



State of New Jersey

DEPARTMENT OF TRANSPORTATION

Local Aid and Economic Development

1035 Parkway Avenue

Trenton, NJ 08625

Philip D. Murphy
Governor

Diane Gutierrez-Scaccetti
Commissioner

Sheila Y. Oliver
Lt. Governor

June 18, 2018

Kimberly Singleton
City of Newark
Engineering Department
255 Central Avenue
Newark, NJ 07103

Re: Delancy Street (Final Design)
Newark, Essex County
Job No. 6114450
Agreement No. 2018-DT-BLA-FEP-204

Dear Ms. Singleton:

Enclosed please find (4) copies of the Funds Exchange Program – Cost Reimbursement Agreement for the above referenced project, which must be executed by the City of Newark. This allows for the reimbursement of costs associated with this project. Please note that pages 17 and 23 must be signed and sealed. Also, as noted on Page 16, Item 21, a resolution must be executed authorizing the City of Newark to enter into this Agreement.

Four (4) originally signed and sealed copies of the Agreement and original copies of the resolution must be returned to this office for execution by the State. Please do not fill in the date of Page 1 as this will be filled in by the Department when the Agreement is fully executed. A copy of the fully executed Agreement will be forwarded to your office.

If you have any questions regarding the above, please contact me at 973-877-1500.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Loveless".

Richard Loveless
Project Management Specialist 3



July 2014

Local Aid and Economic Development

Agreement No.: 2018-DT-BLA-FEP-204

DUNS Number (Local Public Agency): **084 292 980**

Contact Name and Phone Number: **Richard Loveless 973-877-1500**

FUNDS EXCHANGE PROGRAM -COST REIMBURSEMENT AGREEMENT

Project/Phase: Delancy Street (Final Design)

Municipality: Newark City, County: Essex

This Cost Reimbursement Agreement ("Agreement") is made as of the _____ day of _____, by and between the City of Newark, having its offices at 920 Broad Street, Newark, NJ 07102 ("Recipient") and the State of New Jersey, Department of Transportation, Division of Local Aid and Economic Development, having its offices at 1035 Parkway Avenue, Trenton, NJ 08625 ("State");

WITNESSETH:

WHEREAS, Recipient proposes to be a "Local Public Agency" that is sponsoring a Project eligible for funding pursuant to the terms and conditions of this Agreement; and

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

WHEREAS, the State may award Recipient funds to finance the Project ("Project Fund"); and

WHEREAS, Recipient and the State desire to specify the conditions applicable to the financing of the costs of the Project out of the Project Fund and the obligations of Recipient and the State with respect to the Project; and

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

1. Description of Project – Scope of Work

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

2. Agreement Contract Term

2.1 This Agreement shall be effective upon proper execution by the State and the Recipient and shall continue in effect until the Project is completed and all payment vouchers have been paid subject to Section 6 below or until, based on inactivity as defined in Section 6.2(b) below, the State demands the return of some or all funds allocated. Allowable costs incurred for the performance of work in the attached Scope of Work in this Cost Reimbursement Agreement shall be eligible for reimbursement from the effective date of **4/6/2018**. All such work shall be completed by **4/6/2020**, unless either terminated or extended by written authorization of the State.

2.2 This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. In the event the State terminates the agreement for any reason other than abandonment or inactivity, the State shall compensate the Recipient for work actually performed. In the event the State terminates the



Agreement for abandonment or inactivity, the State may demand the return of all funds or the remaining funds, at its own discretion. In the event the Recipient terminates the Agreement, the State in its discretion will determine compensation, if any, to be paid.

- 2.3 The Project shall not be sold, assigned or ownership transferred without the consent of the State. In the event the Project is sold to a non-public entity for a non-public use or any use inconsistent with the terms of this Agreement, this Agreement shall be deemed terminated and the State shall be reimbursed for all money paid.

