

AGREEMENT NO. 1785
BETWEEN
STATE OF DELAWARE
AND
TRAUNER CONSULTING SERVICES, INC.

This **AGREEMENT**, made and executed in duplicate, the day, month, and year affixed by the signature of the Department of Transportation's representative by and between the **DELAWARE DEPARTMENT OF TRANSPORTATION**, a Department created under the laws of the State of Delaware, herein after designated as **DEPARTMENT**, and **TRAUNER CONSULTING SERVICES, INC.**, hereinafter referred to as the **CONSULTANT**, whose address is 1617 JFK Boulevard, Suite 475 Philadelphia, PA 19103.

WITNESSETH:

WHEREAS, the **DEPARTMENT** requires preparation, examination, evaluation, verification and final analysis of construction contract claims arising primarily from highway construction contracts. The consultant will also provide claims avoidance training to department personnel and training for the department's claims committee. Duties also include analysis, examination, evaluation, verification and final analysis of construction project schedules. The consultant will be required to attend and participate in meetings related to claims or project schedule. The consultant will be required to perform constructability plan reviews, and review of DelDOT's Error's and Omission Policy, and other miscellaneous construction management-related activities, on a task order basis: and,

WHEREAS, the **CONSULTANT** will be responsible for the initial evaluation of claims to define issues involved and establish a strategy for assertion or defense of claims, preparation and documentation of reports, graphs, charts, exhibits, and CPM schedules as appropriate, calculation and documentation of delays, recoverable damages, loss of productivity, inefficiencies and other causes regarding construction claims, attendance and participation at meetings and conferences with the **DEPARTMENT**, provide technical assistance and case preparation for the **DEPARTMENT'S**

Counsel, prepare and provide technical assistance on claims avoidance techniques for the **DEPARTMENT'S** training program, provide training for the **DEPARTMENT'S** claim's committee, review contract documents for coordination of the Plans, Standard Specifications, Supplemental Specifications, and Special Provisions for any discrepancies between the contract documents and perform constructability reviews prior to final plan submission, and review and provide recommendations to the **DEPARTMENT'S** current Errors and Omission Policy dated 1/9/1999 pertaining to the road and bridge improvement projects and/or maintenance projects in any of the **DEPARTMENT'S** districts on a state-wide, as-needed as-required basis; and,

WHEREAS, the **DEPARTMENT** has determined that the professional services covered by this **AGREEMENT** are necessary and that the **DEPARTMENT** would be best served by procuring such professional services; and,

WHEREAS, the **CONSULTANT** has been selected pursuant to and the **DEPARTMENT** and **CONSULTANT** have complied with The State Procurement Act, 29 Del C. Chapter 69, and this **AGREEMENT** is executed pursuant thereto.

NOW, THEREFORE, for and in consideration of the mutual covenants, hereinafter are stipulated to be kept and performed, and it is agreed between parties as follows:

The **CONSULTANT** has agreed and by these presents does agree with the **DEPARTMENT** for the consideration hereinafter mentioned to provide the services as hereinafter set forth.

SECTION 1. GENERAL PROVISIONS

- A. The **CONSULTANT** will be responsible for preparation, examination, evaluation, verification and final analysis of construction contract claims arising primarily from highway construction contracts, on an on-call task order basis.
- B. The term of this **AGREEMENT** shall be for three (3) years from the effective date of this **AGREEMENT**.
- C. The **CONSULTANT** assures the **DEPARTMENT** that it is committed to make a good faith effort to attain the Disadvantaged Business Enterprise (DBE) participation goal for each federally funded Task Order assigned under this **AGREEMENT**. DBE firms must be duly

certified with the **DEPARTMENT** as a DBE and approved as a **SUBCONSULTANT** under this agreement.

