

Department of Natural Resources and Environmental Control
CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT, is made by Johnson, Mirmiran and Thompson. Inc., "CONTRACTOR" and the Department of Natural Resources and Environmental Control ("DEPARTMENT"), as follows:

1. Service Contract.

DEPARTMENT agrees to pay CONTRACTOR and CONTRACTOR agrees to perform certain technical or professional services.

2. Scope of Services.

During the time of performance of this Contract services shall be provided within timeframes and in phases as described by Task Orders approved by the Department and consistent with the following scope of work:

- Evaluating economic benefits of Delaware Bay beach community shoreline management alternatives
- Determining storm damage reduction for Delaware Bay beach community project alternatives
- Performing benefit/cost analyses for storm and flood protection projects
- Elevation surveying and inventorying of structures and foundation types as needed for damage modeling
- Engineering services for coastal protection projects
- Assessing recreational benefits for shoreline enhancement projects
- Presenting and defending findings at public workshops and hearings

Task Orders issued under this contract will contain a detailed scope of work, estimated numbers of hours required to accomplish the task, hourly rates for personnel associated with the task, and total cost for each task.

3. Data Furnished to CONTRACTOR.

DEPARTMENT shall furnish all information, data, reports, records, and maps as existing, available, easily retrievable and necessary for the execution of the work to CONTRACTOR, without charge by DEPARTMENT, and DEPARTMENT shall reasonably cooperate with CONTRACTOR in carrying out the work.

4. Personnel.

- A. CONTRACTOR represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract.
- B. CONTRACTOR, or persons under CONTRACTOR'S supervision, shall perform all of the services required by this Contract, and all personnel engaged in the work shall be fully qualified and shall be authorized to perform such services.
- C. CONTRACTOR shall not subcontract any of the work or services covered by this Contract without the prior written approval of DEPARTMENT.

5. Time of Performance.

The services of CONTRACTOR are to commence as soon as practicable after the execution of this Contract and shall be undertaken in such sequence as to assure their expeditious completion in the light of the purposes of this Contract, but in any event all of the services required by this CONTRACT shall be completed no later than December 31, 2012 unless amended to extend this date. Time is of the essence in this Contract.

6. Total Cost and Compensation.

- A. It is agreed that the total cost for the services provided under this Contract shall not exceed \$400,000.

- B. CONTRACTOR is responsible for costs incurred in excess of the total cost of negotiated task orders and DEPARTMENT is not liable for such costs.
- C. Condition Precedent: The rights and obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid executed purchase order is approved by the Secretary of Finance and received by CONTRACTOR. The rights and obligations of DEPARTMENT under this Contract are limited to the amount of any approved purchase order.

7. Obligations and Payment.

- A. The obligations of the DEPARTMENT under this Contract shall be subject to the receipt of sufficient funds appropriated by the General Assembly and the obligations of the DEPARTMENT are limited to the amount of such appropriation.
- B. Invoices will be submitted based on completed tasks. Invoices shall be paid within 30 days after receipt by DEPARTMENT, if services are performed satisfactorily, in DEPARTMENT'S sole discretion.
- C. The obligations of each party to this Contract are not effective and no party is bound by the terms of this Contract unless and until a valid executed purchase order has been approved by the Secretary of finance, and all the procedures of the Department of Finance have been complied with.
- D. CONTRACTOR will maintain accurate financial records and make them available to Federal and State auditors, as needed, up to 3 years following Contract termination.

8. Contractor and Subcontractor Agreements

CONTRACTOR shall indemnify, save and hold harmless and defend the DEPARTMENT, its directors employees, representatives or agents against any demand, claim, suit, loss, costs, or damages to the extent caused by the negligence of the contractor sustained in connection with performance of services provided under this agreement.

CONTRACTOR shall require each and every contractor or subcontractor for the project to indemnify, save and hold harmless, and defend the DEPARTMENT, its directors, employees, representatives, or agents against any demand, claim, suit, loss, costs, or damages to the extent caused by the negligence of the contractor sustained in connection with performance of services provided under this agreement.