3. Plans and Specifications

- 3.1 Recipient shall prepare, or have prepared, if required by the State, environmental documents, engineering documents, plans, specifications and estimates for the Project and shall submit them to the State for review. A Professional Engineer licensed to practice in New Jersey must prepare the plans and specifications. The State shall review the engineering documents, plans and specifications for conformance to program requirements and design standards. All design work shall conform to the applicable American Association of State Highway and Transportation Officials (AASHTO) design criteria, the current Manual on Uniform Traffic Control Devices (MUTCD), and the New Jersey Department of Transportation Bicycle Compatible Roadway and Bikeways Planning and Design Guideline. However, the design of traffic barriers and drainage systems shall conform to the New Jersey Department of Transportation Roadway Design Manual. All workmanship and materials shall conform to the New Jersey Department of Transportation 2007 Standard Specifications for Road and Bridge Construction. If there is a deviation from the standards, the Recipient shall notify the State in writing of any deviation from the standards and shall accept any and all responsibility for any injury and damage by such deviation to any person or property and shall indemnify the State as outlined in this Agreement. A design exception may be executed when it can be documented to the State's satisfaction that a lesser design value is the best practical alternative. The factors to be considered when determining if a lesser design value should be elected shall include social economic and environmental impacts together with safe and efficient traffic operations.

Approval for the design exception shall be based upon Division of Local Aid Policy Number 005.00 as follows:

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

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

The above applies regardless of funding source. The State shall notify Recipient when the project is acceptable for bidding.

- 3.2 For reimbursement of allowable costs, project limits cannot be exceeded, plans and specifications altered, construction change orders issued, or items added or deleted from Project without prior written approval of the State.
- 3.3 The Recipient shall designate a Resident Engineer who shall be empowered to represent the Recipient in connection with the administration of the Project, and shall be responsible for the monitoring and inspection of all work performed by its contractors.



4. Projects Eligible for Funding

Right of Way Acquisition Projects

- 4.1 Recipient shall acquire right of way parcels in accordance with applicable federal and state requirements, including, but not limited to, 49 C.F.R. 24, 23 C.F.R. 710.203, N.J.S.A. 20:4-1 et seq., New Jersey, Department of Transportation, Right of Way Acquisition Manual which may be found at: the <http://www.state.nj.us/transportation/eng/documents/BDC/pdf/ROWAcquistitionManual20120601.pdf> and New Jersey, Department of Transportation, Right of Way Engineering Manual which may be found at: <http://www.state.nj.us/transportation/eng/documents/ROWE/>.
- 4.2 Recipient shall be responsible for preparing all maps and other documents required by the New Jersey, Department of Transportation, Right of Way Acquisition Manual and Right of Way Engineering Manual referenced above.
- 4.3 Eligible costs for right of way acquisition projects shall include:
 - a. Cost of real property which shall be based on the actual purchase price of the parcel or easement, after negotiating a purchase agreement, or the just compensation amount as determined by a court, and
 - b. Associated direct costs of acquisition including appraisal fees, cost estimates, right of way plan preparation, title work, cost to acquire real property, cost of administrative settlements, relocations, and damages pursuant to 23 C.F.R. 710.203.
- 4.4 Any amount paid to the Recipient under this Agreement for a parcel or easement that is later declared to be in excess and sold, may be recovered by the State.

Design Projects

- 4.5 Recipient shall provide professional design services for the Project ("Design Work") in accordance with the New Jersey Department of Transportation 2007 Standard Specifications for Road and Bridge Construction and the State of New Jersey Standard Terms and Conditions.
- 4.6 Recipient warrants that the engineering services shall be performed or approved by an engineer licensed by the State of New Jersey Board of Professional Engineers and Land Surveyors to practice in the State of New Jersey.
- 4.7 Recipient covenants that Design Work will comply with all applicable laws and other requirements of state and local governmental bodies including applicable American Association of State Highway and Transportation Officials (AASHTO) design criteria, the current Manual on Uniform Traffic Control Devices (MUTCD), and the New Jersey Department of Transportation Bicycle Compatible Roadway and Bikeways Planning and Design Guideline.
 - a. Certain projects shall require the pre-approval of the State, prior to the design phase, as to the applicable standards that apply, as follows:
 - i. Transportation projects other than roads and bridges,
 - ii. Projects that intersect State highways,



