after the Period of Performance. Once the Period of Performance has concluded all obligations of the State, USDOT, and FHWA are terminated under this Agreement.

- 3.3 Subject to the following, this Agreement may be terminated by either party upon thirty (30) days written notice to the other party.

3.3.1 The State may, in its sole discretion, terminate this Agreement for cause and all of

its obligations under this Agreement if any of the following occurs:

3.3.1.1 The Subrecipient fails to begin expenditure of award funds;

3.3.1.2 The Subrecipient fails to meet the conditions and obligations specified under this Agreement, including a material failure to comply with the Period of Performance in Section 3.2 even if it is beyond the reasonable control of the Subrecipient.

3.3.1.3 The State, USDOT, or FHWA, may terminate this Agreement for convenience if, in their sole discretion, they determine that termination of this Agreement is in the public interest. Costs incurred by the Subrecipient as a result of a termination for convenience by the State or FHWA may be included in the Subrecipient's claim for compensation.

3.3.1.4 The Subrecipient abandons the Project during any phase (planning, design, construction, etc.). The State may demand the return of all funds or the remaining funds, at its own discretion.

3.3.2 In the event the Subrecipient terminates the Agreement, the State in its discretion will determine compensation, if any, to be paid.

3.3.3 This Agreement terminates on Project Closeout.

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- 3.4 Fund Liquidation, Adjustment, and Cancellation.
 - 3.4.1 The Subrecipient shall liquidate all obligations under this award not later than 90 days after the Period of Performance that is listed in section 3.2.
 - 3.4.2 Liquidation and adjustment of funds under this Agreement follow the requirements of 2 C.F.R. §§ 200.343–.345.
- 3.5 The Project shall not be sold, assigned or ownership transferred without the consent of the State. In the event the Project is sold to a non-public entity for a non-public use or any use inconsistent with the terms of this Agreement, this Agreement shall be deemed terminated and the State shall be reimbursed for all money paid.
- 3.6 The Subrecipient shall not proceed with any work on the Project (“Project Work”) for which reimbursement shall be sought without the specific written authorization of the State. It is agreed that any and all Project Costs incurred by the Subrecipient prior to the execution of this Agreement by all parties shall be non-participating by the State and FHWA.
- 3.7 Subrecipient will ensure that Project Work will comply with all applicable laws and other requirements of federal, state and local governmental bodies.
- 3.8 Recipient shall solicit proposals for all work on the Project in accordance with the Brooks Act of 1972 (40 U.S.C.A. Ch. 11), 2 C.F.R. §§ 200.317-.326, and all applicable federal and state laws, rules and regulations. All contracts entered into under this Agreement must contain the applicable provisions described in 2 C.F.R. Part 200, App. II—Contract Provisions for non–Federal Entity Contracts under Federal Awards. All design solicitations and construction bid solicitations by the Subrecipient must include the following language: "Proposals are being solicited through a fair and open process in accordance with N.J.S.A. 19:44A-20.3 et seq., and as such, contractors are exempt from the limitations on making political contributions under that law. Further, for that reason, as well as because of language in New Jersey's Annual Appropriations Act, refusal to disclose campaign contributions otherwise required by N.J.S.A. 19:44A-20.3 et seq. and N.J.S.A. 19:44A-20.25 et seq., will not adversely affect your consideration for award."

4. Plans and Specifications

- 4.1 Subrecipient shall prepare, or have prepared, if required by the State, environmental documents, engineering documents, plans, specifications and estimates for the Project and shall submit them to the State for review. A Professional Engineer licensed to practice in New Jersey must prepare the plans and specifications. The State shall review the engineering documents, plans and specifications for conformance to program requirements and design standards. All design work shall conform to the applicable American Association of State Highway and Transportation Officials (AASHTO) design criteria, the current Manual on Uniform Traffic Control Devices (MUTCD), and the NJDOT Bicycle Compatible Roadway and Bikeways Planning and Design Guideline. However, the design of traffic barriers and drainage systems shall conform to the NJDOT and the current version

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of the NJDOT Roadway Design Manual in effect at the time this agreement is executed. All workmanship and materials shall conform to the Standard Specifications. If there is a deviation from these standards, the Subrecipient shall notify the State in writing of any deviation from the standards and shall accept any and all responsibility for any injury and damage by such deviation to any person or property and shall indemnify the State as outlined in this Agreement. A Design Exception shall be executed when it can be documented to the State's satisfaction that a lesser design value is the best practical alternative. The factors to be considered when determining if a lesser design value should be elected shall include social economic and environmental impacts together with safe and efficient traffic operations.

4.2 Approval for the Design Exception shall be based upon Division of Local Aid and Economic Development Policy Number 005.00 as follows:

4.2.1 All Design Exceptions for Local Aid projects on non-National Highways System (non-NHS) roadways must be prepared by a licensed professional engineer in the State of New Jersey and approved by the sponsor via a design exception certification.

4.2.2 Projects that are on NHS roads must follow the procedure outlined in the NJDOT Design Exception manual including approval by the Director of Design Services and the Federal Highway Administration.

4.2.3 The above applies regardless of funding source. The State shall notify Subrecipient when the Project is acceptable for bidding.

4.3 For reimbursement of allowable costs, Project limits cannot be exceeded, plans and specifications altered, construction change orders issued, or items added or deleted from Project without prior written approval of the State.

5. Projects Eligible for Funding Under this Agreement

5.1 Right of Way Acquisition Projects

5.1.1 Subrecipient shall acquire Right of Way parcels in accordance with applicable federal and state requirements, including, but not limited to, 49 C.F.R. Part 24, 23 C.F.R. § 710.203, N.J.S.A. 20:4-1 et seq., the NJDOT Right of Way Acquisition Manual and the NJDOT.