SECTION 2. DETAILED REQUIREMENTS

Work assigned on this **AGREEMENT** will be by individual task orders and shall include, but not necessarily be limited to:

- Initial evaluations of claims to define issues involved and establish a strategy for assertion or defense of the claims
- Preparation and documentation of reports, graphs, charts, exhibits, and CPM schedules as appropriate
- Calculation and documentation of delays, recoverable damages, loss of productivity, inefficiencies and other causes regarding construction claims
- Attendance and participation at meetings and conferences with DelDOT and construction contractors involved
- Provide technical assistance and case preparation for DelDOT
- Prepare and provide technical assistance on claims avoidance techniques for the Highway Administration training programs
- Constructability plan reviews of contract documents
- Claims avoidance training
- CPM review and analysis of contractors schedules
- CPM training

throughout the state of Delaware. The **CONSULTANT** will prepare a specific proposal for each task order assignment including a work plan, cost proposal, and schedule to be approved by the **DEPARTMENT**. Any changes in essential project management personnel shall be immediately brought to the attention of the **DEPARTMENT'S** project manager.

SECTION 3. PROJECT SCHEDULE

- A. Within three (3) working days the **CONSULTANT** shall acknowledge each work assignment. The **CONSULTANT** shall contact the **DEPARTMENT** to discuss project requirements and will provide a work plan, schedule and cost proposal to the **DEPARTMENT** within five (5) working days following the initial project scoping meeting.

The **CONSULTANT** shall submit a monthly status report for each assigned task and shall advise of any decisions needed concerning matters that appear to be preventing progress.

- B. The **CONSULTANT** will proceed with the work and services for each task within three (3) working days after receipt of a written Notice to Proceed issued by the **DEPARTMENT'S** Contract Administration section.
- C. The Department retains the right to disallow payment of fixed fee profit on any task initiated by the **CONSULTANT** prior to receipt of a Notice to Proceed issued by the **DEPARTMENT'S** Contract Administration section.

SECTION 4. FEE STRUCTURES

- A. The **CONSULTANT** certifies that the **CONSULTANT** has thoroughly investigated the **DEPARTMENT'S** requirements and that the **CONSULTANT** shall claim no compensation in addition to the amounts for work and services as set forth in this **AGREEMENT**.
- B. In consideration of the faithful and competent performance by the **CONSULTANT** of the work and services set forth in this **AGREEMENT**, the **DEPARTMENT** agrees to pay the **CONSULTANT**, including **SUBCONSULTANT(S)** and expenses, as follows:
 - 1. **DEPARTMENT** approved direct salary costs of productive technical personnel, which is defined as salaries paid to productive technical personnel engaged in fulfilling the work and services delineated in the **AGREEMENT**, plus payroll burdens and approved indirect overhead expenses. No premium for overtime will be paid without prior written **DEPARTMENT** authorization. Payroll burden and indirect overhead cost shall not be applied to the premium portion of overtime.
 - 2. For billing purposes, payroll burden and overhead rate of salaries paid to productive technical personnel are a combined rate based on: the actual rate audited in accordance with the **Federal Acquisition Regulations (FAR) Part 31** for a set period of time and approved by the **DEPARTMENT**, or; a provisional overhead rate established by the **DEPARTMENT**. All overhead rate determinations will become a part of this **AGREEMENT** and attached hereto. Final payment for payroll burdens and indirect overhead under the **AGREEMENT** is subject to audit and will be based on actual costs. The **CONSULTANT'S** combined **FAR Part 31** audited payroll burden and overhead

rate shall be submitted to the **DEPARTMENT** annually within six (6) months from the end of their fiscal year. Failure to submit a **FAR** audited rate in a timely manner will result in deduction of overhead payments until such time as the proper audited report is submitted. Rate preparation and audit costs are not chargeable to the projects.