- iii. Projects with railroad crossings within the project limits or 100 feet outside the project limits, or
 - iv. Projects with railroad crossings outside the project limits where the project could impact traffic flow across the railroad crossing.
- 4.8 Recipient shall prepare, or have prepared any necessary environmental documents, engineering documents, plans, specifications and estimates for the Project as required by Section 3.1 of this Agreement.
- 4.9 The Recipient shall not proceed with any Design Work for which reimbursement shall be sought without the specific written authorization of the State.
- 4.10 Recipient shall submit to the State documentation of the consultant selection process or use of in-house forces and final negotiated consultant cost proposal. The use of in-house staff is permitted but is subject to the approval of the State. In order to use in-house staff for design work, Recipient must allow the State to review its project accounting systems and be cost-basis approved by the State.
- 4.11 If Recipient is not performing design work in-house, Recipient shall solicit proposals for the work in accordance with all state laws, rules and regulations. Upon receipt of proposals from responsible design consultants, Recipient shall select professional services based upon qualifications and shall furnish the name of such consultant to the State for concurrence. Recipient agrees not to contract with any consultant to whom the State has made a reasonable and timely objection.
- 4.12 Recipient or its consultant shall be required to submit a design schedule to the State which should include, at a minimum, the submission dates for project plans and descriptions for Executive Order 215 determination, environmental screening, environmental permits/approvals, preliminary plans specifications, and estimate, and for the funding authorization request package.
- 4.13 Funds for design work shall be authorized by the State once the design authorization submission has been approved. Within ten years of the date of design authorization, the project must be awarded to a construction contractor. Failure to comply with the requirements of this provision will result in the recovery of all funds previously expended.
- 4.14 Recipient agrees that the monies requisitioned from the Project Fund will be used only to reimburse actual, eligible costs and for no other purpose. Recipient agrees that it shall provide to the State, upon demand and at no cost to the State, such documentation as will enable the State to determine that the proceeds of the Project Fund have been applied solely to the costs of the Project.
- 4.15 When the Recipient considers the design work to be finally complete, Recipient shall request that the State's representative make a final review of the plans and specifications. If it is determined, after such review, that the design work has been completed in accordance with all applicable laws and requirements, Recipient shall submit a final invoice to the State and the State shall disburse an amount equal to the approved final payment. Upon payment of the amount approved for final payment, the State shall be released from any further responsibility in connection with the Project Fund and the Project design work.
- 4.16 The Recipient and its consultant will comply with Chapter 51/Executive Order 117 Certification and Disclosure of Political Contributions and will submit the Chapter 51/Executive Order 117 Certification and Disclosure form, certifying that no contributions prohibited by Chapter 51 have been solicited or made by the Recipient and reporting all contributions the Recipient made during the preceding four years to any political organization organized under 26 U.S.C. §527 of the Internal Revenue Code that also meets the



definition of a "continuing political committee" within the mean of N.J.S.A. 19: 44A-3(n) and N.J.A.C. 19: 25-1.7.

Construction Projects

- 4.17 Recipient shall complete or cause the completion of work on the Project ("Project Work") in accordance with the plans and specifications approved by the State.
- 4.18 Recipient covenants that Project Work will comply with all applicable laws and other requirements of state and local governmental bodies. Recipient shall obtain all permits and licenses necessary to complete Project Work.
- 4.19 The Recipient shall not advertise the project until the State provides written authorization to proceed and the Recipient shall not proceed with any Project Work for which reimbursement shall be sought without the written authorization of the State.
- 4.20 Recipient shall solicit bids for the work in accordance with all state laws, rules and regulations applicable to public bidding. The Recipient shall advertise the project within sixty (60) days of the State's authorization of funds and must award the project within six months of authorization of funds. Upon receipt of bids from responsible contractors, Recipient shall select the contractor submitting the lowest responsive bid. Within thirty (30) days of the award of the contract, the Recipient shall submit:
 - a. One copy of the summary of construction bids showing all bid quantities, unit prices, and amounts for the construction of pay items, and
 - b. A fully executed and sealed resolution awarding the contract to the lowest responsible bidder, which shall be subject to the approval of the State.

Once the State has received all of the information listed above, it shall notify Recipient in writing whether it has been approved. Recipient agrees not to contract with any contractor to whom the State has made a reasonable and timely objection. Professional services for construction services should be competitively selected based upon qualifications.

- 4.21 Recipient agrees that the monies requisitioned from the Project Fund will be used only to reimburse actual, eligible Project costs and for no other purpose. Recipient agrees that it shall provide to the State, upon demand and at no cost to the State, such documentation as will enable the State to determine that the proceeds of the Project Fund have been applied solely to the costs of the Project.
- 4.22 Upon written request of the State, the Recipient shall cause its contractor to provide payment and performance bonds in an amount equal to 100% of the cost of the Project Work. A surety company satisfactory to the State and qualified to do business in the State of New Jersey shall execute such bonds. Copies of all bonds shall be delivered to the State upon request. Only those sureties listed in the US Treasury Department Circular 570 and authorized to do business in the State shall furnish the surety bonds.
- 4.23 Recipient agrees that it will cause its contractor to comply with the appropriate statutes and regulations concerning use of foreign materials as required by Section 106.03 of the New Jersey Department of Transportation's 2007 Standard Specifications.
- 4.24 Recipient and its contractor will comply with Chapter 51/Executive Order 117 Certification and Disclosure of Political Contributions and will submit the Chapter 51/Executive Order 117 Certification and Disclosure form, certifying that no contributions prohibited by Chapter 51 have been solicited or made by the contractor and reporting all contributions the contractor made during the preceding four years to any political organization organized under 26 U.S.C. §527 of the Internal Revenue Code that also meets the



definition of a "continuing political committee" within the mean of N.J.S.A. 19: 44A-3(n) and N.J.A.C. 19: 25-1.7.