5.1.2 Subrecipient shall be responsible for preparing all maps and other documents required by the NJDOT Right of Way Acquisition Manual and Right of Way Engineering Manual.

5.1.3 Eligible costs for Right of Way acquisition projects shall include:

5.1.3.1 Cost of real property which shall be based on the actual purchase price of the parcel or easement, after negotiating a purchase agreement, or the just compensation amount as determined by a court, and

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5.1.3.2 Associated direct costs of acquisition including appraisal fees, cost estimates, Right of Way plan preparation, title work, cost to acquire real property, cost of administrative settlements, relocations, and damages pursuant to 23 C.F.R. § 710.203.

5.1.4 Any amount paid to the Subrecipient under this Agreement for a parcel or easement that is later declared to be in excess and sold, may be recovered by the State.

5.2 Design Projects

5.2.1 Subrecipient warrants that the engineering services shall be performed or approved by an engineer licensed by the State of New Jersey Board of Professional Engineers and Land Surveyors to practice in the State of New Jersey.

5.2.2 Subrecipient covenants that Design Work will comply with all applicable laws and other requirements of federal, state and local governmental bodies including applicable American Association of State Highway and Transportation Officials (AASHTO) design criteria, the current Manual on Uniform Traffic Control Devices (MUTCD), and the NJDOT Bicycle Compatible Roadway and Bikeways Planning and Design Guideline.

5.2.2.1 Certain projects shall require the pre-approval of the State, prior to the design phase, as to the applicable standards that apply, as follows:

5.2.2.1.1 Transportation projects other than roads and bridges,

5.2.2.1.2 Projects that intersect State highways,

5.2.2.1.3 Projects with railroad crossings within the project limits or 1000 feet outside the project limits, or

5.2.2.1.4 Projects with railroad crossings outside the project limits where the project could impact traffic flow across the railroad crossing.

5.2.3 Subrecipient shall prepare, or have prepared any necessary environmental documents, engineering documents, plans, specifications and estimates for the Project as required by Section 5.2 of this Agreement

5.2.4 The Subrecipient shall not proceed with any Design Work for which reimbursement shall be sought without the specific written authorization of the State. It is agreed that any and all Project Costs incurred by the Subrecipient prior to the execution of this Agreement by all parties shall be non-participating by the State and FHWA.

5.2.5 Subrecipient shall submit to the State documentation of the consultant selection process or use of in-house forces and final negotiated consultant cost proposal. In order to use in-house staff for design work, Subrecipient must allow the State to review its project accounting systems and be cost-basis approved by the State.

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- 5.2.6 If Subrecipient is not performing design work in-house, Subrecipient shall solicit proposals in accordance with Section 3.8 of this Agreement. Upon receipt of proposals from responsible design consultants, Subrecipient shall select professional services based upon qualifications and shall furnish the name of such consultant to the State for concurrence. Subrecipient agrees not to contract with any consultant to whom the State has made a reasonable and timely objection.
- 5.2.7 If the design consultant is to be retained for construction engineering purposes during the construction phase, contracts with design consultants shall include stipulations on retaining the designer for that purpose during which the negotiated cost of the construction engineering activity should be part of the construction contract.
- 5.2.8 Subrecipient or its consultant shall be required to submit a design schedule to the State which should include, at a minimum, the submission dates for Project plans and descriptions for NEPA determination, environmental screening, environmental permits/approvals, preliminary plans specifications, and estimate, and for the funding authorization request package.
- 5.2.9 Funds for design work shall be authorized by the State once the design authorization submission has been approved. Within ten years of the date of design authorization, the Project must be awarded to a construction contractor. Failure to comply with the requirements of this provision will result in the recovery of all funds previously expended.
- 5.2.10 Subrecipient agrees that all pedestrian facilities shall be designed to provide safe and easy accessibility for all users. These facilities shall comply with the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, 28 C.F.R. § 35.151(e), and the current version of the NJDOT Roadway Design Manual in effect at the time this agreement is executed.
- 5.2.11 Subrecipient agrees that the monies requisitioned from the Project Fund will be used only to reimburse actual, eligible costs and for no other purpose. Subrecipient agrees that it shall provide to the State, upon demand and at no cost to the State, such documentation as will enable the State to determine that the proceeds of the Project Fund have been applied solely to Project Costs.
- 5.2.12 When the Subrecipient considers the design work to be finally complete, Subrecipient shall request that the State's representative make a final review of the plans, specifications and estimate. If it is determined, after such review, that the design work has been completed in accordance with all applicable laws and requirements, Subrecipient shall submit a final invoice to the State and the State shall disburse an amount equal to the approved final payment. Upon payment of the amount approved for final payment, the State shall be released from any further responsibility in connection with the Project Fund and the Project design work.

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5.3 Construction Projects

- 5.3.1 Subrecipient shall complete or cause the completion of Project Work in accordance with the plans and specifications approved by the State.
- 5.3.2 Subrecipient covenants that Project Work will comply with all applicable laws and other requirements of federal, state and local governmental bodies. Subrecipient shall obtain all permits and licenses necessary to complete Project Work prior to federal authorization.
- 5.3.3 The Subrecipient shall not advertise the project until federal authorization for the Project is obtained and the State provides written authorization to proceed.
- 5.3.4 Subrecipient shall not proceed with any Project Work for which reimbursement shall be sought without the written authorization of the State.
- 5.3.5 Subrecipient shall solicit bids for the work in accordance with Section 3.8 of this Agreement. The Subrecipient shall advertise the project within sixty (60) days of the State's authorization of funds and must award the project within six months of authorization of funds. Upon receipt of bids from responsible contractors, Subrecipient shall select the contractor submitting the lowest responsive bid. Within thirty (30) days of the award of the contract, the Subrecipient shall submit:
 - 5.3.5.1 One copy of the summary of construction bids showing all bid quantities, unit prices, and amounts for the construction of pay items, and
 - 5.3.5.2 A fully executed and sealed resolution awarding the contract to the lowest responsible bidder, which shall be subject to the approval of the State.
 - 5.3.5.3 Once the State has received all of the information listed above, it shall notify Subrecipient in writing whether it has been approved. Subrecipient agrees not to contract with any contractor to whom the State has made a reasonable and timely objection.
- 5.3.6 Subrecipient shall submit to the State documentation of the consultant selection process or use of in-house forces and final negotiated consultant cost proposal. The use of in-house staff is permitted but is subject to the approval of the State. In order to use in-house staff for design work, Subrecipient must allow the State to review its project accounting systems and be cost-basis approved by the State.
- 5.3.7 If Subrecipient is not performing construction inspection work in-house, Subrecipient shall solicit proposals in accordance with section 3.8 of this Agreement. Upon receipt of proposals from responsible consultants, Subrecipient shall select professional services based upon qualifications and shall furnish the name of such consultant to the State for concurrence. Subrecipient agrees not to contract with any consultant to whom the State has made a reasonable and timely objection.