3. Reasonable reimbursable direct non-salary costs attributed to the **PROJECT** as follows:
 - a. Lodging and subsistence, actual cost not to exceed CONUS (Continental United States) Per Diem rates set for the location by the U.S. General Services Administration, and pre-approved by the **DEPARTMENT**.
 - b. Mileage will be reimbursed in accordance with the **CONSULTANT'S** written policy for mileage reimbursement. It shall represent the actual amount of reimbursement paid to employees for mileage, and only for approved project related mileage properly documented by a trip log. In no case can the rate exceed the U.S. General Services Administration (GSA) rate established for the year in which work is being performed. Said mileage will not include commuting to or from work. For measurement purposes, the point of beginning shall be taken from the official place of business for each of the **CONSULTANT'S** employees.
 - c. Procurement of any goods, services or documents not specifically listed above will require prior written approval from the **DEPARTMENT**. Receipts or certified in-house listings of non-salary direct costs are required in support of billings. Non-salary direct costs are subject to audit review upon completion of the project.
4. Costs plus fixed fee for profit payments shall be made for performance of work described in this **AGREEMENT**. The fixed fee for profit shall be negotiated based on current **DEPARTMENT** policy on a task-by-task basis, or when the overhead rate is set or adjusted by the **DEPARTMENT**. The amount for fixed fee for profit shall not be expressed as a percentage in either the Task Order proposal or subsequent billings. Fixed fee for profit shall not be permitted on **NON-SALARY DIRECT COSTS**. Payments for fixed fee for profit are subject to review by the **DEPARTMENT** and must be supported by monthly progress reports showing an acceptable percentage of work completed as verified by a certified progress report.
5. In addition to the progress billing, the **CONSULTANT** shall provide a spreadsheet to

accompany each progress billing. The information reported shall be on a cumulative basis with each invoice submitted for the duration of the **AGREEMENT** and shall include, but not be limited to, the task order assignment number, a brief description of the assignment, total number person hours estimated per task and total number hours expended per task, amount of the estimate(s), amount billed to-date for each task order, the amount billed over/under estimate per task assignment and the amount of funding available under the existing **AGREEMENT** limit. Final settlement for total payment to the **CONSULTANT** will be made within ninety (90) days from the date of final written **DEPARTMENT** acceptance of each project as agreed to in the **AGREEMENT**.

6. Escalation of Direct Labor Rates

The Direct Labor rates for **CONSULTANT** personnel assigned to Task Orders under this **AGREEMENT** must receive prior approval by the **DEPARTMENT**. Cost of Living pay raise adjustments of the **CONSULTANT'S** Direct Labor rates will be considered by the **DEPARTMENT** on an annual basis, either effective the beginning of each calendar year, or at some other agreed annual period. The **DEPARTMENT** must approve in writing all escalation in **CONSULTANT** Direct Labor rates prior to progress billing at the new rates. The **CONSULTANT** must include salary escalation as a line item on all price proposals for Task Orders with an anticipated term of more than one year.

Escalation rates shall be based on national indicators, such as the U.S. Department of Labor, Bureau of Labor Statistics (**BLS**), Consumer Price Index (**CPI-U**) (<http://stats.bls.gov/cpi/>) for the **CONSULTANT'S** appropriate region (e.g., All Urban Consumers for Philadelphia-Wilmington-Atlantic City regions). Acceptable salary rate increases shall not exceed the lower of; the calculated result from the **BLS CPI-U**; or, a maximum of Five (5) percent per year under any circumstances.

Merit-based increases may be considered by the **DEPARTMENT** for individuals on the **CONSULTANT'S** staff having demonstrated a consistent record of superior work performance. Performance measures may include but are not limited to: meeting accelerated project schedules; assuming and delivering exceptional quantities of high quality finished products; consistent high quality innovative solutions. Merit-based increases must be fully justified to the **DEPARTMENT** in writing and approved in

writing by the **DEPARTMENT** prior to progress billing at the new rates. Merit-based increases may be considered at anytime during the year.

SECTION 5. CONSULTANT PERFORMANCE OF WORK

The **CONSULTANT** agrees that it shall:

- A. Save harmless the State of Delaware and the **DEPARTMENT**, their agents, officers and employees, from all claims or liability. In meeting this obligation the **CONSULTANT** shall secure and furnish the **DEPARTMENT** a certificate of insurance evidencing regular Liability, Property Damage, Worker's Compensation, and Automobile insurance coverage from an insurance company authorized to do business in the State of Delaware. **CONSULTANT shall maintain the following insurance during the term of this Agreement:**