- 4.25 When Recipient considers the Project to be finally complete, Recipient shall request that the State's representative make a final inspection of the Project. If it is determined, after such inspection, that the Project has been completed in accordance with the plans and specifications, Recipient shall prepare and submit to the State a certification that the final inspection has been made and the cost of the Project has actually been incurred in accordance with the provisions of the Agreement. Upon receipt, the State shall disburse an amount equal to the approved final payment. Upon payment of the amount approved for final payment, the State shall be released from any further responsibility in connection with the Project Fund and the Project. The New Jersey Department of Transportation, Division of Local Aid and Economic Development will monitor maintenance of completed Project by the Recipient. Failure to maintain Project will result in the withholding of funds payable to the Recipient on other State funded programs.

5. Insurance

5.1 Recipient shall maintain or cause to be maintained:

- (a) General Comprehensive Liability Insurance in the minimum amount of \$1,000,000.00 combined single limit plus \$1,000,000.00 in an umbrella policy. This insurance shall specifically provide for coverage of the State as an additional insured and shall provide for coverage at least as broad as the standard, basic unamended commercial general liability policy and shall be endorsed to include broad form contractual liability coverage, independent contractor's coverage and completed operations coverage.
- (b) Automobile Liability Insurance in the minimum amount of \$1,000,000.00.
- (c) Workers Compensation Insurance in the amount required by law.

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

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

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

6. Disbursement of Project Fund

6.1

- (a) The State shall disburse monies from the Project Fund to Recipient in order to reimburse actual, eligible costs associated with Project Work in accordance with the terms and conditions of this Agreement. Only those costs specifically enumerated in the Project Scope of Work and Cost Estimate attached to this Agreement and outlined below will be eligible for reimbursement. Nothing contained herein shall impose upon the State any obligation to ensure the proper application of the monies paid to Recipient from the Project Fund. Furthermore, nothing contained herein shall impose any obligation upon the State to pay to Recipient any monies in excess of the Project Fund. The Recipient shall reimburse the Consultant/Contractor for allowable expenses after the receipt of properly prepared



payment vouchers as outlined in Section 6.2 of this Agreement. All monies shall be subject to appropriations and availability of funds.

- (b) The total cost of the project by the Recipient for completion of the Project Scope of Work in this Agreement shall not exceed \$590,823.00, with an approved budget as follows:

<u>Local Public Agency</u>	<u>Agreement Amount</u>	<u>LPA in-House</u>	<u>Total</u>	<u>Date Authorized</u>	<u>Date for Completion</u>
<u>City of Newark</u>	<u>\$590,823.00</u>	<u>\$0.00</u>	<u>590,823.00</u>	<u>4/6/2018</u>	<u>4/6/2020</u>

- (c) The actual agreement will be adjusted and/or modified unilaterally by the State to reflect the Project costs as determined by the bid amount.
- (d) The final eligible costs incurred by the Recipient during the Project may be reimbursed by the State, subject to prior written approval, the availability of funds, and at the State's sole discretion.

6.2

- (a) Recipient shall prepare and submit payment vouchers for payment for approval by the State within three months of initial billing by the contractor or design consultant, or six months from award, whichever is first.. Payment vouchers may be submitted as frequently as every month at most but are required at least quarterly.
- (b) If Recipient does not comply with the aforementioned time periods for submitting payment vouchers, the State may determine that the Project is deemed "inactive" and, as a result, Project funds may be withdrawn by the State. Also see Section 2.1. Recipient may also be determined inactive, at the discretion of the State, for the following reasons: failure to perform work properly, failure to complete the project as proposed, failure to properly submit or complete the close out documents, or any reason that the State may determine based upon the project status and remaining work to be performed. The payment vouchers shall state, with proper documentation, the amounts due Recipient for actual, eligible costs incurred in connection with the Project. The Recipient shall maintain a complete set of time sheets, records and accounts to identify eligible salaries, fringe benefits, leave, and non-salary direct expenses incurred in support of the Project, as well as material records, certifications, and as-built quantities.
- (c) The parties agree that the State has sole discretion to modify the initial agreement amount to reflect the actual, eligible costs for the Project work at the time of the award concurrence.
- (d) Progress Reports will accompany all payment vouchers and shall include:
- i. A narrative description of work performed during the payment period and any difficulties or delays encountered;
 - ii. A comparison of actual accomplishments to the goals established for the payment period;
 - iii. A comparison, by tasks, of costs incurred with amounts budgeted, and;
 - iv. A comparison, by task, of work performed compared to the schedule, including a percentage of the total work completed. This requirement can be met by including a bar chart showing schedule timing and actual progress.