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- 5.3.8 Subrecipient agrees that the monies requisitioned from the Project Fund will be used only to reimburse actual, eligible Project Costs and for no other purpose. Subrecipient agrees that it shall provide to the State, upon demand and at no cost to the State, such documentation as will enable the State to determine that the proceeds of the Project Fund have been applied solely to Project Costs.
- 5.3.9 Upon written request of the State, the Subrecipient shall cause its contractor to provide payment and performance bonds in an amount equal to 100% of the cost of the Project Work. A surety company satisfactory to the State and qualified to do business in the State of New Jersey shall execute such bonds. Copies of all bonds shall be delivered to the State upon request. Only those sureties listed in the US Treasury Department Circular 570 and authorized to do business in the State shall furnish the surety bonds. Payment and performance bonds shall be part of the contract standard items. Performance and/or Payment bonds shall be billed to the State upon award of contract.
- 5.3.10 Subrecipient agrees that it will cause its contractor to comply with the FHWA's Buy America policies that require a domestic manufacturing process for all steel or iron products that are permanently incorporated in a Federal-aid highway construction project pursuant to 23 U.S.C.A. § 313 and 23 C.F.R. § 635.410; comply with the current NJDOT Standard Roadway Specifications, and the current version of the NJDOT Construction Procedures Handbook. Buy America requirements apply to products installed permanently by utility companies for all contracts within the scope of the NEPA determination regardless of whether the contract uses FHWA funding. Subrecipient agrees that it shall cause its contractor to comply with Federal ADA requirements. All pedestrian facilities constructed or reconstructed shall provide safe and easy accessibility for all users. These facilities shall comply with the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973 and 28 C.F.R. § 35.151(e) and the current version of the NJDOT Roadway Design Manual in effect at the time this agreement is executed. Failure to comply may result in the loss of projects funds.
- 5.3.11 The Subrecipient agrees that it will ensure its contractors are aware of and are in compliance with 31 U.S.C.A. § 1352 prior to execution of any agreement in order to remain eligible for Federal funds.
- 5.3.12 When Subrecipient considers the Project to be finally complete, Subrecipient shall request that the State's representative make a final inspection of the Project. If it is determined, after such inspection, that the Project has been completed in accordance with the plans and specifications, Subrecipient shall prepare and submit to the State a certification that the final inspection has been made and the cost of the Project has actually been incurred in accordance with the provisions of the Agreement. Upon receipt, the State shall disburse an amount equal to the approved final payment. Upon payment of the amount approved for final payment, the State shall be released from any further responsibility in connection with the Project Fund

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and the Project. The State will monitor maintenance of completed Project by the Subrecipient. Failure to maintain Project will result in the withholding of funds payable to the Subrecipient on other State funded programs.

- 5.3.13 The Subrecipient must designate a person in Responsible Charge who is a full time employee of the agency as per 23 C.F.R. § 635.105. The person in "Responsible Charge" of LPA administered projects need not be an engineer. This requirement applies even when consultants are providing construction engineering services. This person may share duties, but is expected to be able to perform the following duties and functions:
- 5.3.13.1 Administers inherently governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
 - 5.3.13.2 Maintains familiarity of day to day project operations, including project safety issues;
 - 5.3.13.3 Makes or participates in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
 - 5.3.13.4 Visits and reviews the Project on a frequency that is commensurate with the magnitude and complexity of the project;
 - 5.3.13.5 Reviews financial processes, transactions and documentation to ensure that safeguards are in place to minimize fraud, waste, and abuse; and;
 - 5.3.13.6 Directs Project staff, agency or consultant, to carry out Project Administration and Contract Oversight, including proper documentation.
 - 5.3.13.7 Is aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the Project.
- 5.3.14 In addition to adhering to the requirements specifically set forth in this Agreement, Subrecipient agrees that it will cause its contractor to comply with the United States Department of Transportation's (USDOT)/FHWA's official Disadvantaged Business Enterprises (DBE) Program Guidance, including that all contract bidders/offerors submit DBE subcontractor information and/or good faith efforts, either at the time of bid (responsiveness) or within 5 days of bid (responsibility). Guidance with regard to the DBE program can be found on the USDOT and FHWA Civil Rights' websites.