Worker's Compensation and Employer's Liability Insurance in accordance with applicable law,

and

Comprehensive General Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and

Medical/Professional Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate;

or

Miscellaneous Errors and Omissions - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

or

Product Liability - \$1,000,000.00 per occurrence/\$3,000,000 general aggregate,

and

If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

The **DEPARTMENT** must be named a certificate holder on each of the certificates of insurance named above. The insurance company shall be authorized to do business in the State of Delaware. The **CONSULTANT** shall provide the **DEPARTMENT** with 30 days notice in the event either policy is cancelled or not renewed. Nothing contained in this section shall be construed as limiting **CONSULTANT'S** obligation to indemnify the **DEPARTMENT** due to the **CONSULTANT'S**, the **CONSULTANT'S** agents', assignees', servants' or employee's negligence. The **DEPARTMENT'S** Errors and Omissions policy is attached and made part of this **AGREEMENT** and any future supplemental agreements.

- B. Comply with all Federal and State laws applicable to the work and services to be done under this **AGREEMENT** for the **CONSULTANT'S** employees as required by law.
- C. Provide all labor, technical and engineering services, all material such as prints, paper and the like necessary to complete the **PROJECT** except as otherwise provided herein. The **CONSULTANT** shall furnish the **DEPARTMENT** with copies of any studies, design information, cost analysis or other information upon request. In accordance with Paragraph H of this Section, all data becomes the sole property of the **DEPARTMENT**. The **CONSULTANT** shall hold the **CONSULTANT'S** work and records open at all times for the inspection and/or audit by the **DEPARTMENT**. The location of the inspection will be at the **DEPARTMENT'S** discretion.
- D. Make no charges or claims for damages or the like for any delays or hindrances from any cause except delays and hindrances beyond the **CONSULTANT'S** control. Such delays shall be compensated by the **DEPARTMENT** by an extension of time and, if sufficiently justified by the facts, an allowance for increase in salaries if the delay is of such length that this occurs. Any final decision making as to whether the delay and hindrances are beyond the **CONSULTANT'S** control shall be vested in the Secretary of Transportation or in a manner of his or her choosing, pursuant to 17 Del. C. Section 152.
- E. Notify the **DEPARTMENT** in writing if the **CONSULTANT** is of the opinion that any work or service is beyond the scope of the **AGREEMENT**. If by its sole discretion the **DEPARTMENT** concurs, in accordance with Delaware law, a Supplemental Agreement may be executed in writing. No work covered by Supplemental Agreements shall be begun

unless ordered in writing by the **DEPARTMENT**.

- F. Meet with the **DEPARTMENT** and others in the event that any matters arising out of this **AGREEMENT** cannot be resolved in a mutually satisfactory manner. At such meetings, all interested parties shall be present with the **SECRETARY** of the Delaware Department of Transportation, who shall hear all arguments and render a final decision on the controversy that shall be binding on all parties concerned.
- G. Retain all books, documents, papers, accounting records and any other material pertaining to cost incurred under this **AGREEMENT** for a minimum period of three years after final payment by the **DEPARTMENT** and shall make the material available upon request for inspection and audit by the **DEPARTMENT**. The **CONSULTANT**, or applicable **SUBCONSULTANT**, shall be liable for **DEPARTMENT** costs incurred for subsequent audit reviews requested by the **CONSULTANT**, as per **DEPARTMENT** guidelines.
- H. Agree that all study data, surveys, documents, reports, designs, plans, specifications, maps, computations, digital media, charges and the like prepared or obtained under the terms of this **AGREEMENT** shall be the sole property of the **DEPARTMENT** and upon request shall be delivered to the **DEPARTMENT**.
- I. Agree to participate and become a party to any lawsuit, administrative and/or arbitration proceeding in which the **CONSULTANT'S** work product pursuant to this **AGREEMENT**, supplemental agreement, the project and/or related activities shall be the subject of any such proceeding. The **CONSULTANT** shall make its files available, to require its officers and employees to participate in and be subject to the jurisdiction of any such proceeding; including but not limited to, the preparation of testimony, the production of records and documents, the explanation of such records and documents and/or such expert testimony as the aforesaid officers and employees of the **CONSULTANT** are qualified to give. **CONSULTANT** further agrees that it is hereby subject to the jurisdiction of any such proceeding and shall be bound by its findings with regard to such findings of liability, responsibility for payment of any judgements, claims or awards made at such proceedings or its appeal process. The **CONSULTANT** shall bear the cost of any obligation undertaken pursuant to these provisions, in which the work product of the **CONSULTANT** is the subject of the inquiry, to the extent that it is negligent in its required performance. If the