- v. Copies of contract compliance documents as completed for the voucher payment period by the resident engineer that is designated by the Recipient, a complete set of which shall be furnished by the State at kickoff and/or preconstruction meetings.
- (e) The State shall review and verify such payment vouchers for payment and remunerate the Recipient for direct and indirect costs incurred up to a maximum Project approved budget of \$590,823.00 stated in this Agreement for satisfactorily completing the Project.

6.3

- (a) The State shall make partial payments to the Recipient toward the actual, eligible costs for the Project work upon the receipt of properly drawn payment voucher for a percentage of work completed on the Project during the period as shown on the accompanying progress report. Where there is a disagreement between the State and the Recipient concerning the percentage of work completed during any given period, that dispute shall be resolved in accordance with Paragraph 19.3 of this Agreement.
- (b) Recipient may submit payment vouchers totaling up to 90% of the lesser of either the authorized amount or the amount eligible for State funding participation. Recipient shall submit a final payment voucher, within six months of final inspection, along with any necessary close out documents, for reimbursement of the remaining 10%, following receipt of written final acceptance of the Project by the State.

6.4

- (a) The Recipient shall remain responsible for satisfactory performance of all work.
- (b) All work performed by contractors and subcontractors on the Project shall be treated as being performed by the Recipient.
- (c) Recipient will be paid the actual, eligible costs for the work of each contractor and consultant. The actual, eligible costs shall be considered full compensation for all costs incurred by the Recipient relative to the work performed by each contractor and consultant. Payment of the actual, eligible costs shall be made on monthly or quarterly payment vouchers submitted by the Recipient based upon the percentage of the contracted work completed as shown in the Recipient's monthly progress reports.
- (d) Recipient shall require its contractors and consultants to comply with the applicable cost principles set forth in Section 6.2 above and the requirements of Section 8 below by placing equivalent provisions in their contracts.

7. Audit Requirements

- 7.1 The Recipient shall provide the State with a fiscal year, organization-wide audit that has been conducted in accordance with the requirements of State Circular Letter 04-04-OMB, Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid and the Single Audit Act of 1984 as amended (Federal OMB Circular A-133). The Recipient shall ensure that the State receives the audit within the prescribed submission period and that this Agreement is listed on the appropriate Schedule of Financial Assistance.
- 7.2 The State, or its agents, shall be entitled to perform an audit at the following times:
 - (a) At any time during the performance of work set forth in this Agreement.
 - (b) During a period of up to three (3) years after either the date of payment of the Final Invoice or a date mutually agreed to by the parties.



7.3 The Recipient acknowledges that changes in payment due the Recipient resulting from audits performed by the State shall be made as follows:

- (a) In the event of overpayment by the State, the Recipient shall refund the amount of such overpayment within thirty (30) days of the request by the State. In the event the Recipient fails to comply with said request, the State is hereby authorized to deduct such overpayment from other monies due the Recipient under the terms of this Agreement or any other agreement between the State and the Recipient. Furthermore, the Recipient expressly understands and agrees that the provisions of this section shall in no way be construed to relieve the Recipient from any liability, or preclude the State from taking any other actions as are available to it under any other provisions of this Agreement or otherwise at law. The terms of this section shall survive the expiration or termination of the Agreement.
- (b) In the event of underpayment by the State, the State shall pay sufficient funds to the Recipient to correct the underpayment as soon as is practicable.
- (c) The Recipient shall include in the Final Invoice the following release clause:

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

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

8. Inspections

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

9. Indemnification

Recipient shall indemnify, defend, protect and hold harmless the State of New Jersey and its agents, servants and employees from and against any and all liability, fines, suits, claims, demands and actions, costs and reasonable expenses of any kind or nature or by anyone whomsoever, including, but not limited to, claims for personal injury, wrongful death, property damage and contractual liability due to or arising in any way out of the performance of any services, actions or operations in connection with the Project or any breach of this Agreement unless caused solely by the gross negligence or default of the State or its agents, servants or employees; provided, however, that the State shall give Recipient prompt notice thereof. If Recipient shall be required to defend in any action or proceeding pursuant to this Section 9 to which action or proceeding the State is made a party, the State shall be entitled to participate in the matter, at its election and sole cost; provided, however, that any such action by the State does not limit or make void any liability of Recipient in respect to the claim or matter in question.