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6. Insurance

- 6.1 Subrecipient shall maintain or cause to be maintained:
 - 6.1.1 General Comprehensive Liability Insurance in the minimum amount of \$1,000,000.00 combined single limit plus \$1,000,000.00 in an umbrella policy. This insurance shall specifically provide for coverage of the State as an additional insured and shall provide for coverage at least as broad as the standard, basic un-amended commercial general liability policy and shall be endorsed to include broad form contractual liability coverage, independent contractor's coverage and completed operations coverage.
 - 6.1.2 Automobile Liability Insurance in the minimum amount of \$1,000,000.00.
 - 6.1.3 Workers Compensation Insurance in the amount required by law.
- 6.2 A copy of each insurance policy shall be made available to the State upon request.
- 6.3 Subrecipient shall cause to be maintained Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance sufficient to protect against liabilities arising out of professional obligations performed pursuant to the requirements of this Agreement. This insurance shall be in the minimum amount of \$1,000,000.00
- 6.4 Subrecipient expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit the obligations assumed by Subrecipient pursuant to this Agreement and shall not be construed to relieve Subrecipient of liability in excess of such coverage, nor shall it preclude the State from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

7. Disbursement of Project Fund

- 7.1 It is agreed that any and all Project Costs incurred by the Subrecipient prior to the execution of this Agreement by all parties shall be non-participating by the State and FHWA.
- 7.2 The State shall disburse monies from the Project Fund to Subrecipient in order to reimburse actual, eligible costs associated with Project Work in accordance with the terms and conditions of this Agreement. Only those costs specifically enumerated in the Project Scope of Work and Cost Estimate. Nothing contained herein shall impose upon the State any obligation to ensure the proper application of the monies paid to Subrecipient from the Project Fund. Furthermore, nothing contained herein shall impose any obligation upon the State to pay to Subrecipient any monies in excess of the Project Fund. The Subrecipient shall reimburse its consultants/contractors for allowable expenses after the receipt of properly prepared payment vouchers as outlined in Section 7.5 of this Agreement. All monies shall be subject to appropriations and availability of funds.
- 7.3 The Agreement may be adjusted and/or modified unilaterally by the State to reflect the Project Costs in accordance with 23 C.F.R. § 630.106.

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- 7.4 The final eligible costs incurred by the Subrecipient during the Project may be reimbursed by the State, subject to prior written approval, the availability of funds, and at the State's sole discretion.

7.5 **Payment Vouchers**

- 7.5.1 Subrecipient shall prepare and submit payment vouchers for payment for approval by the State within three (3) months of initial billing by the contractor or design consultant, or six (6) months from award, whichever is first. Payment vouchers may be submitted as frequently as every month at most but are required at least quarterly.
- 7.5.2 If Subrecipient does not comply with the aforementioned time periods for submitting payment vouchers, the State may determine that the Project is deemed "inactive" and, as a result, Project funds may be withdrawn by the State. The Project may also be determined inactive, at the discretion of the State, for the following reasons: failure to provide billing for eligible costs within 12 months from the initial authorization or a preceding bill, the failure to perform work properly, failure to complete the project as proposed, failure to properly submit or complete the close out documents, or any reason that the State may determine based upon the Project status and remaining work to be performed. The payment vouchers shall state, with proper documentation, the amounts due to the Subrecipient for actual, eligible costs incurred in connection with the Project. The Subrecipient shall maintain a complete set of time sheets, records and accounts to identify eligible salaries, fringe benefits, leave, and non-salary direct expenses incurred in support of the Project, as well as material records, certifications, and as-built quantities.
- 7.5.3 The parties agree that the State has sole discretion to modify the initial Agreement amount to reflect the actual, eligible costs for the Project work at the time of the award concurrence.
- 7.5.4 Progress Reports will accompany all payment vouchers and shall include:
- 7.5.4.1 A narrative description of work performed during the payment period and any difficulties or delays encountered;
 - 7.5.4.2 A comparison of actual accomplishments to the goals established for the payment period;
 - 7.5.4.3 A comparison, by tasks, of costs incurred with amounts budgeted, and;
 - 7.5.4.4 A comparison, by task, of work performed compared to the schedule, including a percentage of the total work completed. This requirement can be met by including a bar chart showing schedule timing and actual progress.

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7.5.4.5 Copies of contract compliance documents as completed for the voucher payment period by the Resident Engineer that is designated by the Subrecipient, a complete set of which shall be furnished by the State at kickoff and/or preconstruction meetings.

7.5.5 The State shall review and verify such payment vouchers for payment and remunerate the Subrecipient for direct and indirect costs incurred up to a maximum Project approved budget for satisfactorily completing the Project.

7.6 Partial Payments

7.6.1 The State shall make partial payments to the Subrecipient toward the actual, eligible costs for the Project Work upon the receipt of properly drawn payment voucher for a percentage of work completed on the Project during the period as shown on the accompanying progress report. Where there is a disagreement between the State and the Subrecipient concerning the percentage of work completed during any given period, that dispute shall be resolved in accordance with Paragraph 22.3 of this Agreement.

7.6.2 Subrecipient may submit payment vouchers totaling up to 90% of the lesser of either the authorized amount or the amount eligible for State funding participation. Subrecipient shall submit a final payment voucher, within six months of final inspection, along with any necessary close out documents, for reimbursement of the remaining 10%, following receipt of written final acceptance of the Project by the State.

7.6.3 If the Subrecipient was found to be in good standing and compliance with the terms this Agreement, the Subrecipient can request compensation of a portion of the funds that were held as per Section 7.6.2 after a satisfactory final inspection by NJDOT and prior to the submittal of the final Payment voucher. Good standing can be defined as maintaining eligibility assessment, invoicing at a minimum of a quarterly basis, and receiving satisfactory reviews with regard to compliance with construction oversight inspections. This payment request will be accepted and processed at the sole discretion of the NJDOT.

7.7 Consultants and Contractors

7.7.1 The Subrecipient shall remain responsible for satisfactory performance of all work.

7.7.2 All work performed by consultant, contractors and subcontractors on the Project shall be treated as being performed by the Subrecipient.

7.7.3 Subrecipient will be paid the actual, eligible costs for the work of each contractor and consultant. The actual, eligible costs shall be considered full compensation for all costs incurred by the Subrecipient relative to the work performed by each

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contractor and consultant. Payment of the actual, eligible costs shall be made on monthly or quarterly payment vouchers submitted by the Subrecipient based upon the percentage of the contracted work completed as shown in the Subrecipient's monthly progress reports.