CONSULTANT is not a party to an arbitration proceeding, administrative hearing or lawsuit and is requested to produce records, assist in preparation and/or participate in a proceeding at the request of the **DEPARTMENT**, it shall do so at such rates as are listed in a supplemental agreement, subject to escalation if appropriate due to time delays. If the **CONSULTANT** is not found to be negligent in the performance of its duties under the agreement and is a party to such administrative hearing, arbitration, the **CONSULTANT** shall be reimbursed for his costs or they shall be prorated accordingly. Pursuant to 17 Del. C. Section 152, the Secretary of the Department of Transportation shall have final responsibility and be the final arbitrator of such disputes accompanying costs, time delays, or reimbursement to the **CONSULTANT** for performance of its duties under the agreement.

- J. Assign only technical employees approved by the **DEPARTMENT**. The approval shall be obtained for each project.

SECTION 6. CONSULTANT CERTIFICATION

- A. The **CONSULTANT** certifies that it has not employed or retained any company or person, working primarily for the **CONSULTANT**, to solicit or secure this **AGREEMENT** by improperly influencing the **DEPARTMENT** or any of its employees, and **CONSULTANT** has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the **CONSULTANT**, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this **AGREEMENT**. The **DEPARTMENT** shall have the right to terminate this **AGREEMENT** for violation of this certification without liability and, at its discretion, to deduct from the **AGREEMENT** price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- B. Notwithstanding anything in the Errors and Omissions policy to the contrary, the standard of performance with which the **CONSULTANT** must comply is that degree of care and skill ordinarily exercised under similar conditions by consultants currently practicing in this state.

SECTION 7. DEPARTMENT SERVICES

The **DEPARTMENT** agrees that it shall:

- A. Furnish the **CONSULTANT** with copies or plans, specifications, photographs, reports,

calculations, surveys, model plans, CADD standards, available traffic data and studies, and any other pertinent public records as are readily available to the **DEPARTMENT** and which are applicable to the **PROJECT**.

- B. As far as possible, cooperate with the **CONSULTANT** in coordination and in obtaining the necessary information and approvals from appropriate government officials.

SECTION 8. AGREEMENT TERMINATION

This **AGREEMENT** may be terminated at any time by the **DEPARTMENT** upon written notice to the **CONSULTANT** by registered mail, return receipt requested. In the event of termination for any reason, the **CONSULTANT** and the **CONSULTANT'S** agents, successors or assigns, members, partners, etc. shall be entitled to compensation under this **AGREEMENT** only for work and services completed by the **CONSULTANT** prior to termination of the **AGREEMENT**, which is both useful and available to the **DEPARTMENT**. Any claim for compensation must be filed in writing with the **DEPARTMENT** within 120 calendar days after termination of this **AGREEMENT**. In the event this **AGREEMENT** is terminated for any cause, all study data, plans, surveys, specifications, maps, charts, computations, documents, reports, designs, computer-aided drafting and design files, databases, computer programs, and source code developed by the consultant for the project, and the like, are and shall be the sole property of the **DEPARTMENT**.

SECTION 9. SCOPE OF AGREEMENT

This **AGREEMENT** constitutes the sole understanding by and between the **CONSULTANT** and the **DEPARTMENT** and nothing outside of the **AGREEMENT** shall be modified except in writing subscribed by both parties.

SECTION 10. SUB-CONTRACTS

- A. The **CONSULTANT** shall not subcontract, sublet, sell, transfer, assign, or otherwise dispose of the **AGREEMENT** or any portion thereof, or of its right, title or interest therein, without written consent from the **DEPARTMENT**. The **CONSULTANT** shall submit a certified copy of the **CONSULTANT**/subconsultant agreement and any and all other agreements with any other person, firm, or organization for review and approval by the **DEPARTMENT**. Each sub-agreement shall be in writing and shall contain and state that all pertinent

provisions and requirements of this **AGREEMENT** are incorporated into the sub-agreement.