10. Abandonment of Project

It is understood and agreed by and between the parties hereto that Recipient shall complete the Project to provide a safe and usable unit and shall not be entitled to abandon the Project. If the Recipient abandons the Project during any phase (planning, design, construction, etc.) all funds expended by the State will be reimbursed by the Recipient to the State. The determination that the project has been abandoned shall be at the sole discretion of the State.

11. No Personal Liability

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

12. Equal Opportunity

12.1 Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined under the laws of the State of New Jersey, N.J.S.A. 10:5-31 et seq., which is paid for in whole or in part, directly or indirectly, with proceeds from the Project Fund the following equal opportunity clause:

- (a) The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.
- (b) The Contractor or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
- (c) The Contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.
- (e) When hiring or scheduling workers in each construction trade, the Contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Division of Public Contracts Equal Employment Opportunity Compliance (hereafter "Division") may, in its discretion, exempt a Contractor or subcontractor from compliance



with the good faith procedures prescribed by the following provisions, i, ii, and iii, as long as the Division is satisfied that the Contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active “card carrying” members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The Contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- i. If the Contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the Contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the Contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the Contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the Contractor or subcontractor agrees to afford equal employment opportunities to minority and women workers directly, consistent with this chapter. If the Contractor’s or subcontractor’s prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the Contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (ii) below; and the Contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.
- ii. If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (i) above, or if the Contractor does not have a referral agreement or arrangement with a union for a construction trade, the Contractor or subcontractor agrees to take the following actions:
 - A. To notify the Public Agency Compliance Officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
 - B. To notify any minority and women workers who have been listed with it as awaiting available vacancies;
 - C. Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the Contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
 - D. To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the Contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
 - E. If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable State and Federal court decisions;
 - F. To adhere to the following procedure when minority and women workers apply or are referred to the Contractor or subcontractor:
 - G. The contractor or subcontractor shall interview the referred minority or women worker.



- H. If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the Contractor or subcontractor shall in good faith determine the qualifications of such individuals. The Contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However a Contractor or subcontractor shall determine that the individual at least possesses the requisite skills and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the Contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (iii) below.
 - I. The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in paragraph (i) above whenever vacancies occur. At the request of the Division, the Contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
 - J. If, for any reason, said Contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the Contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the Public Agency Compliance Officer and to the Division.
 - K. To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, and on forms made available by the Division and submitted promptly to the Division upon request.
- iii. The Contractor or subcontractor agrees that nothing contained in (ii) above shall preclude the Contractor or subcontractor from complying with the hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (ii) above without regard to such agreement or arrangement; provided further, however, that the Contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the Contractor or subcontractor agrees that, in implementing the procedures of (ii) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.
- (f) After notification of award, but prior to signing a construction contract, the Contractor shall submit to the Public Agency Compliance Officer and the Division an initial project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the Contractor, in accordance with N.J.A.C. 17:27-7.



- (g) The Contractor and each subcontractor must submit monthly employment and wage data to the Department via a web based application using electronic Form CC-257R. Instructions for registering and receiving the authentication code to access the web based application can be found at: <http://www.state.nj.us/transportation/business/civilrights/pdf/cc257.pdf>. Instructions on how to complete Form CC-257R are provided in the web application. Submit Form CC-257R through the web based application within 10 days following the end of the reporting month. All employment and wage data must be accurate and consistent with the certified payroll records. The Contractor is responsible for ensuring that their subcontractors comply with these reporting requirements. Failure by the Contractor to submit Monthly Employment Utilization Reports may impact the contractor's prequalification rating with the Department.
 - (h) The Contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).
 - (i) The Contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and off-the-job programs for outreach and training of minority and female trainees employed on the construction projects.
- 12.2 Recipient agrees that it will be bound by the above equal opportunity provisions with respect to its own employment practices when it participates in State assisted construction, design or right of way acquisition work.
- 12.3 Recipient also agrees:
- (a) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the State of New Jersey.
 - (b) To furnish the State such information as may require for the supervision of such compliance, and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- 12.4 In addition, Recipient agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:
- (a) Cancel, terminate, or suspend this Agreement, in whole or in part;
 - (b) Refrain from extending any further assistance to Recipient with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from Recipient; and
 - (c) Initiate appropriate legal proceedings.

