

SAMPLE FOR REVIEW ONLY

**SUBCONTRACT
FOR THE FY 2019
UNIFIED PLANNING WORK PROGRAM**

SUBCONTRACTOR: [insert firm's name]

ADDRESS: [insert firm's address]

SUBCONTRACT FOR: The North Jersey Transportation Planning Authority, Inc.
One Newark Center, 17th Floor
Newark, NJ 07102

PROJECT TITLE: [insert project title]

TASK NO.: [insert UPWP task number and description]

SUBCONTRACT PERIOD: [insert term of contract]

TOTAL BUDGET: [insert final negotiated fee]
Federal (FHWA): [insert final negotiated fee]

NJIT INDEX: 99#### (Fund 27S###)

PROJECT SPONSOR: Federal Highway Administration (FHWA),
CFDA No. 20.205 (Highway Planning and Construction);
New Jersey Department of Transportation (NJDOT),
Task Order PL-NJ-19-01

ISSUED BY: New Jersey Institute of Technology/
North Jersey Transportation Planning Authority, Inc.
University Heights
Newark, New Jersey 07102-1982

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PREAMBLE

This Subcontract, entered into *[insert start date]*, by New Jersey Institute of Technology (NJIT), an institution of higher education, and the North Jersey Transportation Planning Authority, Inc. (NJTPA), Newark, New Jersey 07102 (hereinafter collectively called the “CONTRACTOR”), and:

[Insert Firm’s Name]

(hereinafter called the “SUBCONTRACTOR”), and constituting a subcontract under Prime Contract, Agreement No. 2016-NJIT-001, between the State of New Jersey Department of Transportation (NJDOT), NJTPA and the NJIT.

WITNESSETH THAT

The SUBCONTRACTOR agrees to furnish and deliver the supplies and perform the services set forth in this subcontract, entitled: *[insert project title]*, for the consideration stated herein.

ARTICLE 1. STATEMENT OF WORK

- (A) The SUBCONTRACTOR shall provide the necessary personnel, equipment, facilities and supplies to perform the services specified in the attached Work Statement/Proposal marked **Exhibit A**, which by this reference is made a part hereof (see attached proposal).
- (B) This Subcontract is made pursuant to the terms of Prime Contract and all applicable provisions contained in the Prime Contract shall be binding upon the SUBCONTRACTOR, and SUBCONTRACTOR agrees to comply with same.
- (C) Each deliverable under this Subcontract shall be subject to acceptance testing or review by CONTRACTOR to verify that the deliverable satisfies the criteria required by the Prime Contract. When CONTRACTOR reasonably determines that the applicable deliverable meets with the required criteria, then CONTRACTOR shall accept the deliverable. In the event that any deliverable does not conform to the required criteria, then CONTRACTOR will give SUBCONTRACTOR written notice thereof. CONTRACTOR will cooperate with SUBCONTRACTOR in identifying in what respects the deliverable has failed. SUBCONTRACTOR shall, at no cost to CONTRACTOR, promptly correct any deficiencies which prevent such deliverable from being acceptable to CONTRACTOR so that the deliverable will conform to the required criteria under the Prime Contract.

ARTICLE 2. KEY PERSONNEL

- (A) SUBCONTRACTOR shall designate *[insert consultant firms PM’s name]* as its Project Manager, who shall not be replaced without CONTRACTOR’S prior consent.
- (B) The CONTRACTOR designates *[insert NJTPA’s PM’s name]* as its Project Manager.

ARTICLE 3. PERFORMANCE SCHEDULE

- (A) The performance schedule under this Subcontract shall begin on [insert start date] and shall end on [insert end date], for which period funds are available and allotted. Costs incurred prior to or after these dates are not reimbursable. Subcontract may be extended by mutual written agreement or terminated under the conditions of this Subcontract. All extension requests must be submitted in writing to the NJTPA at least ninety (90) days prior to the close of the subcontract period.

Whenever SUBCONTRACTOR knows that any actual or potential condition is delaying or threatens to delay the timely performance of this Subcontract, SUBCONTRACTOR shall provide written notice thereof to CONTRACTOR.

ARTICLE 4. ALLOWABLE COSTS AND PAYMENTS

- (A) The cost of services to be provided under this Subcontract shall not exceed [insert final negotiated fee].

