

**Request for Proposals (RFP) to Develop a  
Highlands Regional Master Plan (RMP)  
Monitoring Program Recommendation Report (MPRR)**

**I. Request to Submit Proposals**

The Highlands Council is undertaking an update of the Regional Master Plan (RMP) known as the Regional Master Plan Recommendation Report (MPRR) per the requirements set forth in the Highlands Act (N.J.S.A. 13:20-8.a.) and Regional Master Plan (Chapter 6, Part 3, Subpart B). In accordance with RMP *Policy 10.A5* a Regional Master Plan Monitoring Program briefing document and report which develops potential indicators and milestones for the evaluation of regional conditions, identifies potential new or emerging issues, and identifies potential RMP priorities must be created. These analyses support the baseline assessment of the effect of the 2008 RMP on the Highlands Region including but not limited to population, income, employment, preserved land, development densities, building permits, property values, infrastructure, and transportation data. The RMP Monitoring Program will track the achievement of the proposed indicators and milestones and also present a fiscal impact assessment of the overall health of the Highlands Region economy as compared to the rest of the state.

The RMP Monitoring Program briefing document will be informed by a series of public outreach sessions, web based comment portal results, public comment period(s) and include the development of a public comment summary document. Working with Council staff, the respondent will use the findings of the briefing document and recommendations from the public, stakeholder groups, the Highlands Council and its staff to develop a MPRR that includes recommendations for regional indicators and milestones to improve implementation of the RMP. The RMP MPRR upon adoption by the Highlands Council will inform the monitoring activities to be conducted by the Council and guide potential amendments to the current and future iterations of the RMP.

**II. Scope of Services**

The Respondent will provide all necessary personnel and materials to undertake any coordination with the Council's point of contact to complete the following tasks:

**Task A: Compile a series of RMP MPRR appropriate indicators and milestones**

Compile a series of RMP data driven indicators, including indicators from the Fiscal Impact Assessment update (developed pursuant to a separate RFP), that demonstrate local, regional and state wide conditions including but not limited to population, income, employment, preserved land, developed land, redevelopment activity, water quality conditions, development densities, building permits, property values, infrastructure, and transportation information before development of the 2008 RMP and at present time. Indicators should be available at regular intervals into the foreseeable future and be available for both the Highlands Region and the rest of the state and have an associated milestone that may serve as a monitoring program component.

- a. Using the indicators identify key trends in the Region for the 2004- 2014 time period and anticipated conditions for the 2014-2024 time period. The analysis shall identify the overall land use and development trends within the State, Northern New Jersey, and the Highlands Region as well as be able to identify conditions that are unique to Highlands municipalities; and

- b. Based on the indicators, develop appropriate suggested milestones for the monitoring activities that may serve to evaluate current and future iterations of the RMP.

**Task A Deliverables:**

- a. List of indicators with data points, sampling dates, sources, and update frequency;
- b. List of proposed milestones for the MPRR; and
- c. Charts, maps, or other graphically compelling representation of data analysis.

**Task B: Stakeholder and Technical Advisory Committee groups**

- a. The respondent will prepare for and host individual Stakeholder meetings with each of the relevant State Agencies (Department of Environmental Protection, Department of Agriculture, Department of Transportation, and Office of Planning Advocacy), and Highlands focused advocacy organizations and institutions as determined by the Highlands Council;
- b. Prepare for and host Technical Advisory Committees (minimum of two) to address topic specific issues as determined by the Highlands Council;
- c. Prepare, for each meeting, a briefing document which outlines regional resources, pertinent to the topics of discussion, and how such resources are impacted by the RMP; and
- d. Prepare, for each meeting, a series of questions and sub-topics related to implementation and improvement of the RMP for discussion.

**Task B Deliverables:**

- a. Briefing documents prepared prior to each Stakeholder and Technical Advisory Committee meeting;
- b. Questions and topics to be discussed with each Stakeholder and Technical Advisory Committee group;
- c. Stakeholder and Technical Advisory Committee meeting summary reports and findings; and
- d. Prepare task materials required for RMP Monitoring Program briefing report and MPRR.

**Task C: Public Outreach Sessions**

- a. Prepare for and host outreach sessions as directed by the Highlands Council;
- b. Prepare, for each meeting, a briefing document which describes the overall goals and the role of the RMP, the current status of Plan Conformance, the role of the Highlands Transfer of Development Rights (TDR) Program in the Region, the history and development patterns in the Region and surrounding areas, and the results of the indicator analysis described above; and

- c. Compile and summarize the results from public outreach for web distribution.

**Task C Deliverables:**

- a. Prepare a public outreach MPRR briefing document that includes relevant information from tasks A and B above;
- b. Public Outreach sessions; and
- c. Prepare a public comment summary and synthesis document to support the MPRR.

**Task D: Develop, with Council staff, the MPRR**

Develop, with Council staff, the MPRR (RMP Chapter 6: Part 3-Subpart B) which will identify indicators and milestones for baseline conditions and future monitoring program needs; incorporate the fiscal impact assessment details regarding the overall health of the Highlands Region as compared to the rest of the state; and suggested programmatic revisions and enhancements to the RMP as well as other programs.

The MPRR shall specifically address the following topic areas:

- a. Natural Resources including associated Goals, Policies and Objectives (RMP Chapter 4- Part 1) and Programs (RMP Chapter 5- Part 1);
- b. Water Resources and Water Utilities including associated Goals, Policies and Objectives (RMP Chapter 4- Part 2) and Programs (RMP Chapter 5- Part 2);
- c. Agricultural Resources including associated Goals, Policies and Objectives (RMP Chapter 4- Part 3) and Programs (RMP Chapter 5- Part 3);
- d. Historic, Cultural, Archeological, and Scenic Resources including associated Goals, Policies and Objectives (RMP Chapter 4- Part 4) and Programs (RMP Chapter 5- Part 4);
- e. Transportation including associated Goals, Policies and Objectives (RMP Chapter 4- Part 5) and Programs (RMP Chapter 5- Part 5);
- f. Future Land Use including associated Goals, Policies and Objectives (RMP Chapter 4- Part 6) and Programs (RMP Chapter 5- Part 6);
- g. Land Owner Equity including associated Goals, Policies and Objectives (RMP Chapter 4- Part 7) and Programs (RMP Chapter 5- Part 7);
- h. Sustainable Economic Development including associated Goals, Policies and Objectives (RMP Chapter 4- Part 8) and Programs (RMP Chapter 5- Part 8);
- i. Air Quality including associated Goals, Policies and Objectives (RMP Chapter 4- Part 9) and Programs (RMP Chapter 5- Part 9) and;

- j. Implementation including: RMP conformance consistency, and coordination (Chapter 6- Part 1), Highlands project review (Chapter 6- Part 2), improvement of the RMP (Chapter 6- Part 3), and Highlands Council Implementation Programs (Chapter 6- Part 4).

**Task D Deliverables:**

- a. Draft MPRR;
- b. Presentation of the MPRR to the Highlands Council at a regularly scheduled public meeting; and
- c. Final MPRR.

**Task E: Develop, with Council staff, a proposed science and research agenda**

Develop, with Council staff, a proposed science and research agenda to update and enhance the knowledge base that supports the RMP (RMP Chapter 6: Part 3- Subpart A) and associated Technical Reports.

**Task E Deliverables:**

- a. Working with Council staff, develop a proposed RMP science and research agenda based on the findings of Tasks A through E above to be included in the MPRR.

**Timeframe**

The Council anticipates that the timeframe to complete the Scope of Service will be ten to twelve months. The Respondent shall prepare regular progress reports for Highlands Council review.

The Respondent's ability to devote sufficient resources to these tasks in the expected timeframe should be reflected in its detailed schedule (see Section III, B.2), although the Respondent may propose alternative timeframes that achieve a reasonable completion of the Scope of Services in an expedited manner. The Highlands Council will consider the Respondent's proposed timeframe in the awarding of this Project.