It shall be the **CONSULTANT'S** responsibility to determine that all such provisions are included and such provisions shall be implied where not specifically included.

- B. As part of the **CONSULTANT'S** team, **DEPARTMENT** approved subconsultants for this agreement are listed in APPENDIX A. Approved subconsultants may be added to, or removed from, this **AGREEMENT** upon signature of the **CONSULTANT** and the **DEPARTMENT** as indicated in APPENDIX A.
- C. All approved subconsultant work shall be performed and billed in accordance with the terms, conditions, and limitations of this **AGREEMENT**.
- D. Subconsultants shall be paid on a cost plus fixed fee for profit basis. The **CONSULTANT** shall make payment to the subconsultants for services performed within one week after receiving payment from the **DEPARTMENT** for those services.

SECTION 11. SUCCESSOR AND ASSIGNMENTS

The **DEPARTMENT** and the **CONSULTANT** each binds itself, its successors, legal representative, agents, employees, officers, and assigns, to each other to this Contract. The **CONSULTANT** shall not assign, sell or in any way transfer its interest in this **CONTRACT** without the prior written consent of the **DEPARTMENT**.

SECTION 12. NONDISCRIMINATION

Compliance with Title VI of the Civil Rights Act of 1964 and implementing regulations issued by the Department of Transportation.

During the performance of this **AGREEMENT**, the **CONSULTANT**, the **CONSULTANT'S** assignees, agents, members, partners, officers, and successors, in interest hereinafter referred to as the **CONSULTANT**, agrees as follows.

- A. **COMPLIANCE WITH REGULATIONS:** The **CONSULTANT** shall comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as amended from time to time, hereinafter referred to as the **REGULATIONS**, which are incorporated by reference and made a part of this **AGREEMENT**.

SECTION 13. LAWS OF DELAWARE

This **AGREEMENT** and the terms thereof shall be construed in accordance with the laws of the State of Delaware. In addition, **CONSULTANT** agrees to the jurisdiction and venue of a competent court within the State of Delaware.

Remainder of document is blank

APPENDIX A

AGREEMENT 1785

CLAIMS ANALYSIS, SETTLEMENT NEGOTIATION, AND SCHEDULE ANALYSIS

TRAUNER CONSULTING SERVICES, INC.

DEPARTMENT approved subconsultants for this Agreement:

(Consultant must submit signed subconsultant contracts prior to signatures)

Subconsultant's full Name:

No subconsultants at this time

Recommended by CONSULTANT:

Scott Lowe
Consultant Project Manager

Dated: October 31, 2016

Recommended by DEPARTMENT:

Javier Torrijos
Department Project Manager

Dated: _____

Original On File

Shelly K. Altoa
Shelly K. Altoa
Consultant Control Coordinator

Dated: 11.2.16

(Note: Project Manager signatures not required if no subconsultants listed)

**POLICY IMPLEMENT
STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
P.I. number: A-26
Errors and Omissions Policy**

References:

Issued: 1/1/1999

Revised: n/a

Expires: n/a

This document includes a general discussion on errors and/or omissions occurring during project implementation, how to initiate a correction for an error or omission, and what each party's responsibilities are in making the correction. The Department intends to seek reimbursement for additional costs (defined below) associated with correcting errors and omissions during planning, design and construction, including but not limited to, multiple report rewrites, construction costs, and construction engineering.

I. INSURANCE

This document does not address the types of liability insurance a firm may need to carry. Insurance usually carried by consultants includes Comprehensive General Liability, Comprehensive Automobile Liability, Workers' Compensation and Employers' Liability, Professional Liability, and other specialty insurance required in an agreement or that a firm may consider prudent based on the scope of work. The actual agreement covering the work will specify the minimum insurance requirements.

II. ASSIGNMENT OF RESPONSIBILITY

Services procured under the auspices of this document are considered "Professional Services". This in itself infers that, no matter what the scope of work entails, there are associated, industry professional, standards which are expected to be met. For projects involving public safety, meeting these standards takes on even more significance. Firms selected through the process described in the DeIDOT Professional Services Procurement Manual are the best technically qualified, with a proven history of meeting similar contract obligations. Such designation carries with it an acknowledgement of the firm's responsibility to know the accepted standards for doing business in Delaware.