Funding Source: Federal (FHWA): [insert final negotiated fee].

A budget agreed to by the parties is attached as **Exhibit B** and made part of this Subcontract for all purposes and shall not be exceeded unless by written amendment to this Subcontract. **(Provisions for amendment may only be made after receiving approval from the CONTRACTOR).**

For the purpose of determining the amount payable to SUBCONTRACTOR, the following rates are applicable:

- (1) Direct Labor Costs: \$
- (2) Indirect Costs (###% Overhead): \$
- (3) Profit (##% Fixed Fee): \$
- (4) Non-salary Direct Expenses: \$
- (5) Subconsultants Costs: \$

It is agreed that the above rates shall be applicable to the entire period of this Subcontract. If requested by CONTRACTOR, SUBCONTRACTOR will provide a copy of the negotiated agreed rates with the applicable cognizant agency. It is agreed that rates for further periods will be established by subsequent negotiations and incorporated into this Subcontract by amendment. Payments for performance of this Subcontract by SUBCONTRACTOR shall be made by CONTRACTOR on a cost reimbursement basis.

- (B) SUBCONTRACTOR may transfer funds within approved budget categories in accordance with Management Standards of 2 CFR 200, Subparts A to D “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, for Grant Agreements with For-Profit Organizations, as in effect on the date of this Subcontract and in accordance with the provisions of the Prime Contract.
- (C) To be eligible for reimbursement, costs must be in accordance with the following applicable federal requirements: 2 CFR Chapter I and Chapter II, Part 200, et al.,

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; and Federal Acquisition Regulation Subpart 31.2, Contract with Commercial Organizations, as appropriate. Costs shall be further governed by policies and procedures of the CONTRACTOR'S Prime Contract.

- (D) SUBCONTRACTOR shall submit detailed invoices monthly on the attached form **(Exhibit C)** provided by the CONTRACTOR. Each invoice shall be accompanied by the appropriate affidavit of wages paid and documentation of expenditures for each phase of work, including time and effort reports documenting the project's progress and status. SUBCONTRACTOR shall submit invoices with receipts and other supporting documentation for all individual non-salary cost items. SUBCONTRACTOR shall provide a complete set of time sheets, records and accounts to identify salaries, payroll burden, and non-salary direct expenses incurred by personnel directly supporting the Work Program to accompany each invoice. These expenditures shall be documented in compliance with applicable Federal and STATE guidelines and be made available for review. If such documentation is found, during annual audits and/or reviews by the Federal Government and/or STATE to be not in compliance with applicable Federal and State guidelines, the SUBCONTRACTOR shall take an appropriate plan of corrective action to meet all guidelines or repay the undocumented costs to the CONTRACTOR for remittance to the appropriate Federal funding agency. A final invoice with a final release clause is required no later than thirty (30) days from the last day of this Subcontract. A final invoice received beyond the thirty (30) days following the end date of this Subcontract is subject to refusal at the sole direction of the CONTRACTOR.
- (E) SUBCONTRACTOR shall require in any subcontract that the subcontractor assume and agree in writing to perform SUBCONTRACTOR'S obligations hereunder and accept the maximum per diem rate permitted by the U.S. government (if applicable).
- (F) The CONTRACTOR will not reimburse the SUBCONTRACTOR for equipment purchases, in accordance with state policy and practices.

ARTICLE 5. EXAMINATION OF RECORDS

- (A) SUBCONTRACTOR shall maintain all records relating to both negotiations and to costs incurred, or anticipated to be incurred, directly or indirectly in the performance of this subcontract, which records shall include, but not be limited to, documents, papers, accounting records, and any other evidence pertaining to cost; shall make such records available at the respective offices of the CONTRACTOR at all reasonable times during the contract period and for three (3) years from the date of the final payment, and shall furnish copies of the records if requested. Additionally, all records involved with disputes, litigation or settlement of claims arising under or related to the contract shall be retained and made available until such disputes, litigation or claims are finally disposed of. No retained records or records involved with disputes, litigation or settlement of claims shall be destroyed by the SUBCONTRACTOR without the prior written approval of the CONTRACTOR. Following passage of three (3) years from the date of payment of the applicable Final Invoice, the CONTRACTOR may, at its option, ask the SUBCONTRACTOR to destroy the records or surrender records to the CONTRACTOR for additional storage.