- 7.7.4 Subrecipient shall require its contractors and consultants to comply with the applicable cost principles set forth in this Section and the requirements of Section 12 below by placing equivalent provisions in their contracts.
- 7.7.5 Subrecipient shall require all subcontracting be performed in accordance with the Standard Specifications and 23 C.F.R. § 635.116.

8. Conflict of Interest

- 8.1 All FHWA Federal Aid Highway Program (FAHP) funds provided for locally administered projects must pass through NJDOT pursuant to 23 C.F.R §172.5. NJDOT, as the grant recipient, is responsible for ensuring the Subrecipient complies with Federal requirements. This includes ensuring sufficient controls are in place to protect the public's interest against fraud, waste, and abuse of taxpayer resources.
- 8.2 Federal requirements and FHWA policies do not expressly prohibit the use of the same consulting firm for design and construction inspection services on the same project. However, the use of the same firm for design and inspection may present potential conflicts of interest that provide opportunities that benefit the consulting engineering firm and not the Subrecipient. A consulting firm performing construction inspection services for the same federal-aid project that the firm also designed provides the firm an opportunity to influence or affect decisions on scope changes; design changes; construction revisions; contract change orders; and related issues. A firm may have a vested financial interest in failing to disclose deficiencies in its design work during construction, such as minimizing or ignoring design errors and omissions rather than serving the best interest of the public. Using a different firm for construction inspection provides an additional level of review and reduces the risk for potential conflicts of interest. Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the Subrecipient must establish appropriate compensating controls in the form of policies, procedures, practices, and other safeguards to ensure a conflict of interest does not occur in the procurement, management, and administration of consultant services as specified in 23 CFR 172.7(b)(4).

9. Liquidated Damages

- 9.1 Liquidated damages must be specified for all federally funded projects. Liquidated Damages are defined as the daily amount set forth in the contract to be deducted from the contract price to cover damages to the State and the Subrecipient as a result of the contractor's failure to complete work within the specified Contract Time. The amount of liquidated damages set forth in all contracts pursuant to this Agreement shall take into account the Subrecipient's estimated costs incurred as well as road user costs. Liquidated damages must be assessed by the Subrecipient in accordance with the Standard

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Specifications. Failure to assess liquidated damages by the Subrecipient in accordance with the Standard Specifications, contract bid documents, and federal requirements may result in the loss of federal participation of funds.

- 9.2 Contract time extensions will only be granted for excusable delays specified in the Standard Specifications. Contract time extensions must be submitted and approved by Change Order as the project progresses and at the time an excusable delay occurs in accordance with the Standard Specifications.

10. Audit Requirements

- 10.1 The Subrecipient shall provide the State with a fiscal year, organization-wide audit that has been conducted in accordance with the requirements of OMB "Supercircular" 2 C.F.R. Part 200, Audits of States, Local Governments, and Non-Profit Organizations, and State Circular Letter 04-04-OMB, Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid. If the Subrecipient is to contract with a commercial organization they must follow 48 C.F.R. § 31.2, "Contracts with Commercial Organizations." The Subrecipient shall ensure that the State receives the audit within the prescribed submission period and that this Agreement is listed on the appropriate Schedule of Financial Assistance.
- 10.2 The State, or its agents, shall be entitled to perform an audit at the following times:
- 10.2.1 At any time during the performance of work set forth in this Agreement.
- 10.2.2 During a period of up to three (3) years after either the date of payment of the Final Invoice or a date mutually agreed to by the parties.
- 10.2.3 The Subrecipient acknowledges that changes in payment due the Subrecipient resulting from audits performed by the State shall be made as follows:
- 10.2.3.1 In the event of overpayment by the State, the Subrecipient shall refund the amount of such overpayment within thirty (30) days of the request by the State. In the event the Subrecipient fails to comply with said request, the State is hereby authorized to deduct such overpayment from other monies due the Subrecipient under the terms of this Agreement or any other agreement between the State and the Subrecipient. Furthermore, the Subrecipient expressly understands and agrees that the provisions of this Section shall in no way be construed to relieve the Subrecipient from any liability, or preclude the State from taking any other actions as are available to it under any other provisions of this Agreement or otherwise at law. The terms of this section shall survive the expiration or termination of the Agreement.
- 10.2.3.2 In the event of underpayment by the State, the State shall pay sufficient funds to the Subrecipient to correct the underpayment as soon as is practicable.

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10.3 The Subrecipient shall include in the Final Invoice the following release clause:

“In consideration of the requested payment of this Final Invoice, the [Subrecipient] hereby releases the State of New Jersey and the New Jersey Department of Transportation, their agents, officers and employees, from all claims and liabilities arising from work done or services performed under this Agreement.”

10.4 Payment to the Subrecipient for a Final Invoice does not waive either the right of the State to establish adjustments and to collect overpayments that are disclosed by audits performed subsequent to payment of the Final Invoice, or the right of the Subrecipient to underpayments based upon adjustments disclosed by said audits.

11. Inspection

Subrecipient shall permit the State or any authorized representative, free access to the Project with the right to examine, visit and inspect, at any reasonable time, all work completed or in progress, labor performed and materials furnished in connection with the Project as well as Subrecipient's accounts, books and records, including its receipts, disbursements, contracts and any other matters relating thereto. Subrecipient shall supply such reports and information as the State shall reasonably request. All accounts, books, records and other documents related to the Project shall be retained by Subrecipient for a period of three (3) years after final payment is received from the State.