**III. RFP Submittal Requirements**

A. Qualifications Submittal: Proposals must include the following items:

1. A cover letter setting forth the experience of each member-component of the Respondent, including any proposed sub-consultant's experience, describing work performed on similar projects; key personnel qualifications and relevant planning, design, and/or landscape architecture experience; understanding of the Project and the Highlands Council's needs; approach to the Project; and commitment and ability to perform the Project;
2. A concise reflection of the Act, RMP, and implementing programs (i.e. Plan Conformance, Center Designation, Grants, etc.) demonstrating the Respondents' thorough knowledge of the subject area's goals, policies, and objectives and means for effectuating them.
3. Resumes of qualified professionals who will be responsible for assisting with or completing assigned tasks;

4. A statement detailing the Respondent's availability over the next 12 to 18 months and its availability during that time to work interactively with Highlands Council staff at the Council offices in Chester, NJ;
5. A statement indicating that the Respondent has no existing or foreseeable conflicts that would prevent it from performing the Scope of Services;
6. A statement indicating that the Respondent is agreeable to contracting in accordance with the Council's Contract Standard Terms and Conditions (T&C's) (see Appendix D), or in the alternative, if the Respondent seeks to take any exceptions to the T&C's, specific wording changes must be submitted with the response;
7. An organizational structure (flow chart), showing all personnel who would work on Highlands Council assignments, along with any alternate personnel or sub-consultants the Respondent may consider utilizing;
8. Examples of previous work products, publications, reports, and experience with similar efforts to those outlined in the Scope of Services of Section II, above;
9. A matrix that graphically depicts the key personnel identified in paragraph 7, above, who worked on the example projects listed in paragraph 8, above, and what his/her role was with respect to each example project (see example below). Also list the roles and responsibilities each of those personnel will have with respect to the proposed project outlined in the Scope of Services of Section II, above;

Personnel	Role	Example Project	Example Project	Example Project
Jane A. Smith	Chief Planner	X		X
Joe A. Smith	Chief Landscape Architect		X	X
Jane A. Doe	Professional Landscape Architect		X	

10. If the Respondent, or any principal therein or member of a team (in his or her official capacity with the Respondent), is or has been engaged in any litigation as a defendant, and which relates in any manner to the type of services to be provided pursuant to this RFP, and/or is or was subject to any professional disciplinary action within three (3) years of the date of the release of this RFP, provide a description of the litigation and/or disciplinary action, as well as the outcome and/or resolution of the matter;
11. A listing of up to three(3) current clients (private or public), where the Respondent is, or members thereof are, conducting work that is comparable to the Scope of Services of Section II, above;

12. Three (3) references, including at least two (2) clients for whom services have been provided within the past three (3) years regarding efforts similar to those outlined in the Scope of Services of Section II, above. Provide the contact names, positions, email addresses and phone numbers for representatives of each entity listed as a reference. The Highlands Council reserves the right to contact references for information that may be used in the evaluation process; and

13. Contact Information: Provide the name and address of the Respondent, the name, telephone number, facsimile number and email address of the individual responsible for preparation of the response to this proposal who may be contacted in the event of questions or notification, and the location of the office, if other than that shown above at which the services to be provided hereunder will be performed.

B. Technical Proposals must include the following items:

1. A detailed approach for achieving satisfactory results regarding the Scope of Services of Section II, above; and
2. A detailed schedule and flow-chart of tasks for completion of the Scope of Services.

C. Rate Schedules & Budget: The Proposal must include in a separate sealed envelope (please mark as confidential):

1. A rate schedule that details fully loaded project hourly rates, which includes all overhead and profit that may be incurred in performing the project;
2. A project budget in an Excel type format that presents the estimated staff hours (by title and rate) to be allocated to each proposed task to be performed per the Scope of Services. Three hard copies of the chart shall be submitted as well as an electronic version; and
3. Note: All direct expenses shall be billed at cost.

D. Three (3) hard copies and one (1) electronic version of the complete Proposal, including Qualifications Submittal, Technical Proposal, and Rate Schedule & Budget must be received no later than 5:00 p.m. Friday, March 7, 2014. Proposals must be mailed or delivered to: New Jersey Highlands Council, 100 North Road (Route 513), Chester, New Jersey 07930, attention: Kim Ball Kaiser, Staff Attorney. [kim.kaiser@highlands.state.nj.us](mailto:kim.kaiser@highlands.state.nj.us). Late Proposals will not be considered.

#### **IV. General Requirements and Information**

A. Any firm or individual who is considering responding to this RFP is required to so state its intention in an email addressed to [kim.kaiser@highlands.state.nj.us](mailto:kim.kaiser@highlands.state.nj.us). The email shall include the following caption: "NOTICE OF INTENTION-RMP RECOMMENDATION REPORT RFP." The email shall include the following information: 1) the name and address of the primary entity considering responding to the RFP; 2) the name of an individual associated with such potential respondent to whom any future correspondence during the submission process may be made by the Council; and 3) the email address and telephone number of such individual. **NOTE:**

Submission of such information is mandatory, but it does not bind or commit the potential respondent to responding to this RFP. Rather, this information will be used to disseminate any addenda, including any clarifications or other notifications that may be issued by the Highlands Council in connection with this RFP.

- B. If a response is submitted by a corporation (joint venture, associated Respondents, etc.), the Proposal shall be signed by a corporate officer authorized to do so. If made by an individual, that individual shall sign it. One or more of the partners shall sign if the Respondent is a general partnership, or by the managing partner or general partner if a limited partnership. If submitted by a limited liability company, the submittal shall be signed by a managing member.
- C. The Highlands Council reserves the right to require the submission of additional information regarding experience and qualifications as it may deem necessary, and may consider any available evidence on the financial, technical, or other qualifications and abilities of the Respondent.
- D. Only the interpretations and/or corrections issued as a written Addendum to the RFP by a representative of the Highlands Council shall be binding. No other source is authorized to give information regarding any explanation or interpretation of the RFP. Accordingly, any questions regarding this RFP must be submitted in writing to: Kim Ball Kaiser, Staff Attorney, NJ Highlands Council, 100 North Road, Chester, NJ 07930 or by email to: [kim.kaiser@highlands.state.nj.us](mailto:kim.kaiser@highlands.state.nj.us). Respondents to this RFP are instructed not to communicate in any other manner than as set forth immediately above with any other representatives of the Highlands Council during the submission process, and not to communicate with any representatives of the Highlands Council during the selection process for this contract, unless such communication was initiated by a representative of the Highlands Council in connection with any request for clarification to a response. In the event that any Addenda or clarifying communication arises out of a question submitted by a respondent or Respondent, the said clarification and response or Addendum shall be issued to all Respondents who have provided contact information as required in Section IV.A., above.
- E. This RFP does not commit the Highlands Council to award a contract to any Respondent or to pay any costs incurred in the preparation or mailing of the Proposal.
- F. The Highlands Council reserves the right to reject all Proposals, reduce the scope of work, or abandon all or part of this Project, prior to award of any contracts, pursuant to N.J.S.A. 13:20-1et seq. Proposals may be rejected for any or no reason.
- G. The Highlands Council reserves the right to waive any and all irregularities and informalities in the Proposals, and to request clarification of qualifications prior to qualifying a Respondent.
- H. The selected Respondent must provide certification and disclosure documents in compliance with Public Law 2005, Chapter 51; Public Law 2005, Chapter 271, and Executive Order 129 (codified as P.L. 2005, c. 92) prior to the award of any contract. Certification forms relating to these provisions are attached hereto as Appendices A, B, and C respectively.

- I. Pursuant to N.J.S.A. 52:32-44, the selected Team must provide proof of valid business registration with the Division of Revenue in the Department of Treasury prior to the award of any contract.
- J. If awarded the contract, the selected Respondents shall be required to comply with the requirements of N.J.S.A. 10:5-31 etseq. and N.J.A.C. 17:27-1.1 etseq. regarding affirmative action.
- K. After the receipt of proposals, the Highlands Council reserves the right to negotiate with any number of Respondents it chooses in its discretion prior to awarding a contract.
- L. Documents/information submitted in response to this RFP generally shall be available to the public except as protected from disclosure by the common law, and State law, including the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 etseq.

#### **V. Team Selection Process**

- A. Based upon the Proposals, taking into consideration staff's recommendation, and its own determination as to which proposal is most advantageous to the needs of the Highlands Council, the Council may issue a contract award. In selecting the most qualified Team for the services of this RFP, the Highlands Council will consider the following:
  - 1. The background, qualifications, skills, and experience of the Respondent and its staff;
  - 2. The Respondent's degree of expertise concerning the area at issue;
  - 3. The Respondent's proposed technical approach to the issues raised in the Project description or specifications;
  - 4. The Respondent's capacity to meet the requirements of the Project at issue within the timeframe established by the Highlands Council;
  - 5. The rate or price to be charged by the Respondent;
  - 6. The Highlands Council's prior experiences (if any) with the Respondent;
  - 7. The Respondent's familiarity with the work, requirements, and systems of the Highlands Council;
  - 8. The Respondent's references;
  - 9. Interviews with prospective Respondents;
  - 10. Geographical location of the Respondent's offices;
  - 11. The nature and extent to which the Respondent has taken exceptions to the Council's Contract Standard Terms and Conditions (T&C's) contained in Appendix D; and



12. Familiarity with all applicable State and federal laws and regulations.

- B. Upon selection of the qualified Respondent, the Highlands Council and the Respondent will negotiate a professional services contract. Additionally, the Highlands Council and the selected Respondent will develop cooperatively a detailed Scope of Services consistent with the Scope of Work set forth hereinabove at Section II, which will set forth the particular tasks to be conducted and the schedule for completion of those tasks. The professional services contract will include the Highlands Council's Professional Services Contract Standard Terms and Conditions, which are attached hereto as Appendix D.