- (B) The books of account, files, and other records of SUBCONTRACTOR which are available to this subcontract, shall at all times, be available for inspection, review and audit by the CONTRACTOR and its representatives to determine the proper application and use of all funds paid to or for the account or benefit of SUBCONTRACTOR; in addition, SUBCONTRACTOR shall provide such special reports as requested by the CONTRACTOR to permit evaluation of progress of the project.
- (C) FAR Subpart 4.7 – Contractor Records Retention (48 C.F.R. 4.700 et seq.) and FAR 52.215-2 (48 C.F.R. 52-215-2) are hereby made a part of this subcontract by reference as if set forth fully herein.
- (D) If any amount paid hereunder by the CONTRACTOR is subsequently disapproved or disallowed by the sponsor or another agency, the SUBCONTRACTOR shall, upon demand, promptly remit disapproved or disallowed amount to the CONTRACTOR.

ARTICLE 6. PATENTS, COPYRIGHTS AND INTELLECTUAL PROPERTY

- (A) Title to any inventions, intellectual property, software, designs, discoveries or the like (hereinafter collectively “Inventions”) made solely by the SUBCONTRACTOR in the performance of this Subcontract, shall vest in the SUBCONTRACTOR to the extent permitted by the Prime Contract and/or prime sponsor. Rights to Inventions made solely by the CONTRACTOR shall belong to the CONTRACTOR. SUBCONTRACTOR grants CONTRACTOR, NJDOT and/or U.S. Government a global, royalty-free, irrevocable, non-exclusive license for CONTRACTOR, NJDOT and/or U.S. Government to access and use all developed work product to the extent necessary for CONTRACTOR, NJDOT and/or U.S. Government to provide services with respect to and as required by the Prime Contract. SUBCONTRACTOR shall not incorporate any pre-existing intellectual property into the deliverables of this Subcontract without the prior written consent of CONTRACTOR. All ownership rights to Inventions created by either party under this Subcontract are subject to U.S. and/or state Government rights therein, if any.
- (B) SUBCONTRACTOR and CONTRACTOR shall jointly and equally own title to all Inventions made jointly by employees of SUBCONTRACTOR and CONTRACTOR in the performance of this Subcontract. Each party agrees to cooperate with the other and to prepare and execute those documents reasonably necessary to carry out the intent of this Article. Each party agrees to share equally in the reasonable expenses in preparing, filing, prosecuting and/or maintaining patents for joint inventions in the U.S. and for those foreign countries which the parties mutually agree upon. CONTRACTOR shall control the filing of all jointly made Inventions.
- (C) SUBCONTRACTOR shall provide prompt written notice to CONTRACTOR of any Invention or joint Invention made during SUBCONTRACTOR’S performance of this Subcontract.

ARTICLE 7. REPORTS

- (A) The SUBCONTRACTOR shall submit such technical reports to the CONTRACTOR Project Manager as required by the CONTRACTOR in the scope of work. Reports must be submitted sufficiently in advance of due date to allow time for review and comment by the CONTRACTOR. A final detailed technical report is

due within thirty (30) days of the end of this Subcontract and shall include to the extent applicable, drawings, specifications, and the necessary operating and maintenance instructions concerning any equipment, item, or process developed under this Subcontract.

- (B) The following disclaimer statement shall appear on the cover or the title page of any published report concerning this Project:

"The preparation of this report has been financed in part by the U.S. Department of Transportation, North Jersey Transportation Planning Authority, Inc., Federal Transit Administration and the Federal Highway Administration. This document is disseminated under the sponsorship of the U.S. Department of Transportation in the interest of information exchange. The United States Government assumes no liability for its contents or its use thereof."

- (C) A final expenditure report, as specified in Article 4, is due within thirty (30) days of the end of this Subcontract.