Because of the Department's review process and the involvement of many internal support sections as well as other state agencies, utility companies, public groups, municipalities, and the like, acceptance of the responsibility for an error and/or omission in a professional manner will depend on good project monitoring. The Project Manager must ensure that full and complete review and comment records are kept by both the Consultant and the Department. It is required that an office copy of each marked or edited review submission and comments be prepared and retained for future reference. Detailed minutes of project review meetings are also required.

Because of the underlying expectation that a firm will comply with established standards throughout project development, there are occasions when a Project Manager and their Section Head will determine that a firm may not have met this obligation. When discovered, the error and/or omission should be reported immediately to the Consultant for resolution. While invoices should annotate the time and associated costs for correcting the lapse, the Department shall not be charged to correct errors and/or omissions.

III. ERROR AND/OR OMISSION DISCOVERY

Definitions:

Errors are defined as unknown, ignorant, or unintentional deviations from accuracy or correctness. Errors may arise from mistaken judgement, misplaced confidence, incorrect belief as to the existence or effect of matters of fact, or other actions. Errors also include failure to meet established Delaware requirements, or design standards for that type of project, (i.e., AASHTO, FHWA, EPA, FTA, DeIDOT or other established government requirements or design standards).

Omissions are defined as missing or unmentioned detail or requirements through either failure to perform properly, neglect, or failure to use reasonable care. Omissions also include failure to identify and implement cost-effective solutions.

Additional costs refers to that portion of the project cost the consultant is responsible for which includes those expenses over and above the cost the Department would have incurred had the error or omission not been made.

Example #1: A mistaken quantity that results in an unbalanced bid situation shall constitute an error whereas a mistaken quantity that results in the expense of additional materials to the Department shall not cause additional costs to the consultant except for the recalculation.

Example #2: If the consultant under-designs a sign structure, the consultant shall be responsible for the re-design as well as the construction cost, if any, of the under-designed structure. Likewise, if the consultant over-designs a sign structure, the consultant shall be responsible for the re-design as well as the increased cost of the over-designed structure.

Example #3: The Department will pay the expense of the first re-write of any reports being developed under contract. The cost of report re-writes after that first re-write will be considered additional costs to the consultant.

During Project Development:

Errors and/or omissions discovered during project development are relatively easy to resolve when identified early because the Consultant's Project Manager and the Department's Project Manager are both aware of the circumstances surrounding the problem. The major issue remaining involves arriving at a mutual agreement on whether full, partial or no compensation is due the Consultant to correct the problem. (See Resolution below.)

During Implementation or Construction

Most often it will be obvious if a Consultant error and/or omission truly occurred. Frequently, however, there is a time lapse between the completion of professional services to develop the project and actual implementation of the plan, project, or construction. Associated with this delay is the updating and modification of completed work because of changes in specifications, updated regulations, legislative initiatives, or additional valid comments for improving a project. Most often, corrections or modifications are performed by Department staff; however, they must be immediately reported to the Department's Project Manager and in turn, to the Consultant. In essence, the quality and content of a project become a shared responsibility. Changes of specifications, updated regulations, legislative initiatives, or comments for improving a project after acceptance of the final design, shall in no way be construed as an error/or omission.

Professional responsibility of the Consultant preparing the project does not terminate with acceptance of the product and/or final payment for its development. Failure to discover the error and/or omission during the design, review or implementation of the project does not relieve the Consultant of their responsibility to correct the effects of the error and/or omission. The extent of the responsibility of the consultant for payment for correcting any errors and/or omissions may be in question, but the active participation of the firm in resolving a problem upon request is mandatory. The level of the Consultant's participation shall be determined by the Department.

The procedure to initiate the correction of an error and/or omission lies with the person responsible for ensuring proper implementation of the plan, project, or construction. At the first indication of an error and/or omission, the Department's representative should notify the project Supervisor. All subordinates should be instructed to keep detailed documentation on the work being performed.