#### **VI. Term and Termination**

- A. The initial term of the professional services contract shall be for a period of eighteen (18) months from when it is formally entered into by the parties, and may be extended upon agreement by both parties in the event that the detailed Scope of Services requires additional time for effective completion.
- B. The Highlands Council may, at any time, terminate the professional services contract in whole or in part for the Highlands Council's convenience and without cause as determined by the Highlands Council in its sole discretion. Upon receipt of an order of termination for convenience, the Respondent shall not proceed with any item of work, unless specifically authorized to do so in writing. In such a case, unless mutually agreed to by the parties, the Respondent will not be entitled to payment for any services provided after the effective date of such termination.

If there are any questions regarding this Request for Proposals, please contact Ms. Kaiserin writing to NJ Highlands Council, 100 North Road, Chester, NJ 07930 by e-mail at [kim.kaiser@highlands.state.nj.us](mailto:kim.kaiser@highlands.state.nj.us).

#### **NEW JERSEY HIGHLANDS COUNCIL**



**Gene F. Feyl**  
Executive Director

Dated: 1-17-14

# **APPENDIX A**

The Bidder (Vendor) should complete the required Certification and Disclosure forms and submit them, together with a completed Ownership Disclosure form, **to the using agency, department or the Purchase Bureau**. Instructions for completing this form are at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>.

### Part I: Certification

I hereby certify as follows:

1. On or after October 15, 2004, the below-named person or entity has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, company or organization Contributions, as set forth below that would bar the award of a contract to the Bidder, pursuant to the terms of Public Law 2005, Chapter 51 (N.J.S.A. 19:44A-20.13-20.25, superseding Executive Order 134 (2004)).
  - a) **Within the 18 months immediately preceding the Solicitation (exclusive of any contributions made prior to October 15, 2004), the below-named person or organization has not made a Contribution to**
    - (i) Any candidate committee and/or election fund of any candidate for or holder of the public office of Governor; or
    - (ii) Any State or county political party committee.
  - b) **During the term of office of the current Governor (exclusive of any Contributions made prior to October 15, 2004), the below-named person or organization has not made a Contribution to**
    - (i) Any candidate committee and/or election fund of the governor; or
    - (ii) Any State or county political party committee nominating such Governor in the election preceding the commencement of said Governor's term.
  - c) **Within the 18 months immediately prior to the first day of the term of office of the Governor (exclusive of any Contributions made prior to October 15, 2004), the below-named person or organization has not made a Contribution to**
    - (i) Any candidate committee and/or election fund of the Governor; or
    - (ii) Any State or County political party committee of the political party nominating the successful gubernatorial candidate in the last gubernatorial election.
2. If the Bidder is awarded a contract pursuant to the solicitation for this bid proposal, the below-named person or organization will, on a continuing basis, continue to report any Contributions it makes during the term of the contract, and any extension(s) thereof.

Public Law 2005, Chapter 51

Formerly:



Bidder: \_\_\_\_\_

**Part II: Disclosure**

Following is the required disclosure of all Contributions made from October 15, 2004, through the date of signing of this Certification and Disclosure to: (i) any entity designated and organized as a "political organization" under 26 U.S.C.A. § 527 that is also defined as "continuing political committee" under N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1 or (ii) any candidate committee and/or election fund of any candidate for or current holder of the public office of Governor; and any State or county political party committee. Such an entity is identified in the following chart as a "Committee."

Name and Address of Committee	Date of Contribution	Amount of Contribution	Type of Contribution i.e., Currency, Check, Loan, In Kind	Donor
<b>Indicate "none" if no Contributions were made. Attach additional pages if necessary.</b>				

#1

**Certification on behalf of a COMPANY or organization:**

I certify as an officer or authorized representative of the Company or Organization identified below that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Name of Company or Organization: \_\_\_\_\_

Signed: \_\_\_\_\_ Title: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

(check one) (A)  The **Company** or Organization is the Bidder, or (B)  The **Company** or Organization is a Principal (more than 10% ownership or control) of the Bidder, a Subsidiary controlled by the Bidder, or a Political Organization (eg, PAC) controlled by the Bidder.

#2

**Certification by an individual** – for use by the individual Bidder, or as a Principal (more than 10% ownership or control) of the Bidder, or as the spouse or child of the Bidder:

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

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

#3

**Note: A person may certify BOTH as an officer or authorized representative of the Bidder, AND in his or her individual capacity, as a Principal of the Bidder.**

# Instructions

## Instructions for Completing “Contractor Certification and Disclosure of Political Contributions” Forms

### Who Should Sign and Submit Certification and Disclosure Forms

Public Law 2005, Chapter 51 requires submission of a Certification and Disclosure form from each Bidder with which the State intends to contract, as well as other related individuals or entities, depending upon the Bidder’s organizational structure. The following provides a summary of the most common requirements:

#### **Where the Bidder is a corporation or other business organization:**

Submit separate Certification and Disclosure forms for each of the following:

- The Bidder, certified by an officer or other authorized representative; AND
- All “Principals” of the Bidder’s Business Entity; namely, any individual or entity owning or controlling more than 10% of the Bidder’s Business Entity; AND
- Any subsidiary controlled by the Bidder’s Business Entity; AND
- Any Political Organization (as defined above, under “Business Entity”) controlled by the Bidder’s Business Entity.

#### Ownership Disclosure Forms

In order to determine whether all required “Principals” of the Bidder have submitted the necessary forms, the Bidder must submit a copy of an Ownership Disclosure form. This disclosure is required by statute – see N.J.S.A. 52:25-24.2. Generally, the contracting agency will provide the appropriate form to use for this purpose. Otherwise, please use the Ownership Disclosure form available at the Division of Purchase and Property’s website, at: <http://www.state.nj.us/treasury/purchase/forms/pbodf.pdf>.

**ONE FORM** may be used to submit compliance documentation on behalf of the Bidder *and* as a Principal (more than 10% owner) of the Bidder, as long as appropriate representatives have signed *both* in the space provided for signature on behalf of the company, as an officer or other authorized representative, *and* in the space provided for individual signature.

#### **Where the Bidder is an individual (including a sole proprietor), not a corporation or other business organization:**

Unless separate Certification and Disclosure forms are submitted, one Certification and Disclosure will be deemed to encompass all of the following persons or organizations:

- The Bidder; AND
- Any spouse or children of legal age, residing in the same household; AND
- Any Political Organization (as defined above) controlled by the Bidder’s Business Entity.

# Instructions

## Contractor Certification and Disclosure of Political Contributions

### Examples

***Scenario One: Two individuals each own 50% of the Bidder:*** Three signatures are required – one on behalf of the Bidder and one by each individual owner of more than 10% of the Bidder. NOTE: If one of the Principals (owners) signs on behalf of the Bidder, that Principal may also sign the same form, in his or her individual capacity. However, the other Principal must sign and submit a separate Certification and Disclosure form. Accordingly, either two or three separate Certification and Disclosure forms will be submitted.

***Scenario Two: An individual owns 100% of a Bidder:*** Two signatures are required: the individual owner can submit one Certification and Disclosure form, provided he or she has signed in the space provided for signature on behalf of the Bidder (“ARROW #2”> “Certification on behalf of a company or organization”) and in the space provided for individual signature (“ARROW #3”> “Certification by an individual...”).

***Scenario Three: Four individuals and one corporation each own 20% of the Bidder:*** six signatures are required – one by each individual and corporate owner of more than 10% of the Bidder, and one on behalf of the Bidder. NOTE: As in Scenario One, above, if one of the Principals (owners) signs on behalf of the Bidder, that Principal may also sign the same form, in his or her individual capacity.

***Scenario Three: The Bidder is an individual,*** conducting business in his or her own name, or as a sole proprietorship: certification and disclosure by the Bidder applies to that person’s spouse and/or legal age child living in the same household, unless separate certification and disclosure forms are submitted.

Additional scenarios are the subject of some of the Questions and Answers posted on the Division of Purchase and Property’s website. Please refer to that site, at <http://www.state.nj.us/treasury/purchase/execorder134.htm> for additional information, or to submit questions regarding the completion of Political Contribution Compliance (EO 134) forms.

### Continuing Disclosure Obligation

Pursuant to Public Law 2005, Chapter 51, all business entities which have been awarded a State contract on or after October 15, 2004, in an amount in excess of \$17,500, have a continuing obligation to disclose all Contributions made during the term of such contract.

Such disclosures are to be submitted by the business entity to the Agency or Agencies which awarded the applicable contract(s). The disclosures are to be made using the standard Certification and Disclosure form, which may be downloaded from the Division of Purchase and Property’s website.