ARTICLE 8. TERMINATION

- (A) CONTRACTOR may terminate this Subcontract by giving thirty (30) days advance written notice to SUBCONTRACTOR. In the event of early termination by CONTRACTOR, SUBCONTRACTOR shall cease work on the subcontract and refrain from incurring additional cost upon notification of termination. CONTRACTOR will reimburse SUBCONTRACTOR for approved and authorized work, and all reasonable and non-cancelable costs incurred by SUBCONTRACTOR up to the date of notice of termination. However, in no event shall CONTRACTOR be obligated to pay more than the total amount of this Subcontract. Notwithstanding this provision (or any other terms of this Subcontract), CONTRACTOR reserves the right to issue an immediate stop work order notice to SUBCONTRACTOR upon receipt of the same from the state and/or federal funding authorities. No payment for work, expenses or costs after the date of the stop work order notice will be paid by CONTRACTOR (including non-cancelable costs) unless CONTRACTOR receives the same from the state and/or federal funding authorities.
- (B) Notwithstanding the provisions of Paragraph (A), in the event that the SUBCONTRACTOR is in default or has breached its obligations at the time of termination, CONTRACTOR does not waive any of its rights or remedies which it may have against SUBCONTRACTOR resulting from SUBCONTRACTOR's default, and CONTRACTOR may withhold all or part of payments to SUBCONTRACTOR to off-set its reasonably determined damages.
- (C) If SUBCONTRACTOR has not taken action after six months from the beginning of the performance period specified in Article (3), Subcontractor shall be notified, by letter, that project funding will be rescinded and be reprogrammed within the CONTRACTOR's work program.

ARTICLE 9. PUBLICITY

- (A) SUBCONTRACTOR shall not use the name of the CONTRACTOR, nor any of its employees or agents for the purpose of publicity or advertising without the prior written consent of the CONTRACTOR. All publicity shall acknowledge the support

of the prime sponsor to the extent required under the Prime Contract. Nothing herein shall be construed to prevent disclosures of information required by law or lawful process.

ARTICLE 10. DEBARMENT AND SUSPENSION

- (A) The SUBCONTRACTOR certifies that neither it nor its principals are debarred, suspended, or declared ineligible from participating in this agreement by and Federal and/or state agency.

ARTICLE 11. COMPLIANCE WITH LAWS

- (A) SUBCONTRACTOR assures compliance with all applicable federal, state and local laws, rules and regulations and executive orders, as amended, including but not limited to: (a) Non-Discrimination In Employment and Equal Employment Opportunity (N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq; Titles VI and VII of the Civil Rights Act of 1964; Executive Orders 11246 and 11375 as implemented by 41 CFR Part 60; Rehabilitation Act of 1973, Section 504; Age Discrimination Act of 1976; and Title IX of Higher Education Act of 1972); (b) Drug-Free Workplace Act of 1988 (34 CFR Part 85); (c) Byrd Anti-Lobbying Amendment (31 USC 1352); (d) Protection of Human Subjects (45 CFR Part 46); (e) Clean Air Act (42 USC 7401 et seq.); (f) Water Pollution Control Act (33 USC 1251 et seq.); (g) Notification of Employee Rights Under Federal Labor Laws (Executive Order 13496); (h) Fair Labor Standards Act of 1938 (29 CFR Part 5); (i) US Export Control (Arms Export Control Act, 22 USC 2751-2794; International Traffic and Arms Regulation, 22 CFR Part 120; Arms Administration Act, 50 USC 2401-2420; and Export Administration Regulations 15 CFR 730-774); (j) Disclosure of Investment Activities in Iran P.L. 2012, c.25; and (k) New Jersey's Diane B. Allen Equal Pay Act (P.L. 2018, c. 9). This provision shall be included in all sub-award documents related to this Subcontract, at all tiers.

ARTICLE 12. ASSIGNMENT

- (A) This Subcontract may not be assigned in whole or in part without the prior written consent of the CONTRACTOR.

ARTICLE 13. INDEMNIFICATION/INSURANCE

- (A) SUBCONTRACTOR shall defend, indemnify, protect and save harmless the CONTRACTOR, its officers, and employees from and against all suits, claims, losses, demands or damages to the extent arising out of or claimed to arise out of its negligent acts, errors, or omissions in the performance of this Subcontract, except that SUBCONTRACTOR shall not be responsible for claims arising from the negligent acts, errors or omissions of CONTRACTOR. SUBCONTRACTOR shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses to the extent arising from such suit or claim or incurred in connection therewith. The foregoing obligations shall survive termination or expiration of this Subcontract. If any judgment shall be rendered against the CONTRACTOR for which indemnification is provided under this article, the SUBCONTRACTOR, shall, at its own expense, satisfy and discharge the same. It is understood that the obligations accepted by

the SUBCONTRACTOR pursuant to this article "INDEMNIFICATION" relate to the scope of work attached herein **(Exhibit A)**.