12. Indemnification

Subrecipient shall indemnify, defend, protect and hold harmless the State of New Jersey and its agents, servants and employees from and against any and all liability, fines, suits, claims, demands and actions, costs and reasonable expenses of any kind or nature or by anyone whomsoever, including, but not limited to, claims for personal injury, wrongful death, property damage and contractual liability due to or arising in any way out of the performance of any services, actions or operations in connection with the Project or any breach of this Agreement unless caused solely by the gross negligence or default of the State or its agents, servants or employees; provided, however, that the State shall give Subrecipient prompt notice thereof. If Subrecipient shall be required to defend in any action or proceeding pursuant to this Section to which action or proceeding the State is made a party, the State shall be entitled to participate in the matter, at its election and sole cost; provided, however, that any such action by the State does not limit or make void any liability of Subrecipient in respect to the claim or matter in question.

13. No Personal Liability

Notwithstanding anything to the contrary contained herein, the parties hereto specifically understand and agree that there shall be no personal liability imposed on the officers, employees or agents of Subrecipient or the State with respect to any of the covenants or conditions of this Agreement.

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14. Equal Opportunity

- 14.1 The parties to this Agreement do hereby agree that the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. (PL 1975, c 127, as amended and supplemented) dealing with discrimination in employment on public contracts, and the rules and regulations promulgated pursuant thereunto, are hereby made a part of this contract and are binding upon them.
- 14.2 During the performance of this contract, the Contractor agrees as follows:
- 14.2.1 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 or sex. The Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status or sex. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Division of Civil Rights/Affirmative Action setting forth provisions of this nondiscrimination clause;
- 14.2.2 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 or sex;
- 14.2.3 The Contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Division of Civil Rights/Affirmative Action, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 14.2.4 In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

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- 14.2.5 No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- 14.2.6 There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- 14.2.7 This contract may be canceled or terminated by the contracting Public Agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.
- 14.2.8 The notices referred to in Sections 14.2.1 and 14.2.3 may be obtained at the preconstruction conference.

15. Nondiscrimination

Subrecipient hereby agrees that it will comply with Title VI of the 1964 Civil Rights Act (the "Act") and related statutes and implementing regulations to the end that no person shall on the grounds of race, color, national origin, handicap, age, sex, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under the Project covered by this Agreement and, further Subrecipient agrees that:

- 15.1 It will insert the nondiscrimination notice required by the Standard Department of Transportation Title VI Assurance (DOT Order 1050.2) in all solicitations for bids for work or material, and, in adapted form, in all proposals for negotiated agreements.
- 15.2 It will insert the clauses in Appendixes A, B or C of DOT Order 1050.2 as appropriate, in all contracts, deeds transferring real property, structures, or improvements thereon or interest therein (as a covenant running with the land) and in future deeds, leases, permits, licenses, and similar agreements, related to this Project, entered into by the Subrecipient with other parties.
- 15.3 It will comply with, and cooperate with, FHWA in ensuring compliance with the terms of the standard Title VI Assurance, the act and related statutes, and implementing regulations.

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16. Disadvantaged Business Enterprises

Subrecipient hereby agrees to the following statements and agrees that these statements shall be included in all subsequent agreements between Subrecipient and any contractor:

- 16.1 It is the policy of NJDOT that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26; Titles I & V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA); the Transportation Equity Act for the 21st Century (TEA-21); and Section V, Part B below, shall have equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R., § 26(A), (C), and (F) apply to this Agreement.
- 16.2 The Subrecipient and its Contractor agree that Disadvantaged Business Enterprises, as defined in 49 C.F.R. § 26(A); and in the ISTEA and the TEA-21, and Section V, Part B below, have equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, the NJDOT and all Contractors shall take all necessary and reasonable steps in accordance with 49 C.F.R., Part 26 to ensure that Disadvantaged Businesses are given equal opportunity to compete for and to perform on NJDOT federally funded contracts. The NJDOT and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of USDOT assisted contracts.

17. No Oral Modifications

- 17.1 This Agreement may not be changed orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.
- 17.2 The Subrecipient shall request State approval for any task or line item budget revision deemed necessary to carry out the Project. The Subrecipient shall submit the request in writing to the State. The State shall provide written authorization to the Subrecipient if the request is by the State and the applicable funding agency.

18. Notices and Demands

- 18.1 All notices, demands, requests or other communications required or permitted to be given pursuant to this Agreement must be in writing.
- 18.2 All notices, demands, requests or other communications required or permitted to be given pursuant to this Agreement shall be deemed to have been properly given or served by depositing the same in the United States mail, postpaid and registered or certified, return receipt requested, or by Federal Express or similar service providing receipt against delivery, as follows:

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If to the State:

Laine Rankin
Director
Division of Local Aid and Economic Development
State of New Jersey Department of Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

Or the designated District Office, Division of Local Aid and Economic Development, serving the area of the Subrecipient:

District 1 -

Roxbury Corporate Center
200 Stierli Court
Mount Arlington, NJ 07856
Phone: (973) 601-6700
Fax: (973) 601-6709
Morris, Passaic,
Sussex and Warren

District 2 -

153 Halsey Street - 5th floor
Newark, NJ 07102
Phone: (973) 877-1500
Fax: (973) 648-4547
Bergen, Essex, Hudson,
and Union

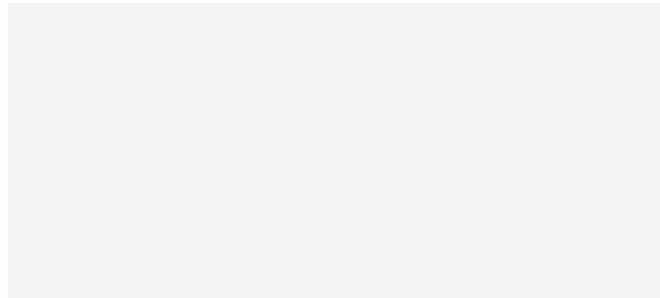
District 3 -

1035 Parkway Avenue
Trenton, NJ 08625
Phone: (732) 625-4290
Fax (609)530-8044
Hunterdon, Middlesex, Mercer,
Monmouth, Ocean and Somerset

District 4 -

1 Executive Campus
Route 70 West, 3rd Floor
Cherry Hill, NJ 08002
Phone: (856) 486-6618
Fax (856) 486-6771
Atlantic, Burlington, Camden, Cape May,
Cumberland, Gloucester and Salem

If to Subrecipient:



This section does not apply to legal notices required by law or Court Rules.