# Instructions

## Contractor Certification and Disclosure of Political Contributions

### Agency Submission of Forms

The agency should submit the completed and signed Contractor Political Contribution Compliance (EO 134) and Ownership Disclosure forms, with an Executive Summary of Transaction form (available online at: [http://www.state.nj.us/treasury/purchase/forms/eo134/dpp\\_134\\_esp.pdf](http://www.state.nj.us/treasury/purchase/forms/eo134/dpp_134_esp.pdf)), **completed by the agency**, to:

Chapter 51 Review Unit  
P.O. Box 039  
33 West State Street, 9<sup>th</sup> Floor  
Trenton, New Jersey 08625

The agency should keep the original forms in its file, and submit copies to the Chapter 51 Review Unit.

### Questions & Answers

Questions regarding the interpretation or application of **Public Law 2005, Chapter 51** (N.J.S.A. 19:44A-20.13-20.25, superseding Executive Order 134) (2004)) may be submitted electronically through the website of the Department of the Treasury, Division of Purchase and Property, <http://www.state.nj.us/treasury/purchase/execorder134.htm>. Responses to questions are posted at the website, as are additional reference materials and forms.

### Definitions:

**“Chapter 51”** -- means Public Law 2005, Chapter 51 (N.J.S.A. 19:44A-20.13-20.25, superseding Executive Order 134 (2004)).

**“Business Entity”** – means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. It also includes (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under 26 U.S.C.A. § 527 that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person’s spouse or child, residing in the same household.

**“Contribution”** – means a contribution reportable by the recipient under the “New Jersey Campaign Contributions and Expenditures Reporting Act,” P.L. 1973, c.83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-10.1 et seq. Contributions made prior to January 1, 2005 in an amount in excess of \$400 during a reporting period are deemed “reportable” under these laws. As of January 1, 2005, contributions in excess of \$300 are deemed “reportable.”

References to **“Bidder”** include, but are not limited to, all entities which contemplate entering into a contractual relationship with the State, including vendors, potential vendors, contractors, consultants, sellers.

# IMPORTANT NOTICE

## NEW “PAY-TO-PLAY” RESTRICTIONS TO TAKE EFFECT NOVEMBER 15, 2008

Governor Jon S. Corzine recently signed Executive Order No. 117, which is designed to enhance New Jersey’s efforts to protect the integrity of government contractual decisions and increase the public’s confidence in government. The Executive Order builds on the provisions of P.L. 2005, c. 51 (“Chapter 51”), which limits contributions to certain political candidates and committees by for-profit business entities that are, or seek to become, State government vendors.

Executive Order No. 117 extends the provisions of Chapter 51 in two ways:

1. The definition of “business entity” is revised and expanded so that contributions by the following individuals also are considered contributions attributable to the business entity:
  - Officers of corporations and professional services corporations, with the term “officer” being defined in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1), with the exception of officers of non-profit entities;
  - Partners of general partnerships, limited partnerships, and limited liability partnerships and members of limited liability companies (LLCs), with the term “partner” being defined in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1); and
  - Spouses, civil union partners, and resident children of officers, partners, LLC members and persons owning or controlling 10% or more of a corporation’s stock are included within the new definition, except for contributions by spouses, civil union partners, or resident children to a candidate for whom the contributor is eligible to vote or to a political party committee within whose jurisdiction the contributor resides.
2. Reportable contributions (those over \$300.00 in the aggregate) to legislative leadership committees, municipal political party committees, and candidate committees or election funds for Lieutenant Governor are disqualifying contributions in the same manner as reportable contributions to State and county political party committees and candidate committees or election funds for Governor have been disqualifying contributions under Chapter 51.

***Executive Order No. 117 applies only to contributions made on or after November 15, 2008, and to contracts executed on or after November 15, 2008.***

Updated forms and materials are currently being developed and will be made available on the website as soon as they are available. In the meantime, beginning November 15, 2008, prospective vendors will be required to submit, ***in addition to the currently required Chapter 51 and Chapter 271 forms***, the attached Certification of Compliance with Executive Order No. 117.



**Certification on Behalf of A Company, Partnership or Organization and All Individuals  
Whose Contributions are Attributable to the Entity  
Pursuant to Executive Order No. 117 (2008)**

I hereby certify as follows:

On or after November 15, 2008, neither the below-named entity nor any individual whose contributions are attributable to the entity pursuant to Executive Order No. 117 (2008) has solicited or made any reportable contribution of money or pledge of contribution, including in-kind contributions or company or organization contributions, to the following:

- a) **Any candidate committee and/or election fund of the Governor;**
- b) **A State political party committee;**
- c) **A legislative leadership committee;**
- d) **A county political party committee; or**
- e) **A municipal political party committee.**

I certify as an officer or authorized representative of the Company or Organization identified below that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

**Name of Company, Partnership or Organization:**

\_\_\_\_\_

**Signed:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**(circle one) (A) The Company, Partnership or Organization is the vendor;**

**or**

**(B) the Company, Partnership or Organization is a Principal (more than 10% ownership or control) of the vendor, a Subsidiary controlled by the vendor, or a Political Organization (e.g., PAC) controlled by the vendor.**

*\*Please note that if the person signing this Certification is not signing on behalf of all individuals whose contributions are attributable to the entity pursuant to Executive Order No. 117 (2008), each of those individuals will be required to submit a separate individual Certification.*

**Individual Certification of Compliance with Executive Order No. 117 (2008)**

I hereby certify as follows:

On or after November 15, 2008, I have not solicited or made any reportable contribution of money or pledge of contribution, including in-kind contributions or company or organization contributions, to the following:

- a) Any candidate committee and/or election fund of the Governor;**
- b) A State political party committee;**
- c) A legislative leadership committee;**
- d) A county political party committee; or**
- e) A municipal political party committee.**

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

**Signed:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

# **APPENDIX B**

**PUBLIC LAW 2005, C. 271  
VENDOR CERTIFICATION AND POLITICAL CONTRIBUTION DISCLOSURE FORM**

Contract Reference No:

Vendor:

At least ten (10) days prior to entering into the above-referenced contract, the Vendor must complete this Certification and Disclosure Form, in accordance with the directions below and submit it to the State contact for such contract. **Please note that the disclosure requirements under Public Law 2005, Chapter 271 are separate and different from the disclosure requirements under Public Law 2005, Chapter 51 (formerly Executive Order 134). Although no vendor will be precluded from entering into a contract by any information submitted on this form, a vendor's failure to fully, accurately and truthfully complete this form and submit it to the appropriate State agency may result in the imposition of fines by the New Jersey Election Law Enforcement Commission.**

### **Disclosure**

Following is the required Vendor disclosure of all Reportable Contributions made in the twelve (12) months prior to and including the date of signing of this Certification and Disclosure to: (i) any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or (ii) any entity that is also defined as a "continuing political committee" under N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.

The Vendor is required to disclose Reportable Contributions by: the Vendor itself; all persons or other business entities owning or controlling more than 10% of the profits of the Vendor or more than 10% of the stock of the Vendor, if the Vendor is a corporation for profit; a spouse or child living with a natural person that is a Vendor; all of the principals, partners, officers or directors of the Vendor and all of their spouses; any subsidiaries directly or indirectly controlled by the Vendor; and any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the Vendor, other than a candidate committee, election fund, or political party committee.

"Reportable Contributions" are those contributions that are required to be reported by the recipient under the "New Jersey Campaign Contributions and Expenditures Reporting Act," P.L. 1973, c.83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-10.1 et seq. As of January 1, 2005, contributions in excess of \$300 during a reporting period are deemed "reportable."

Name and Address of Committee to Which Contribution Was Made	Date of Contribution	Amount of Contribution	Contributor's Name
Indicate " <u>none</u> " if no Reportable Contributions were made. Attach Additional Pages As Needed			

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**Certification:**

I certify as an officer or authorized representative of the Vendor that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

**Name of Vendor:** \_\_\_\_\_

**Signed:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

# **APPENDIX C**

**EXECUTIVE ORDER 129 CERTIFICATION**  
**SOURCE DISCLOSURE CERTIFICATION FORM**

Bidder: \_\_\_\_\_ Solicitation Number: \_\_\_\_\_

I hereby certify and say:

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

The Bidder submits this Certification as part of a bid proposal in response to the referenced solicitation issued by the Division of Purchase and Property, Department of the Treasury, State of New Jersey (the "Division"), in accordance with the requirements of Executive Order 129, issued by Governor James E. McGreevey on September 9, 2004 (hereinafter "E.O. No. 129").

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

Bidder or Subcontractor	Description of Services	Performance Location[s] by Country
----------------------------	-------------------------	---------------------------------------

Any changes to the information set forth in this Certification during the term of any contract awarded under the referenced solicitation or extension thereof will be immediately reported by the Vendor to the Director, Division of Purchase and Property (the "Director").

I understand that, after award of a contract to the Bidder, it is determined that the Bidder has shifted services declared above to be provided within the United States to sources outside the United States, prior to a written determination by the Director that extraordinary circumstances require the shift of services or that the failure to shift the services would result in economic hardship to the State of New Jersey, the Bidder shall be deemed in breach of contract, which contract will be subject to termination for cause pursuant to Section 3.5b.1 of the Standard Terms and Conditions.