9. Termination of Contract for Cause.

If, for any reasons, or through any cause, CONTRACTOR shall fail to fulfill in timely or proper manner its obligations under this Contract, or if CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this Contract, DEPARTMENT shall then have the right to terminate this Contract by giving written notice to CONTRACTOR of such termination and specifying the effective date, at least 5 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by CONTRACTOR under this Contract shall, at the option of DEPARTMENT, become its property, and CONTRACTOR shall be entitled to receive reasonable compensation as determined by DEPARTMENT in its sole discretion for any satisfactory work completed on such documents and other materials which is usable to DEPARTMENT. Whether such work is satisfactory and usable is determined by DEPARTMENT in its sole discretion.

10. Termination for Convenience of DEPARTMENT.

DEPARTMENT may terminate this Contract in its sole discretion at any time for any reason by giving written notice of such termination and specifying the effective date, at least 15 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of DEPARTMENT, become its property and CONTRACTOR shall be entitled to receive reasonable compensation as determined by DEPARTMENT in its sole discretion for any satisfactory work completed on such

documents and other materials which is usable to DEPARTMENT. Whether such work is satisfactory and usable to is determined by DEPARTMENT in its sole discretion. Such reasonable compensation shall be CONTRACTOR'S sole compensation. Exercise of this right by DEPARTMENT shall not be deemed a breach of this Contract, and no damages shall be awarded to CONTRACTOR for exercise of this paragraph. If this Contract is terminated due to the fault of CONTRACTOR, Paragraph 9 hereof relative to termination shall apply.

11. Changes: Fragmentation Prohibition.

DEPARTMENT may, from time to time, require changes in the Scope of Services of the CONTRACTOR to be performed under this Contract in DEPARTMENT'S sole discretion, provided, however, if such changes include any decrease in the amount of CONTRACTOR'S compensation, then such changes must be mutually agreed upon by DEPARTMENT and CONTRACTOR, and shall be incorporated in written amendments to this Contract. The parties represent and agree that this Contract is not a fragmentation of a project, and that this Contract is not part of or a continuation of an ongoing project. The parties understand that any intentional fragmentation of a project, in order to make a professional services contract subjects a violator to a fine of not less than one thousand (\$1,000) dollars nor more than two thousand (\$2,000) dollars, and to imprisonment for not more than one year, pursuant to 29 Del. C. §6903.

12. Interest of CONTRACTOR.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. CONTRACTOR further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

13. Publication, Reproduction and Use of Material.

No material produced in whole or in part under this Contract shall be subject to copyright in the United States or in any other country. DEPARTMENT shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this Contract. CONTRACTOR shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for DEPARTMENT'S support will be given in the publication.

14. Assignment of Antitrust Claims.

As consideration for the award and execution by DEPARTMENT of this Contract, CONTRACTOR hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by DEPARTMENT or CONTRACTOR pursuant to this Contract.

15. DEPARTMENT'S Responsibilities. DEPARTMENT shall:

A. Examine and review in detail all letters, reports, drawings and other documents presented by CONTRACTOR to DEPARTMENT and render to CONTRACTOR in writing findings and decisions pertaining thereto within a reasonable time so as not to delay the services of CONTRACTOR.

B. Give prompt written notice to CONTRACTOR whenever DEPARTMENT observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR'S services.

16. The Parties Agree:

A. The laws of the State of Delaware shall apply to the construction and operation of this Contract.

B. This contract is the entire agreement between the CONTRACTOR and the DEPARTMENT and supersedes any prior agreement, whether oral or written, between the CONTRACTOR or any predecessor of the CONTRACTOR and the DEPARTMENT. It may be altered only by a written agreement signed by the CONTRACTOR and the DEPARTMENT. The CONTRACTOR's rights and obligations under this agreement will be binding on the CONTRACTOR's successors and assigns.

C. The CONTRACTOR shall not assign any interest in this Contract, and shall not transfer any interest in it, without the prior written consent of the DEPARTMENT.

D. The Contractor shall comply with 30 DE Code Chapter 23 regarding business licenses throughout the term of this agreement.

STATE OF DELAWARE

**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

Collin O'Mara, Secretary

JOHNSON, MIRMIRAN & THOMPSON

By: *David DiPierro*
Title: *Senior Vice President*