- (B) Workers Compensation in statutory amounts and Employers Liability Insurance of not less than \$1 million.
- (C) Commercial General Liability with combined single limits for bodily injury and property damage of not less than \$1 million per occurrence and \$3 million aggregate. NJTPA and New Jersey Institute of Technology (NJIT) must be named as additional insured on such policy.
- (D) Automobile Liability with bodily injury limits of at least \$500,000 per person and \$1 million per accident and property damage limit of at least \$500,000 per accident. NJTPA and New Jersey Institute of Technology (NJIT) must be named as additional insured on such policy.
- (E) Consultants' Errors and Omissions, endorsed to include the scope of work included herewith, in amount of not less than \$1 million per claim. Such insurance may be required to be renewed for five years following the completion of the project.
- (F) Certificates of Insurance evidencing the above coverages must be submitted to NJTPA in advance of the commencement of any work, and coverages must be maintained in force throughout the term of the project.

ARTICLE 14. SPECIAL PROVISIONS

- (A) The SUBCONTRACTOR agrees that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26, and Emerging Small Business Enterprises (ESBE), as defined by the New Jersey Department of Transportation (NJDOT), shall have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement, The SUBCONTRACTOR and its subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts in accordance with 49 CFR Part 26. For this agreement, the DBE/ESBE goal, as previously established, shall be [insert current percentage goal as established annually, effective October 1st, by NJDOT] percent (##.##%). Should SUBCONTRACTOR be unable to achieve this goal, a request, in writing must be provided to the CONTRACTOR for a waiver. At this time, the CONTRACTOR will provide a determination. Failure to meet this goal, or obtain a waiver from the CONTRACTOR, may result in lack of reimbursement to SUBCONTRACTOR (see paragraph E below).
- (B) Regulations of the Department of Transportation relative to Non-Discrimination in Federally assisted projects of the Department of Transportation (49 CFR Part 26), are made part of the Agreement.
- (C) Equal Employment Opportunity Requirement for Procurement and Service Contracts in accordance with the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq., attached hereto, is made part of the Agreement, labeled **(Exhibit D)**.
- (D) New Jersey Department of Transportation "Code of Ethics for Vendors" attached hereto, is made part of the Agreement, labeled **(Exhibit E)**.

- (E) In the event of non-compliance by the SUBCONTRACTOR with nondiscrimination provisions of this Agreement, the CONTRACTOR shall impose such sanctions as it, NJDOT, FHWA, and/or FTA may determine to be appropriate, including, but not limited to:
 - (1) Withholding payments to the SUBCONTRACTOR until the SUBCONTRACTOR complies; and
 - (2) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (F) "Lobbying Restrictions", attached hereto, is made part of the Agreement, labeled **(Exhibit F)**.

ARTICLE 15. SUBCONTRACTORS

- (A) Subject to the provisions of this Article, work may be subcontracted. The CONTRACTOR, pursuant to the requirements of 2 CFR Chapter 1, Chapter, Part 200, et al. and STATE OMB audit Circulars and as a recipient of federal and state funds, is required to comply with all federal and state procurement guidelines. As such, it is understood that the SUBCONTRACTOR shall ensure that the terms and conditions of proposed subcontracts are in full compliance with above said regulations. As part of its obligations under this Agreement, the SUBCONTRACTOR shall, at all times give its personal attention to the provision of the services agreed to under this Agreement and shall keep all such services under its control.
- (B) With regard to each subcontract, the SUBCONTRACTOR shall maintain all supporting documentation, including an executed agreement with the subcontractor, on file for review by representatives of the CONTRACTOR, the state and the federal government. The subcontract shall provide that the subcontractor shall be responsible for complying with all federal, state or local laws and regulations applicable to the performance of the Agreement as well as the provisions of the Agreement affecting work performed by the subcontractor.
- (C) The SUBCONTRACTOR shall make no claim for reimbursement for expenditures, which were incurred prior to the Subcontract, for services performed by the subcontractor related to the Subcontract.
- (D) The subcontract shall provide that the subcontractor shall look only to the SUBCONTRACTOR for the payment of any claims of any nature whatsoever arising out of said subcontract.
- (E) With regard to hiring consultants and subconsultants, see **(Exhibit G)**, "Procedure for Procurement of Professional Services."