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

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

Bidder: \_\_\_\_\_  
[Name of Organization or Entity]

By: \_\_\_\_\_ Title: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

## OWNERSHIP DISCLOSURE FORM

NUMBER :  
 OPEN DATE :  
 T-NUMBER :  
 BIDDER :

PAGE

**INSTRUCTIONS:** Provide below the names, home addresses, dates of birth, offices held and any ownership interest of all officers of the firm named above. If additional space is necessary, provide on an attached sheet.

NAME	HOME ADDRESS	DATE OF BIRTH	OFFICE HELD	OWNERSHIP INTEREST (Shares Owned or % of Partnership)

**INSTRUCTIONS:** Provide below the names, home addresses, dates of birth, and ownership interest of all individuals not listed above, and any partnerships, corporations and any other owner having a 10% or greater interest in the firm named above. If a listed owner is a corporation or partnership, provide below the same information for the holders of 10% or more interest in that corporation or partnership. If additional space is necessary, provide that information on an attached sheet. **If there are no owners with 10% or more interest in your firm, enter "None" below.** Complete the certification at the bottom of this form. If this form has previously been submitted to the Purchase Bureau in connection with another bid, indicate changes, if any, where appropriate, and complete the certification below.

NAME	HOME ADDRESS	DATE OF BIRTH	OFFICE HELD	OWNERSHIP INTEREST (Shares Owned or % of Partnership)

### COMPLETE ALL QUESTIONS BELOW

	YES	NO
1. Within the past five years has another company or corporation had a 10% or greater interest in the firm identified above? <i>(If yes, complete and attach a separate disclosure form reflecting previous ownership interests.)</i>	_____	_____
2. Has any person or entity listed in this form or its attachments ever been arrested, charged, indicted or convicted in a criminal or disorderly persons matter by the State of New Jersey, any other state or the U.S. Government? <i>(If yes, attach a detailed explanation for each instance.)</i>	_____	_____
3. Has any person or entity listed in this form or its attachments ever been suspended, debarred or otherwise declared ineligible by any agency of government from bidding or contracting to provide services, labor, material or supplies? <i>(If yes, attach a detailed explanation for each instance.)</i>	_____	_____
4. Are there now any criminal matters or debarment proceedings pending in which the firm and/or its officers and/or managers are involved? <i>(If yes, attach a detailed explanation for each instance.)</i>	_____	_____
5. Has any federal, state or local license, permit or other similar authorization, necessary to perform the work applied for herein and held or applied for by any person or entity listed in this form, been suspended or revoked, or been the subject of any pending proceedings specifically seeking or litigating the issue of suspension or revocation? <i>(If yes to any part of this question, attach a detailed explanation for each instance.)</i>	_____	_____

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

I, being duly authorized, certify that the information supplied above, including all attached pages, is complete and correct to the best of my knowledge. I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

COMPANY NAME: \_\_\_\_\_ (Signature)

ADDRESS: \_\_\_\_\_ PRINT OR TYPE { \_\_\_\_\_ (Name)

\_\_\_\_\_ { \_\_\_\_\_ (Title)

FEIN/SSN#: \_\_\_\_\_ Date: \_\_\_\_\_



# **APPENDIX D**

**NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
CONTRACT STANDARD TERMS AND CONDITIONS**

Revised as of June 11, 2013

The following “Standard Terms and Conditions” shall become part of any contract(s) awarded or order(s) placed as a result of the New Jersey Highlands Council’s Request for Proposals (RFP), of which this is a part, unless specifically and expressly modified by reference in the Council RFP, or in a writing executed by the Executive Director of the Council or the designee thereof.

**I. DEFINITIONS**

As used in these Standard Terms and Conditions the following terms shall have the definitions set forth in this paragraph. These definitions shall also apply to the entire contract unless otherwise defined therein.

“Contract” means a mutually binding legal relationship obligating the Respondent to furnish services and the Council to pay for them, subject to appropriation where the Council derives its annual budget by means of appropriation from the State Legislature. The Contract shall consist of these Standard Terms and Conditions, the Council Request, the proposal submitted by the Contractor, the subsequent written document memorializing the agreement (if any), any amendments or modifications and any attachments, addenda or other supporting documents of the foregoing. In the event of a conflict between these documents, the following documents shall control in order of precedence from the most controlling to least: subsequent written document, if any, memorializing the agreement between the parties; Professional Services Contract Standard Terms and Conditions; Council Request; and Firm proposal.

The Contract and/or its terms cannot be modified or amended by conduct or by course of dealings. Thus, the “contract” does not include the aforementioned actions and such actions, or reliance thereon, afford no rights whatsoever to any party to the Contract.

“Contractor” or “Respondent” means the person or entity which submits a proposal in response to the Council Request (or RFP) and to whom (or which) the Contract is awarded.

“Council” means the New Jersey Highlands Water Protection and Planning Council.

“Council Request” or “RFP” means a request made by the Council for offers or proposals to provide the sought after services as specified herein.

“Designee” means the representative of the Executive Director, duly authorized by same to conduct specific activities and who also has the power to legally bind the Executive Director within the scope of the Contract. Actions taken by an unauthorized designee or which are beyond the scope of the designee’s authorization or beyond the scope of the Contract are ultra vires and have no legal or equitable effect.

“Executive Director” means the Executive Director of the New Jersey Highlands Water Protection and Planning Council or the Designee thereof.

“Project” means the initiative, enterprise, undertaking or services for which the Contractor was contracted, and which is detailed in the Request for Proposal of which this is a part.

“Shall” denotes a mandatory condition.

“State” means the State of New Jersey and its agencies.

**II. APPLICABILITY AND INCORPORATION OF STANDARD TERMS AND CONDITIONS**

These Standard Terms and Conditions will apply to all services contracts made by the Council. These Standard Terms and Conditions are automatically incorporated into the Contract unless the Contractor is

specifically instructed otherwise in the Council Request or in any amendment thereto. These Standard Terms and Conditions are in addition to the terms and conditions set forth in the Council Request and should be read in conjunction with same unless the Council Request specifically indicates otherwise.

III. **CONTRACTOR'S STATUS AND RESPONSIBILITIES**

- A. **CONTRACTOR'S STATUS:** The Contractor's status shall be that of an independent contractor and not that of an employee of the State.
  
- B. **CONTRACTOR'S CERTIFICATION AS TO ITS REPRESENTATIONS:** The Contractor certifies that all representations made by it in its proposal or other related and/or supporting materials are true, subject to penalty of law. Further, the Contractor agrees that its violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract may be cause for termination of the contract award. In addition, the Contractor's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Contract shall serve as a legal bar to the Contractor's enforcement of its rights under the Contract, including any and all claims at law or equity.
  
- C. **CONTRACTOR'S PERFORMANCE:** For professional services contracts, the Contractor, and any subcontractors engaged by Contractor, agree to perform all services in a manner consistent with that level of care and skill ordinarily exercised by other experienced professional consultants under similar circumstances, and in the geographic area(s) in which the services are to be performed, at the time of the provision of the services. For contracts for work other than professional services, the Contractor, and any subcontractors engaged by Contractor, agree to perform all services and work in a good, skillful and timely manner. To perform its services and/or work, the Contractor shall employ or engage the services of qualified persons and/or entities at its own expense except as otherwise specified in the Contract. The Contractor has an affirmative obligation to promptly notify, in writing, the Council of any changes in circumstances which might affect the Contractor's ability to be awarded or to timely perform its obligations under the Contract.
  
- D. **RESPONSIBILITIES OF CONTRACTOR:**
  - (1) The Contractor is responsible for the quality, technical accuracy and timely completion and delivery of all deliverables and other services to be furnished by the Contractor and/or subcontractors and/or consultants under the Contract. If circumstances beyond the control of the Contractor result in a late delivery, it is the responsibility and obligation of the Contractor to make the details known immediately to the Council.
  
  - (2) The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services and deliverables furnished under the Contract. The approval of interim deliverables furnished under the Contract shall not in any way relieve the Contractor of fulfilling all of its obligations under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the State or the Council, of any rights under the Contract or of any cause of action arising out of the Contractor's performance of the Contract.
  
  - (3) The acceptance of, approval of or payment for any of the services performed by the Contractor under the Contract shall not constitute a release or waiver of any claim the State or the Council, has or may have for latent defects or errors or other breaches of warranty or negligence.
  
  - (4) Should the Contractor hire, employ or otherwise engage subcontractors, the Contractor shall be considered the prime Contractor and the sole point of contact with regard to contractual matters. The Contractor assumes sole and full

responsibility for the complete performance contemplated by the Contract including the performance of all subcontractors.