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19. Partial Invalidity

To the extent that the intent and underlying purpose of this Agreement are not compromised, the invalidity or unenforceability of any term, covenant, condition or provision of this Agreement, or its application to any persons, entities or circumstances shall not render invalid or unenforceable the remainder of this Agreement, or the application of such term, covenant, condition or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, and each term, covenant, condition and provision of this Agreement shall remain valid and enforceable to the fullest extent permitted by applicable law.

20. Further Assurances

The parties agree to cooperate with each other and to execute and deliver such further documents and assurances as may be necessary to carry out the purpose of this Agreement.

21. Subject to FHWA Regulations

Notwithstanding anything contained herein to the contrary, so long as the Project is being financed out of proceeds from the Project Fund, this Agreement and the obligations of the parties hereunder are subject to the rules and regulations promulgated by the FHWA.

22. Entire Agreement; Counterparts; Disputes

- 22.1 This Agreement contains the entire agreement between the parties hereto and supersedes any and all prior understandings and agreements, oral or written, between the parties respecting the subject matter hereof.
- 22.2 This Agreement may be executed in two or more counterparts, each of which shall be deemed a duplicate original and all of which together shall constitute one and the same Agreement.
- 22.3 In the event a dispute arises concerning the meaning of any term used in this Agreement, or the work and services required to be performed under this Agreement, or as to compensation under this Agreement, the dispute shall be decided by the Commissioner of Transportation or his duly authorized representative.

23. Choice of Law

This Agreement is being executed and is intended to be performed in the State of New Jersey and shall be governed in all respects by the laws of the State of New Jersey.

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24. Resolution

The Subrecipient shall supply the necessary resolution authorizing the Subrecipient to enter into this Agreement and this Agreement shall not become binding on either party until it is executed by the Commissioner of Transportation or the Commissioner's designee.

25. APPENDIX A - Non Discrimination - Regulations of the Department of Transportation relative to pursuant to N.J.S.A. 10:5-31 et seq. are attached hereto and made a part of this Agreement.

26. APPENDIX B - Certification of Subrecipient is attached hereto and made a part of this Agreement.

27. APPENDIX C - Certification of New Jersey Department of Transportation is attached hereto and made a part of this Agreement.

28. APPENDIX D - NJDOT Code of Ethics for Vendors is attached hereto and made a part of this Agreement.

29. APPENDIX E - Certification of Subrecipient Eligibility is attached hereto and made a part of this Agreement.

30. APPENDIX F - Americans with Disabilities Act is attached hereto and made part of this Agreement.

31. APPENDIX G – Project Scope of Work is attached hereto and made a part of this Agreement.

32. APPENDIX H – Project Cost Estimate is attached hereto and made a part of this Agreement.

March 2022

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IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to duly execute this Agreement on and as of the day and year first above written.

Project: Washington Street Corridor Improvement Project

Municipality: West Orange Township, County: Essex

Agreement Number: 2023-DT-DLA-507

Federal Project Number: D00S806

ATTEST/WITNESSED/AFFIX SEAL:

SUBRECIPIENT(LPA)

Name:
Title

Date

By:_____

Name:
Title

Date

ATTEST/WITNESSED/AFFIX SEAL:

NEW JERSEY DEPARTMENT OF

TRANSPORTATION

Anika James

Date

Department Secretary, New Jersey
Department of Transportation

By:_____

Laine Rankin

Date

Director, Division of Local Aid &
Economic Development

THIS DOCUMENT HAS BEEN REVIEWED AND APPROVED AS TO FORM

ATTORNEY GENERAL OF NEW JERSEY
MATTHEW J. PLATKIN

See DAG e-Signature

Next page

By:_____

Brad M. Reiter

Deputy Attorney General

Date

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**APPENDIX A****NONDISCRIMINATION**

During the performance of this Agreement, the SUBRECIPIENT, for itself, its assignees and successors in interest hereinafter referred to as the SUBRECIPIENT, agrees as follows:

1. Compliance with Regulations: The SUBRECIPIENT will comply with Regulations of the United States Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21 through Appendix H, and Title 23C.F.R. § 710.405(b), hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Agreement.
2. Nondiscrimination: The SUBRECIPIENT, with regard to the work performed by it after award and prior to completion of the work, will not discriminate on the basis of race, color, age, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The SUBRECIPIENT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the SUBRECIPIENT for work to be performed under a subcontract, including procurement of materials or equipment, such potential subcontractor or supplier shall be notified by the SUBRECIPIENT of the SUBRECIPIENT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, age, sex or national origin.
4. Information and Reports: The SUBRECIPIENT will provide all information and reports required by the Requisitions, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the SUBRECIPIENT is in the exclusive possession of another who fails or refuses to furnish this information, the SUBRECIPIENT shall so certify to the STATE or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the SUBRECIPIENT'S noncompliance with the nondiscrimination provisions of this contract, the STATE shall impose such sanctions as are appropriate and available under the laws of the STATE.
6. (a)Withholding of payments to the SUBRECIPIENT under the contract until the SUBRECIPIENT complies, and/or
7. (b)Cancellation, termination, or suspension of the contract, in whole or in part.