At this same time, the Department's Project Manager responsible for developing the project, if not the person identifying the error and/or omission, should be notified. Depending upon how critical a correction is to project scheduling, report preparation and review may be impractical. When such timing is critical, the Project Manager is verbally notified, and guidance is requested with emphasis on what additional data is needed to document and resolve the error and/or omission. The Department's Project Manager, in turn, should immediately advise the consultant, the supervisor, and up through the chain of command as necessary.

The Department holds the prime Consultant responsible for all work performed or not performed under an agreement including that of any subconsultants. When necessary, based on the opinion of the Department's Project Manager, section head, District Engineer, Deputy Director, and/or Director, the prime consultant will be notified of the problem and requested to participate in a solution in cooperation with Department staff. There will be no

compensation to either the prime or subconsultant for services related to the verification and correction of an error and/or omission unless as otherwise agreed. The primary objective is to keep the project on schedule by proposing a viable alternative. Records should be kept of any immediate action taken to correct the situation.

Resolution

The Department's Project Manager shall document the error and/or omission that was identified, collect all supporting materials, review their findings with the Consultant, determine the required action to correct the error and/or omission and analyze the cost impact of the resolution (including but not limited to materials, overtime, and force account). All documentation shall be presented to the Section Head. The prime Consultant is expected to participate at the appropriate level, from site visits to preparation of corrective documents. Much of this participation is mutually agreed to as solutions are developed.

The Section Head (or Assistant Chief Engineer for Project Management Team) will review the materials, discuss the resolution options with the Consultant and make a final recommendation to their Assistant Director (or Chief Engineer for Project Management Team) for review. At the conclusion of the Assistant Director's review, the recommendation will be presented to the Director or Deputy Director for approval. For the Project Management Team, the Chief Engineer's decision shall govern.

Appeal

Should the Consultant not participate in the resolution process or disagree with the finding of financial responsibility as presented, the Consultant can schedule a review with the Deputy Director or Director (Chief Engineer for Project Management Team). The Deputy Director or Director can modify the terms of the resolution or refer the appeal to the Secretary per the Consultant agreement's appeal process.

Default

Should the Consultant not honor the terms of the final resolution, the Department, for just and definable acts, has the option of filing a Consultant insurance claim, filing legal process for restitution, terminating all current agreements, or barring the firm from further work with the Department for up to five years, or any combination thereof.

End

State Cont. No. 1785
Fed.-Aid Proj. No. N/A
State : Delaware

CERTIFICATION OF CONSULTANT

I hereby certify that I am an officer and duly authorized representative of the firm of Trauner Consulting Services, Inc., whose address is 1617 JFK Boulevard, Suite 475 Philadelphia, PA 19103 and that neither I, nor the above firm I hereby represent, has:

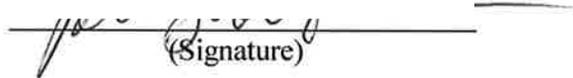
- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining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

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the State **DEPARTMENT OF TRANSPORTATION** and the **FEDERAL HIGHWAY ADMINISTRATION** in connection with this contract involving participation of Federal-aid highway funds, and is subject to applicable, State and Federal Laws, both criminal and civil.

Original On File

October 31, 2016
Date


(Signature)

CERTIFICATION OF STATE DIVISION OF:

I hereby certify that I am the Director of the Division of Transportation Solutions of the State of Delaware's Department of Transportation, and that the above consulting firm or the consultant's representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract to:

(a) employ or retain, or agree to employ or retain, any firm or person, or

(b) pay, or agree to pay, to any firm, person or organization any fee, contribution, donation, or consideration of any kind:

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the **FEDERAL HIGHWAY ADMINISTRATION**, in connection with this contract involving participation of Federal-aid highway funds, and its subject to applicable State and Federal Laws, both criminal and civil.

Original On File

11/7/2016
Date

Signature

Certification of Federal-Aid Contracts

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of the Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

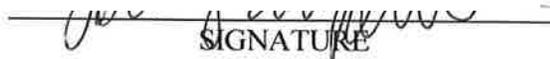
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. code. Any persons who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Original On File

October 31, 2016

DATE


SIGNATURE