- (5) When the Contractor intends to subcontract for any work under the Contract, the subcontractor must be approved by the Executive Director in writing. It is understood, however, that consent of the Executive Director for the subcontracting of any work under the Contract in no way relieves the Contractor from its full obligations under the Contract. In addition, the Contractor must notify and receive the approval of the Council's Project Manager before hiring any subcontractor for the Contract work. The Contractor shall at all times give due attention to the fulfillment of the Contract and shall keep the work under its control. Consent to the subcontracting of any part of the work by the Executive Director in writing shall not be construed to be an approval of said subcontract or of any of its terms, but shall operate only as an approval of the subcontractor. The Contractor shall be responsible for all work performed by the subcontractor, which shall conform to the provisions of the Contract and all requirements of law. The failure of any subcontractor to adhere to the terms of the Contract or requirements of law may, in the Council's discretion, be cause for termination of the contract award.
- (6) All payments for services under the Contract will be made only to the Contractor. The Contractor assumes sole and full responsibility for any payments due to its subcontractors under the Contract.
- (7) Nothing herein or in the Contract shall be construed as creating a contractual relationship between any subcontractor and the State and/or the Council.
- (8) The Contractor's obligations under this clause are in addition to the Contractor's other expressed or implied assurances under the Contract or law and in no way diminish any other rights that the State or the Council may have against the Contractor.

E. **INVESTIGATION:** By submitting a proposal in response to the Council Request, the Respondent certifies and warrants that it has satisfied itself, from its own investigation, of the conditions to be met and that it fully understands its obligations and if awarded the Contract agrees that it will not make any claim for, or have right to, cancellation or relief from the Contract without penalty because of its misunderstanding or lack of information.

F. **PRICE FLUCTUATION DURING CONTRACT:** Unless otherwise set forth in writing by the Executive Director, all rates and costs quoted shall be firm and not be subject to increase during the duration of the Contract. However, in the event of a manufacturer's price or Contractor's rate or cost decrease during the Contract period, the State shall receive the full benefit of such reduction on any undelivered purchase order and on any subsequent order placed during the Contract period. The Executive Director must be notified in writing of any rate or cost reduction within five (5) days of the effective date. Failure to report and/or pass on reductions may result in the termination of the contract award for cause.

G. **COST LIABILITY:** Neither the Council nor the State assumes any responsibility or liability for costs incurred by the Respondent prior to the award of the Contract and thereafter only as specifically provided in the Contract.

H. **INDEMNITY/LIABILITY TO THIRD PARTIES:**

- (1) The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the State of New Jersey and the Council, and their employees from and against any and all claims, demands, suits, actions, recoveries, judgments and

costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this Contract.

- (2) The Contractor shall hold and save the State of New Jersey, the Council and its members, officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopied composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this Contract.
- (3) The Contractor further agrees that:
  - (a) any approval by the State or the Council of the work performed and/or reports, plans or specifications provided by the Contractor shall not operate to limit the obligations of the Contractor assumed in the Contract;
  - (b) the State and the Council assume no obligation to indemnify or save harmless the Contractor, its agents, servants, employees or subcontractors for any claim which may arise out of its performance of the Contract; and
  - (c) the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in the Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the State or the Council from taking any other actions available to it under any other provisions of the Contract or otherwise at law or equity.

I. **INSURANCE:** The Contractor shall procure and maintain at its own expense, until at least three (3) years after the completion of all work and/or services performed under the Contract, extensions and/or modifications thereto, liability insurance for damages imposed by law and assumed under the Contract, of the kinds and in the amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey, and with an A.M. Best rating of "A" or better. By submitting a proposal in response to the Council Request, the Contractor expressly agrees that any insurance protection required herein or by the Contract shall in no way limit the Contractor's obligations assumed in the Contract and shall not be construed to relieve the Contractor from liability in excess of such coverage nor shall it preclude the State from taking such other actions as are available to it under other provisions of the Contract or otherwise in law or equity.

- (1) The insurance to be provided by the Contractor shall be as follows:
  - (a) Commercial General Liability policy as broad as the standard coverage forms in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
  - (b) Automobile liability insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
  - (c) Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than \$1,000,000

BODILY INJURY, EACH OCCURRENCE; \$1,000,000 DISEASE EACH EMPLOYEE; \$1,000,000 DISEASE AGGREGATE LIMIT.

(d) Professional Liability Insurance: The Contractor shall carry Errors and Omissions/ Professional Liability Insurance in the amount of not less than \$5,000,000 per claim and in the aggregate and in such policy forms as shall be approved by the State. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the Contract, it shall obtain from its new carrier an endorsement for retroactive coverage.

2) The Contractor shall, prior to commencement of the work required under the Contract, provide the Executive Director with a valid original Certificates of Insurance as evidence of the Contractor's insurance coverage in accordance with the foregoing provisions. Such certificates of insurance shall specify that the insurance provided is of the types and is in the amounts required in 1(a), (b), (c) and (d) above.

The certificates shall provide for thirty (30) days written notice to the Executive Director prior to any cancellation, expiration or non-renewal of insurance during the term required in the Contract, extensions and/or modifications thereto. The Contractor shall further be required to provide the Executive Director with valid original certificates of renewal of the insurance upon the expiration of the policies. The Contractor shall also, upon request, promptly provide the Executive Director with copies of each policy required under these Standard Terms and Conditions and the Contract, certified by the agent or underwriter to be true copies of the policies provided to the Contractor. All certificates and copies of insurance policies shall be forwarded to the Council's address as listed herein.

In the event that the Contractor provides evidence of insurance in the form of certificates of insurance valid for a period of time less than the period during which the Contractor is required by the terms of these Standard Terms and Conditions and the Contract to maintain insurance, i.e. three (3) years after the expiration of the Contract, said certificates shall be acceptable, but the Contractor shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance from time to time, so that the Council is continuously in possession of evidence of the Contractor's insurance in accordance with the foregoing provisions.

In the event the Contractor fails or refuses to renew any of its insurance policies as necessary, or any policy is canceled, terminated or modified so that the insurance does not meet the requirements of these Standard Terms and Conditions or the Contract, the State and/or Council may refuse to make payment of any further amounts due under the Contract or refuse to make payments due or coming due under other agreements between the Contractor and the State. The State, in its sole discretion, may use funds retained under this paragraph to renew the Contractor's insurance for the periods and amounts referred to above. During any period when the required insurance is not in effect, the Executive Director may, at the Executive Director's option, recommend to the Council to either suspend work under the Contract or proceed to default the Contractor and thereby terminate the contract award.

J. **AVAILABILITY OF RECORDS:** The Contractor shall maintain and retain weekly payroll, overhead, cost and accounting records and all other records related to the services performed on the Project, including expenses pertaining to additional services required by the State on the Project. Such records shall be maintained and available for the State's and/or Council's inspection as to all aspects of the work, whether performed by the Contractor or any independent firms. These records shall be kept in accordance with generally accepted accounting principles and practices for a period of three (3) fiscal years after the expiration of the State's fiscal year in which the Contract expires or in which final payment is received by the Contractor under the

Contract, which ever occurs later. (The State's fiscal year is from July 1 through June 30). The Executive Director has the right to request, and Contractor agrees to furnish free of charge, all information and copies of all records which the Executive Director requests. The Contractor shall allow the Executive Director or his designee(s) to visit the office(s) of the Contractor periodically, upon reasonable notice, in order to review any document related to the Contract or to otherwise monitor work being performed by the Contractor pursuant to the Contract. Any failure by the Contractor to maintain or produce such records or to otherwise cooperate may because for termination of the Contract award and/or suspension or debarment of the Contractor from State contracts.

- K. **DATA CONFIDENTIALITY:** All information or data supplied by the State or the Council after the award of the Contract, any data gathered by the Contractor in fulfillment of the Contract, and any analysis thereof (whether in fulfillment of the Contract or not) are to be considered strictly confidential and shall be used only as set forth in the Confidentiality Agreement.
- L. **NO WAIVER OF WARRANTIES OR REMEDIES AT LAW OR EQUITY:** Nothing in the Contract shall be construed to be a waiver by the State or Council of any warranty, expressed or implied, except as specifically and expressly stated in a writing executed by the Council. Further, nothing in the Contract shall be construed to be a waiver by the State or Council of any remedy available to the State or Council under the Contract, at law or equity except as specifically and expressly stated in a writing executed by the Council.
- M. **OWNERSHIP OF MATERIAL:** All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the Contract, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this Contract shall be and remain the property of the State of New Jersey and shall be delivered to the State of New Jersey upon 30 days notice by the State. With respect to software computer programs and/or source codes developed for the State, the work shall be considered "work for hire", i.e. the State, not the contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of law, be a work made for hire in accordance with the terms of this Contract, Contractor or subcontractor hereby assigns to the State all right, title and interest in and to any copyright in perpetuity, and the State shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.
- N. **PUBLICITY:** Publicity and/or public announcements pertaining to the project or the contractual relationship between the parties shall be prohibited unless, and only to the extent approved by the Executive Director prior to release.