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8. This Agreement is subject to all federal, State, and local laws, rules, and regulations, including, but not limited to, those pertaining to nondiscrimination in employment and affirmative action for equal employment opportunity.
9. The SUBRECIPIENT agrees to ensure that Disadvantaged Business Enterprises (DBE's) as defined in 49 C.F.R., Part 23 and FTA Circular 4716.1A, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. Failure to make a good faith effort to meet the established DBE goal may result in sanctions as defined under paragraph 5 of this Appendix.
10. If at any time following the execution of this Agreement, the SUBRECIPIENT intends to sublet any additional portion(s) of the work or intends to purchase materials or lease equipment not contemplated during the original proposal preparation, the SUBRECIPIENT shall:
 - (a) Notify the Project initiator, in writing, of the type and approximate value of the work which the SUBRECIPIENT intends to accomplish by such subcontract, purchase order or lease.
 - (b) Give DBE firms equal consideration with non-minority firms in negotiations for any such subcontracts, purchase orders or leases.
11. Incorporation of Provisions: The SUBRECIPIENT will include the provisions of paragraph (1) through (9) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders or instructions, issued pursuant thereto.

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APPENDIX B

CERTIFICATION OF SUBRECIPIENT

In executing the Agreement the SUBRECIPIENT'S signatory certifies on behalf of the SUBRECIPIENT that neither he, nor any other officer, agent or employee of the SUBRECIPIENT has:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for him or the SUBRECIPIENT) to solicit or secure this Agreement.
2. agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement, or
3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for him or the SUBRECIPIENT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement;

The Subrecipient shall expressly state any exceptions in a disclosure letter to the STATE which shall accompany the Agreement after execution by the SUBRECIPIENT on submission to the Commissioner or his designee for execution.

The SUBRECIPIENT acknowledges that this certificate furnished to the STATE and which may be furnished to the U.S. Department of Transportation, in connection with this Agreement, is subject to applicable State and Federal laws, both criminal and civil.

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APPENDIX C

CERTIFICATION OF NEW JERSEY DEPARTMENT OF TRANSPORTATION

In executing the Agreement the STATE'S signatory certifies that to the best of his knowledge, the SUBRECIPIENT or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

1. employ or retain, or agree to employ or retain, any firm or person, or
2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.



APPENDIX D

NJDOT CODE OF ETHICS FOR VENDORS

1. No vendor* shall employ any NJDOT officer or employee in the business of the vendor or professional activity in which the vendor is involved with Department officer or employee.
2. No vendor shall offer or provide any interest, financial or otherwise, direct or indirect, in the business of the vendor or professional activity in which the vendor is involved with the Department officer or employee.
3. No vendor shall cause or influence or attempt to cause or influence any NJDOT employee or officer in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that NJDOT officer or employee.
4. No vendor shall cause or influence, or attempt to cause or influence, any NJDOT officer or employee to use or attempt to use his or her official position to secure any unwarranted privileges or advantages for that vendor or for any other person.
5. No vendor shall offer any NJDOT 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 SUBRECIPIENT in the discharge of his or her official duties. In addition, employees or officers of NJDOT 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.

NOTE: This section would permit an NJDOT employee or officer to accept food or refreshments of relatively low monetary value provided during the course of a meeting, conference or other occasion where the employee is properly in attendance (for example - coffee, danish, tea or soda served during a conference break). Acceptance of unsolicited advertising or promotional materials of nominal value (such as inexpensive pens, pencils or calendars) would also be permitted.

Any questions as to what is or is not acceptable or what constitutes proper conduct for a Departmental employee or officer should be referred to the Department's Ethics Liaison Officer or his or her designee.

6. This code is intended to augment, not to replace existing administrative orders and the current Departmental Code of Ethics.
7. This code shall take effect immediately upon approval of the NJ Executive Commission on Ethical Standards and adoption by the NJDOT.

*Vendor is defined as any general contractor, subcontractor, consultant, person, firm, corporation or organization engaging in or seeking to do business with NJDOT.

Adopted on the 16th day of December, 1987

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APPENDIX E

CERTIFICATION OF SUBRECIPIENT ELIGIBILITY

I _____ hereby certify under penalty of perjury under the laws of the United States, that except as noted below, the company or any person associated therewith in the capacity of owner, partner, director, officer, principal, Project director, manager, auditor, or any position involving the administration of State funds:

is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal, State or local government agency;

has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal, State or local government agency within the past 3 years;

does not have a proposed debarment pending; and

has not been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

(Insert exceptions - for any exception noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. If no exceptions, insert "None".)

Attest:

SUBRECIPIENT

Name/Title

Name/Title

Date: _____



APPENDIX F

AMERICANS WITH DISABILITIES ACT

Equal Opportunity For Individuals With Disabilities.

The SUBRECIPIENT and the STATE do hereby agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. Sec. 12101 et seq.), which prohibits 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 pursuant thereto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the STATE pursuant to this contract, the SUBRECIPIENT agrees that the performance shall be in strict compliance with the Act. In the event that the SUBRECIPIENT, its agents, servants, employees, or sub consultants violate or are alleged to have violated the Act during the performance of this contract, the SUBRECIPIENT shall defend the STATE in any action or administrative proceeding commenced pursuant to this Act. The SUBRECIPIENT shall indemnify, protect, and save harmless the STATE, its 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 SUBRECIPIENT 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 STATE'S grievance procedure, the SUBRECIPIENT agrees to abide by any decision of the STATE which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the STATE or if the STATE incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the SUBRECIPIENT shall satisfy and discharge the same at its own expense.

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

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

It is further agreed and understood that the STATE assumes no obligation to indemnify or save harmless the SUBRECIPIENT, its agents, servants, employees and sub consultants for any claim which may arise out of their performance of this Agreement. Furthermore, the SUBRECIPIENT expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the SUBRECIPIENT'S obligations assumed in this Agreement, nor shall they be construed to relieve the SUBRECIPIENT from any liability, nor preclude the STATE from taking any other actions available to it under any other provisions of this Agreement or otherwise at law.