ARTICLE 16. REPRESENTATIONS, WARRANTIES AND COVENANTS

- (A) SUBCONTRACTOR covenants that the performance of work and services pursuant to the requirements of this Agreement shall conform to all statutes, laws, regulations and standards. Except as set forth in the Work Statement/Proposal attached as **Exhibit A**, SUBCONTRACTOR warrants that its performance of this Subcontract

does not depend on the acquisition of rights from any third party and the conveyance of the deliverables described in the Work Statement/Proposal attached as **Exhibit A** and will not knowingly infringe on the intellectual property right of any third party.

- (B) SUBCONTRACTOR covenants that the quality of all services rendered shall be performed in accordance with prevailing professional standards within the applicable field or profession required under the Scope of Work.
- (C) SUBCONTRACTOR represents and warrants that to solicit or secure this Subcontract, no company or person, other than a bona fide employee working solely for the SUBCONTRACTOR, has been employed or retained; and that the SUBCONTRACTOR has not agreed to pay any company or person, other than a bona fide employee working solely for the SUBCONTRACTOR, any finders fee, commission, percentage, brokerage fee, gift, or any other consideration, either contingent upon or resulting from the award or making of this Subcontract. For breach or violation of this representation or warranty, the CONTRACTOR shall have the right to either annul this Subcontract without liability, or in its discretion to deduct or otherwise to recover from the contract price or consideration the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

ARTICLE 17. SITUS

- (A) Regardless of the place of physical execution or performance, this Subcontract shall be construed according to the laws of, and deemed to have been executed in the State of New Jersey. Any action or claim relating to or arising out of this Subcontract will be brought in a state or federal court sitting in the State of New Jersey and the parties irrevocably consent to personal jurisdiction and venue of, and agree to bound by any judgment and orders rendered by, such courts.

ARTICLE 18. NOTIFICATIONS

- (A) Any notices or communication required to be sent to CONTRACTOR by SUBCONTRACTOR under this Subcontract shall be in writing and shall be hand delivered or sent by certified or registered mail, return receipt requested, to the below address:

If to New Jersey Institute of Technology:

Ms. Mariel Diaz
Associate Director, Grants and Contracts Accounting
Office of Research Development
New Jersey Institute of Technology
323 Martin Luther King, Jr. Blvd.
Newark, NJ 07102

If to the North Jersey Transportation Planning Authority, Inc.:

Ms. Angellita S. Young
Director, Finance and Administration
NJTPA
One Newark Center, 17th floor
Newark, NJ 07102

If to the Subcontractor:

[Insert Consultant's PM's name, firm's name and address]

ARTICLE 19. CONFIDENTIALITY/PUBLICATION

- (A) The parties agree to keep and maintain as strictly confidential any confidential or proprietary information and material of the other required for the performance of this Subcontract, provided that such information it is clearly marked as "confidential" at the time of tender to the other, including but not limited to materials, technical data, or other information that one party may provide to the other, in connection with this Subcontract (collectively "Confidential Information"). CONTRACTOR is free to refuse to accept any proffered confidential information of SUBCONTRACTOR. Each party shall hold the Confidential Information in confidence, with the same degree of care that it applies to its own confidential information of like importance, but not less than reasonable care, except that each party may disseminate such Confidential Information to its employees who have a need to know for performance of this Subcontract. Each party shall use Confidential Information that it receives solely to accomplish the work required under this Subcontract and for no other purpose. Each party agrees that in the event of a breach or threatened breach of this provision, both may be irreparably harmed such that monetary damages will not adequately compensate it for its injuries. In the event of any such breach, both parties may be entitled, in addition to any rights or remedies it may have at law or in equity, to seek temporary and permanent injunctive relief issued by any court of competent jurisdiction enjoining and restraining the other from continuing such breach. The foregoing obligations shall survive termination or expiration of this Subcontract.
- (B) "Confidential Information" shall not include the following information, to the extent that a party can show that the information: (i) is previously known by it at the time of disclosure without obligation of confidence, or without breach of this Subcontract; (ii) is publicly disclosed through no wrongful act of a party or its representatives; (iii) is received from a third party having the right to lawfully possess and disclose same and without breach of this Subcontract, (iv) is independently developed by a party without access or reference to the Confidential Information, (v) is approved for release by prior written authorization of the disclosing party, (vi) is required to be disclosed by governmental law, statute, regulation or the like, or court order. If a party is required to disclose any Confidential Information by a court of competent jurisdiction pursuant to applicable law or regulation, or by a properly filed Open Public Records Request, such party shall make such disclosure only to the extent expressly required and only after reasonable efforts to alert the other party of such disclosure requirement, so that the party owning the Confidential Information may seek to contest disclosure at its own cost and expense.
- (C) CONTRACTOR shall be furnished copies of any proposed publication by SUBCONTRACTOR involving any work under this Subcontract at least sixty (60) days in advance of the submission to permit CONTRACTOR to make written comments or object in writing because there is patentable subject matter which needs protection or CONTRACTOR'S proprietary information which needs to be removed. CONTRACTOR shall provide SUBCONTRACTOR with such commentary or objection within thirty (30) days of receiving a proposed publication or forever waive its rights in this regard. In the event that CONTRACTOR makes a