#### IV. **CONTRACTUAL RELATIONSHIP**

- A. **ASSIGNMENT:** The Contractor shall not assign or transfer its obligations or rights under the Contract without the prior written consent of the Council. Any assignment or transfer of the Contractor's rights under the Contract without the prior written consent of the Council shall not relieve the Contractor of any duty, obligation or liability assumed by it under the Contract and shall be cause for termination of the contract award.
- B. **MERGERS, ACQUISITIONS AND DISSOLUTION:**
  - (1) Merger or Acquisition: If, subsequent to the award of any contract resulting from the Council Request, the Contractor shall merge with or be acquired by another firm, for

purposes of this Contract only, the documents set forth below must be submitted to the Executive Director for approval within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in termination of the Contract award for cause. Any such merger or acquisition will require the assignment of the Contract pursuant to the provisions related thereto set forth herein.

- (a) Corporate resolutions prepared by the awarded Contractor and new entity ratifying acceptance of the Contract terms, conditions and prices, as may be amended.
- (b) State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to the provisions contained herein.
- (c) Vendor Federal Employer Identification Number.
- (d) Ownership Disclosure: Within thirty (30) days after any merger or acquisition, the Contractor must disclose the names and addresses of all of its owners and potential owners which hold or may acquire 10% or more of its stock or interest. The Contractor has the continuing obligation to notify the Council of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed. Compliance with this provision does not give rise to any rights to the Contract to the acquirer or resulting entity (in the case of a merger) without the written consent of the Council.

- (2) Dissolution: If, during the term of the Contract, the Contractor's partnership, joint venture or corporation shall dissolve, the Executive Director must be so notified. All responsible parties of the dissolved partnership or corporation must submit to the Executive Director, in writing, the names of the parties proposed to perform the contract and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved partnership, joint venture or corporation submit the required documents to the Executive Director. If the Contractor is (1) a corporation, it must provide a copy of the corporate resolution to dissolve; (2) a partnership, the written statement of the partnership, general partner, receiver or custodian thereof that the partnership has dissolved; and (3) a joint venture, the written agreement of the principal parties thereto to dissolve the joint venture.

- C. **NOTICE:** The Contractor shall promptly provide notice to the Executive Director of all information related to its merger, acquisition and/or dissolution.

V. **ADDITIONAL TERMS**

- A. **CONTRACT AMOUNT:** The estimated amount of the contract(s), when stated in the Council Request, shall not be construed as either the maximum or minimum amount which the State and/or the Council shall be obligated to order or expend as the result of the Council Request or any contract entered into as a result of the Council Request.

- B. **PERFORMANCE SECURITY:**

- (1) Performance Security: If performance security is required in the Council Request, the successful Firm shall furnish performance security in such amount on any award of the Contract or line item purchase. See N.J.A.C. 17:12-2.5. Acceptable forms of performance security are as follows:



- (a) an irrevocable security in the amount listed in the Council Request payable to the Treasurer, State of New Jersey, binding the Contractor to provide faithful performance of the Contract;
- (b) a properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey, as beneficiary issued by a federally insured financial institution; and
- (c) the amount of the performance security will be stated on the cover sheet to the Council Request. If the requirement for performance security is expressed as a percentage, security will be required only if the total amount of the Contract exceeds \$250,000.

The Performance Security must be submitted to the Executive Director within thirty (30) days of the effective date of the Contract award and cover the period of the Contract and any extensions thereof. Failure to submit performance security may result in termination of the Contract award for cause and nonpayment for work performed.

- C. **TIME PERIODS:** The Council may extend or shorten any time period specified in the Contract for good cause. Moreover, when, in the discretion of the Executive Director, non-performance by the Contractor may affect the health, safety or welfare of the State, the Executive Director may dispense with any time period specified Paragraph VII B herein.

## VI. MANDATORY COMPLIANCE WITH LAW

The Contractor's compliance with the legal requirements set forth in this paragraph as well as any other applicable laws, regulations or codes is mandatory and cannot be waived by the State, the Council or the Executive Director. The list of laws, regulations and/or codes cited herein is not intended to be an exhaustive list and is available for review at the State Library, 185 W. State Street, Trenton, New Jersey 08625.

### A. **BUSINESS REGISTRATION:**

- (1) All New Jersey and out of State corporations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue prior to conducting business in the State of New Jersey.
- (2) Proof of valid business registration with the Department of the Treasury, Division of Revenue shall be submitted by the Firm and, if applicable, by every subcontractor of the Firm, with the Firm's bid. No contract will be awarded without proof of business registration with the Division of Revenue. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG. can be filed online at [www.state.nj.us/njbgs/services.html](http://www.state.nj.us/njbgs/services.html).
- (3) Before performing work under the Contract, all subcontractors of the Contractor must provide to the Contractor proof of New Jersey business registration. The Contractor shall forward the business registration documents on to the Council.

- B. **AFFIRMATIVE ACTION:** The Contractor shall not discriminate in employment and agree to abide by all antidiscrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, inclusive, N.J.S.A. 10:5-1, et seq., and N.J.S.A. 10:5-38 and all rules and regulations issued thereunder.

- C. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall abide by the provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq.
- D. **PREVAILING WAGE ACT:** The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq., is hereby made part of every contract entered into on behalf of the State of New Jersey through the Council, except those contracts which are not within the contemplation of the Act. The Firm's signature on its proposal is its guarantee that neither the Firm nor any subcontractors the Firm might employ to perform the work covered by its proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act.
- E. **OWNERSHIP DISCLOSURE:** Pursuant to N.J.S.A. 52:25-24.2, contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of the bid submission, the Firm disclosed the names and addresses of all of its owners holding 10% or more of the corporation or partnership's stock or interest during the term of the Contract. The Contractor has the continuing obligation to notify the Council of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.
- F. **FIRM'S WARRANTY:** By submitting a proposal in response to the Council Request, the Firm warrants and represents that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. The penalty for breach or violation of this provision may result in termination of the contract award without the State being liable for damages, costs and/or attorney fees or, in the Council's discretion, a deduction from the Contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.
- G. **MACBRIDE PRINCIPLES:** The Contractor shall comply with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:34-12.2.
- H. **P.L. 2004, C.57:** The Contractor and its subcontractors must comply with P.L. 2004, C.57, which requires the Contractor and its subcontractors to collect and remit applicable State use tax to the New Jersey Division of Taxation on the sale of all goods and services in the State of New Jersey subject to the provisions of the "Sales and Use Tax Act," P.L. 1966, C.30 (N.J.S.A. 54:32B-1 et seq.).
- I. **COMPLIANCE WITH N.J.S.A. 19:44A-20.13 et seq.** The Contractor is required to comply with the "pay to play" disclosure requirements set forth in the statutes. Compliance requires the Contractor to submit the Executive Order 134 Certification and Disclosure (DPP134-C & D). In addition, the Contractor is under a continuing duty to disclose during the time of the Contract all contributions made during the term of the Contract covered under the statute. Towards satisfying that duty, the contractor shall submit the Continuing Disclosure of Political Contributions (DPP134-CD) when required under the statute. Failure to comply with any of the requirements of the statute may result in the termination of the Contract. All forms and instructions are available on the New Jersey Treasury Department, Division of Purchase and Property web-site: <http://www.state.nj.us/treasury/purchase/forms.htm>.
- J. **COMPLIANCE WITH REQUIREMENTS OF NJSA 52:34-13.2:**
- (1) Subject to the exceptions below, N.J.S.A. 52:34-13.2 requires that all contracts that are "primarily for the performance of services" shall be performed within the United States. This provision applies to all contractors and sub-contractors performing such contracts

for the State. This Contract and Request for Proposal do not fall within any exception to the statute.

**FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A CONTRACT TO THE FIRM.**

- (3) BREACH OF CONTRACT: A SHIFT TO OUTSOURCED SERVICES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF THE CONTRACT.
  - (4) If, during the term of the Contract, the Contractor or subcontractor, who had on Contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside of the United States, the Contractor shall be deemed in breach of the Contract, which Contract shall be subject to termination for cause pursuant to Section VII B (3) (c).
- K. **SET-OFF FOR STATE TAXES AND CHILD SUPPORT:** Pursuant to N.J.S.A. 54:49-19, if the Contractor is entitled to payment under the Contract at the same time as it is indebted for any State tax (or is otherwise indebted to the State) or child support, the State Treasurer may set off that payment by the amount of the indebtedness.
- L. **STANDARDS PROHIBITING CONFLICTS OF INTEREST:** The following prohibitions on Contractor activities shall apply to all contracts and purchase agreements made with the State or Council:
- (1) No Contractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such Contractor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i of any such officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
  - (2) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the Contractor to the Attorney General and the Executive Commission on Ethical Standards.
  - (3) No Contractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Contractor to, any State officer or employee or special State officer or employee or having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding the present or proposed relationship does not present the potential, actual or appearance, of a conflict of interest.