13. Nondiscrimination

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



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

14. Small Business Enterprises

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

- (a) Policy. It is the policy of the New Jersey Department of Transportation that small business enterprises (SBE's), as they are defined in N.J.A.C. 12A: 10A-1.2 et seq. and N.J.A.C. 17:14-1.2 et seq., shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with State funds under this agreement.
- (b) Obligation. The contractor agrees to ensure that SBE's, as defined in N.J.A.C. 12A: 10A-1.2 et seq. and N.J.A.C. 17:14-1.2 et seq., have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with State funds provided under this Agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with the applicable section of N.J.A.C. 12A: 10A-1.2 et seq. and N.J.A.C. 17:14-1.2 et seq. to ensure that SBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, handicap, religion, age, or sex, as provided in state law, in the award and performance of DOT-assisted contracts."

15. No Oral Modifications

- (a) This Agreement may not be changed orally, but only by an Agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.
- (b) The Recipient shall request approval by the State of any task or line item budget revision deemed necessary to carry out the project in this Agreement. This request shall be submitted in writing by the Recipient to the State. If approved by the State, the State shall provide written authorization to Recipient to proceed with the revision.

16. Notices and Demands

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



If to the State:

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

Or the designated District Office, Bureau of Local Aid, serving the area of the Recipient:

District 2 – Richard Loveless, Project Management Specialist 3
153 Halsey Street - 5th floor
Newark, NJ 07102
Phone: (973) 877-1500
Fax: (973) 648-4547

If to Recipient:

Phillip Scott, P.E.
(Engineer)
City of Newark
Department of Engineering
920 Broad Street
Newark, NJ 07102

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

17. Partial Invalidity

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

18. Further Assurances

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

19. Entire Agreement; Counterparts; Disputes

- 19.1 This Agreement contains the entire agreement between the parties hereto and supersedes any and all prior understandings and agreements, oral or written, between the parties respecting the subject matter hereof.



19.2 This Agreement may be executed in two or more counterparts, each of which shall be deemed a duplicate original and all of which together shall constitute one and the same Agreement.

19.3 In the event a dispute arises concerning the meaning of any term used in this Agreement, or the work and services required to be performed under this Agreement, or as to compensation under this Agreement, the dispute shall be decided by the Commissioner of Transportation or his duly authorized representative.

20. Choice of Law

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

21. Resolution

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

22. APPENDIX A - Regulations of the Department of Transportation relative to pursuant to N.J.S.A. 10:5-31 et seq.

23. APPENDIX B - Certification of Recipient is attached hereto and made a part of this Agreement.

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

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

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

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

28. APPENDIX G – Project Scope of Work

29. APPENDIX H – Project Cost Estimate



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

Project: Delancy Street (Final Design)
Municipality: Newark City, County: Essex

OWNER: CITYOF NEWARK

Approved as to form:

Date
Name: Phillip Scott, P.E.
Title: Director of Engineering

By: _____
Date
Name: Kenyatta K. Stewart
Title: Corporation Counsel

ATTEST/WITNESSED/AFFIX SEAL:

RECIPIENT City of Newark

Date
Name: Kathleen Marchetti
Title: Deputy City Clerk

By: _____
Date
Name: Ras J. Baraka
Title: Mayor

ATTEST/WITNESSED/AFFIX SEAL:

NEW JERSEY DEPARTMENT OF TRANSPORTATION

Date
Anika James
Department Secretary,
New Jersey Department of Transportation

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

THIS DOCUMENT HAS BEEN REVIEWED AND APPROVED AS TO FORM

ATTORNEY GENERAL OF NEW JERSEY

Gurbir Grewal

By: _____
Deputy Attorney General

Date



APPENDIX A

NONDISCRIMINATION

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

1. Compliance with Regulations: The RECIPIENT will comply with Regulations as recognized by the State relative to nondiscrimination pursuant to N.J.S.A. 10:5-31 et seq.
2. Nondiscrimination: The RECIPIENT, with regard to the work performed by it after award and prior to completion of the work, will not discriminate on the basis of race, color, age, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The RECIPIENT will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, including Procurement of Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the RECIPIENT for work to be performed under a subcontract, including procurement of materials or equipment, such potential subcontractor or supplier shall be notified by the RECIPIENT of the RECIPIENT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the basis of race, color, age, sex or national origin.
4. Information and Reports: The RECIPIENT will provide all information and reports required by the Requisitions, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the RECIPIENT is in the exclusive possession of another who fails or refuses to furnish this information, the RECIPIENT shall so certify to the STATE shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the RECIPIENT'S noncompliance with the nondiscrimination provisions of this contract, the STATE shall impose such sanctions as are appropriate and available under the laws of the STATE.
 - (a) Withholding of payments to the RECIPIENT under the contract until the RECIPIENT complies, and/or,
 - (b) Cancellation, termination, or suspension of the contract, in whole or in part.
6. This Agreement is subject to all federal, State, and local laws, rules, and regulations, including, but not limited to, those pertaining to nondiscrimination in employment and affirmative action for equal employment opportunity.
7. The RECIPIENT agrees to ensure that Small Business Enterprises (SBE) as defined in N.J.A.C. 12A: 10-102 et seq., and N.J.A.C. 17:14-1.2 et seq. have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with State funds. Failure to make a good faith effort to meet the established SBE goal may result in sanctions as defined under paragraph 5 of this Appendix.



8. If at any time following the execution of this Agreement, the RECIPIENT intends to sublet any additional portion(s) of the work or intends to purchase materials or lease equipment not contemplated during the original proposal preparation, the RECIPIENT shall:
 - (a) Notify the Project initiator, in writing, of the type and approximate value of the work which the RECIPIENT intends to accomplish by such subcontract, purchase order or lease.
 - (b) Give SBE firms equal consideration with non-minority firms in negotiations for any such subcontracts, purchase orders or leases.
9. Incorporation of Provisions: The RECIPIENT will include the provisions of paragraph (1) through (9) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders or instructions, issued pursuant thereto.

**APPENDIX B****CERTIFICATION OF RECIPIENT**

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

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

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

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



APPENDIX C

CERTIFICATION OF NEW JERSEY DEPARTMENT OF TRANSPORTATION

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

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



APPENDIX D

NJDOT CODE OF ETHICS FOR VENDORS

1. No vendor* shall employ any NJDOT officer or employee in the business of the vendor or professional activity in which the vendor is involved with Department officer or employee.
2. No vendor shall offer or provide any interest, financial or otherwise, direct or indirect, in the business of the vendor or professional activity in which the vendor is involved with the Department officer or employee.
3. No vendor shall cause or influence or attempt to cause or influence any NJDOT employee or officer in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that NJDOT officer or employee.
4. No vendor shall cause or influence, or attempt to cause or influence, any NJDOT officer or employee to use or attempt to use his or her official position to secure any unwarranted privileges or advantages for that vendor or for any other person.
5. No vendor shall offer any NJDOT officer or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the RECIPIENT in the discharge of his or her official duties. In addition, employees or officers of NJDOT will not be permitted to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events or any other item which could be construed as having more than nominal value.

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

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

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

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

Adopted on the 16th day of December, 1987

**APPENDIX E****CERTIFICATION OF RECIPIENT ELIGIBILITY**

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

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

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

does not have a proposed debarment pending; and

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

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

Attest:

RECIPIENT

Name/Title: Kathleen Marchetti, Deputy City Clerk

Name/Title: Ras J. Baraka, Mayor

Date: _____



APPENDIX F

AMERICANS WITH DISABILITIES ACT

Equal Opportunity For Individuals With Disabilities.

The RECIPIENT and the STATE do hereby agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. Sec. 12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereto, are made a part of this contract. In providing any aid, benefit, or service on behalf of the STATE pursuant to this contract, the RECIPIENT agrees that the performance shall be in strict compliance with the Act. In the event that the RECIPIENT, its agents, servants, employees, or sub consultants violate or are alleged to have violated the Act during the performance of this contract, the RECIPIENT shall defend the STATE in any action or administrative proceeding commenced pursuant to this Act. The RECIPIENT shall indemnify, protect, and save harmless the STATE, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The RECIPIENT shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith.

In any and all complaints brought pursuant to the STATE'S grievance procedure, the RECIPIENT agrees to abide by any decision of the STATE which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the STATE or if the STATE incurs any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the RECIPIENT shall satisfy and discharge the same at its own expense.

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

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

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