timely objection to a proposed publication, SUBCONTRACTOR shall refrain from making such publication or presentation for a maximum of ninety (90) days from date of receipt of such objection in order for either CONTRACTOR to file appropriate patent applications. If CONTRACTOR objects due to its proprietary information being contained in the proposed publication, SUBCONTRACTOR agrees to remove the same.

ARTICLE 20. NEW JERSEY BUSINESS REGISTRATION REQUIREMENT

- (A) SUBCONTRACTOR is hereby given notice that a business organization or individual that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12-92), or that provides false business registration information under the requirements of either of those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a State of New Jersey contracting agency such as CONTRACTOR. No payment shall be made by CONTRACTOR to SUBCONTRACTOR under this Subcontract until SUBCONTRACTOR provides an acceptable New Jersey Business Registration Certificate.

ARTICLE 21. GENERAL PROVISIONS

- (A) The failure by either party to enforce any provision of this Subcontract or to timely insist on performance shall not constitute or be construed as a waiver of any right to strictly enforce a contractual provision.
- (B) This Subcontract constitutes the entire understanding between the parties regarding this matter and merges any and all prior discussions, representations, promises, and warranties within its scope. There are no representations, warranties or promises not expressly set forth in this Subcontract.
- (C) Except as expressly set forth herein, this Subcontract may not be modified, renewed, or extended, except in writing, signed by both parties.
- (D) SUBCONTRACTOR shall not communicate directly with the prime sponsor regarding the performance of this Subcontract without the prior consent of CONTRACTOR.
- (E) Any provision of this Subcontract that by its nature is intended to survive termination and/or expiration of this Subcontract, including but not limited to Articles 4, 5, 6, 9, 11, 13, 16 and 19, shall survive termination and/or expiration of this Subcontract.
- (F) SUBCONTRACTOR shall be deemed to be an independent contractor and, as such, neither SUBCONTRACTOR nor its employees shall be entitled to any benefits applicable to employees of CONTRACTOR.
- (G) Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, statement, commitment or representation as to any matter. Neither shall be bound by the acts or conduct of the other.

(H) SUBCONTRACTOR acknowledges that technology, software, services, and commodities provided by CONTRACTOR may be subject to laws or regulations restricting their export, re-export, transfer or release to certain entities or destinations, including those laws and regulations administered by the U.S. Department of Commerce (Bureau of Industry and Security) and the U.S. Department of the Treasury (Office of Foreign Assets Control). With respect to any export, re-export, transfer, or release otherwise permitted under this Agreement, SUBCONTRACTOR shall comply with all applicable U.S. government requirements, including the U.S. Export Administration Regulations.

IN WITNESS WHEREOF, the parties have executed this subcontract as of the day and year first above written.

ATTEST/SEAL

New Jersey Institute of Technology

By _____
Mr. Edward J. Bishof, Sr.
Senior Vice President for Finance and
Chief Financial Officer

Date _____

North Jersey Transportation
Planning Authority, Inc.

By _____
Mary D. Ameen
Executive Director

ATTEST/SEAL

For the SUBCONTRACTOR:

By _____

Date _____

(Typed Name)

(Title)

Instructions to SUBCONTRACTOR:

If a corporation, affix a corporate seal.