- (4) No Contractor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- (5) No Contractor shall cause or influence, or attempt to cause or influence, any State officer or employees or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- (6) The provisions cited in this paragraph shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with the Contractor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines in the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.

VII. **PROJECT SUSPENSION AND TERMINATION OF THE CONTRACT AWARD**

- A. **SUSPENSION OF PROJECT:** If, for any reason, the Project for which the Contractor's services were contracted should be suspended, the Council may suspend this contract upon seven (7) days written notice to the Contractor. Upon receipt of such notice, unless otherwise directed in writing by the Executive Director, the Contractor shall immediately discontinue all work under the Contract. Upon such notification, the Contractor shall be paid a proportion of the fee which the services actually and satisfactorily performed by it shall bear to the total services completed under the Contract, less payments previously made. The State may order that the work on the Project be stopped temporarily, and upon seven (7) days written notice from the Executive Director, the Contractor shall cease all work on the Project except as necessary to properly secure the Project. If the State directs that the work on the Project resume within six (6) months, the Contractor shall be obliged to complete the Project for the basic fee provided for in this Contract, plus additional compensation for any work necessitated by the stop order as approved by the Executive Director in writing.

However, in the event that services are scheduled to end either by Contract expiration or by termination of the contract award by the Council, it shall be incumbent upon the Contractor to continue the service if requested by the Executive Director to do so, until new services, if any, are completely operational. At no time shall this transitional period extend more than ninety (90) days beyond the expiration or termination date of the existing Contract, except by agreement of the parties. The Contractor will be reimbursed for this service at the rate in effect when this transitional period clause is invoked by the Executive Director.

- B. **TERMINATION OF THE CONTRACT AWARD:** The Council may terminate the contract award at any time during the duration of the Contract, without penalty, subject to the following provisions:
- (1) Change of Circumstances: Where circumstances change and/or the needs of the State or Council change, or the Contract is otherwise deemed by the Council to no longer be in the public interest, the Council may terminate the contract award upon no less than thirty (30) days notice to the Contractor. In the event of such a termination of the contract award, the Contractor shall furnish to the Council, free of charge, such close-out reports as may reasonably be required.
  - (2) For Convenience: Notwithstanding any provision or language in this contract to the contrary, the Council may terminate at any time, in whole or in part, any contract entered into as a result of the Council Request for the convenience of the State, upon no less than 30 days written notice to the Contractor.

- (3) For Cause:
- (a) Where a Contractor fails to perform or comply with the Contract and/or fails to comply with the complaints procedure set forth in N.J.A.C. 17:12-4.1, et seq., the Council may terminate the contract award upon ten (10) days notice to the Contractor with an opportunity to protest said termination and/or request an informal hearing. If the Contractor protests, the Council will complete the informal hearing, if necessary, and issue a final agency decision regarding termination of the Contract.
  - (b) Where a Contractor continues to perform a contract poorly as demonstrated by one or more formal complaints resolved against it, the Council may issue a Notice of Intent to Terminate the Contract Award with a ten (10) day opportunity for the Contractor to protest such termination and/or request an informal hearing. If the Contractor protests, the Council will complete the hearing, if necessary, and issue a final agency decision regarding termination and related issues including, but not limited to, damages payable to the State, subject to Paragraph VII B(5).
  - (c) The Council's right to terminate the contract award for cause includes any reason set forth in any other provision contained in the Contract.
  - (d) The failure of a Contractor to respond to the Council's notice of intent to terminate the contract award within the ten (10) day period automatically converts said notice into a final agency decision without further action of the Council.
  - (e) The Council's right to terminate the contract award for cause includes the Contractor's performance on any other State contract, a violation of state or federal law (as demonstrated by the Contractor's admissions of same or a final decision of an appropriate decision-making body), or any reason related to the ability of the Contractor to fulfill its contractual obligations. The Council may also terminate any contract with a federally debarred contractor or a contractor which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts.
- (4) In cases of emergency, the Council may shorten the time periods of notification and may dispense with an opportunity to respond.
- (5) Upon a termination of the Contract award under this or any other paragraph herein, the Contractor shall be entitled to receive as full compensation for services rendered to the date of termination that portion of the fee which the services actually and satisfactorily performed by it, as determined by the Executive Director, shall bear to the total services contemplated under this contract, less payments previously made.
- (6) Except for termination of the contract by the Council for convenience, upon termination of the contract award, the Council may acquire the services which are the subject of the Contract from another source and may charge the Contractor whose contract award has been terminated the difference in price, and the said Contractor shall be liable for same.
- (7) All protests of the Council's intent to terminate a contract award must be accompanied by a statement of the factual and/or legal basis of the protest and copies of all documents which the Contractor believes support its position.

- (8) If Council determines that an informal hearing is required, said informal hearing shall be conducted by the Council, prior to the issuance of the final agency decision regarding the interpretation of the Contract, Contractor performance and/or termination of the contract award.

## VIII. CONTRACTOR COMPENSATION

- A. **INVOICING AND PROGRESS REPORTING:** The Contractor shall submit monthly invoices for work satisfactorily completed. Invoices must specify in detail the costs incurred, must be in strict accordance with the hourly rates and costs agreed to by the Council, and shall otherwise be in accordance with the terms of the Contract. The Contractor shall also submit any other supporting documentation necessary for the Council to determine that costs incurred during invoiced period have in fact been incurred.

In addition to monthly invoices, the Contractor shall submit a monthly Progress Report in the form attached hereto, which report shall set forth the Contract number; Contractor contact information; a detailed description of work conducted during the reporting period, including a list of tasks performed and percent completeness for each task based upon overall Scope of Work; percentage of Contract budget expended to date; and a list of critical issues or problems encountered during the reporting period.

- B. **PAYMENT TO CONTRACTOR:** Payment for services purchased by the Council will only be made upon the submission of monthly invoices along with adequate supporting documentation substantiating that the work has been satisfactorily completed as required in Section VIII A. Notwithstanding Section VIII C, payment will not be made until the Executive Director has approved payment.
- C. **NEW JERSEY PROMPT PAYMENT ACT:** The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32, et seq. requires State agencies to pay for goods and services within sixty (60) days of the Agency's receipt of a properly executed New Jersey Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, which ever is later. Properly executed performance security, when required, must be received by the Council prior to processing any payments for goods and services accepted by the Council. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid unless it exceeds \$5.00 per properly executed invoice. A good faith dispute creates an exception to the Prompt Payment Act. Except as noted above, cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.
- D. **AVAILABILITY OF FUNDS:** The Council's obligation to make payment under the Contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Council for payment of any money shall arise unless and until funds are made available each fiscal year to the Council by the State Legislature.
- E. **RETAINAGE:** If retainage is required on the Contract, the State and/or Council will retain the stated percentage or retainage from each invoice. Payment of retainage will be authorized after satisfactory completion and submission of all services, deliverables or work products by the Contractor and acceptance by the Council of all services, deliverables or work products required by the Contract.

For ongoing term contracts, the Council will retain the stated percentage of each invoice submitted. At the end of the three (3) month period after payment of each invoice, the Council will review the Contractor's performance and if performance has been satisfactory, the Council will release the retainage for the preceding three (3) month period. Following the expiration of the Contract, retained fees will be released to the Contractor after certification by the Council's project manager, if any, that all services have been satisfactorily performed.

IX. **AMENDMENT OR MODIFICATION**

Any amendment or modification to this Contract must be made in writing and executed by both parties.

X. **NOTICES**

All notices required under this contract shall be in writing and shall be validly and sufficiently served by the Council upon the Contractor, and vice versa, if addressed and mailed by certified mail to the addresses set forth in the Contract.

For purposes of this Contract, all correspondence and documentation to the Council shall be sent to:

Kim Ball Kaiser, Esq.  
Staff Attorney  
New Jersey Highlands Council  
100 North Road (Route 513)  
Chester, New Jersey 07930

XI. **CLAIMS**

The following shall govern claims made by the Contractor against the State concerning interpretation of the Contract, Contractor performance and/or termination of the contract award: All claims asserted against the State and/or Council by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

XII. **APPLICABLE LAW**

This Contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and any violations arising out of this Contract shall be venued in the Superior Court of New Jersey or the District Court of New Jersey.

XIII. **SEVERABILITY**

If any term of this Contract is held by a court of competent jurisdiction to be invalid or unenforceable, then this Contract, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

XIV. **DRAFTING PRESUMPTION**

The Contract shall be construed as if drafted by both parties and both parties waive all statutory and common law presumptions to the contrary.

XV. **HEADINGS**

Headings used in this Contract are provided for convenience only and shall not be used to construe meaning or intent.

XVI. **AUTHORIZATION TO BIND**

The person signing below represents that he or she is authorized to bind the entity listed below to the terms and conditions set forth above.

***TERMS AND CONDITIONS OF THIS AGREEMENT ACCEPTED:***

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

DATE: \_\_\_\_\_