

CONTRACT

for

CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) SERVICES

I-95 and SR 896 Interchange

State Project Number: CM/GC-T201609002

Federal-Aid Number: IM-N060(44)

THIS **AGREEMENT** is made and executed in quadruplicate, the day, month, and year affixed by the signature of the Department of Transportation's representative, by and between the **DELAWARE DEPARTMENT OF TRANSPORTATION (Department)**, a department created under the laws of the State of Delaware, party of the first part, and **XXXXXXXXXXXX** of Street City State Zip ("**CM/GC Contractor**"), party of the second part.

WITNESSETH:

WHEREAS, the **CM/GC Contractor** has been selected pursuant to state and federal guidelines and regulations to provide services to the **Department** as a Construction Manager/General Contractor as defined in the advertised Request for Proposals (RFP) for this project, which advertisement and RFP are hereby incorporated by reference as part of this Agreement, and

WHEREAS, CM/GC is a contracting method that allows the **Department** to use a single procurement to secure pre-construction and construction services, and

WHEREAS, this Agreement covers pre-construction services, where the **Department** has procured the services of a construction contractor early in the design phase of a project in order to obtain the contractor's input on constructability issues that may be affected by the project design. The CM/GC contractor does not provide any preliminary or final design engineering. As part of the pre-construction services, the CM/GC contractor provides information for consideration in the design and environmental review processes on construction-related aspects of a project, including the potential effects of design elements on construction costs, schedule and quality, and

WHEREAS, construction services may begin once environmental review is complete and risks are adequately defined. If the **Department** and the **CM/GC Contractor** are able to agree on a price for a given scope and schedule for construction, the **CM/GC Contractor** and the **Department** will execute a separate contract for the construction of the project.

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

ARTICLE ONE. The TERM of this Agreement shall be from its effective date until either; this Agreement is terminated by the **Department** or mutual agreement of the parties in writing and signed by the parties; or, the **CM/GC Contractor** and the **Department** executes a final Agreement for Construction Services for this project (not including Early Work Packages). Should the **Department** desire to suspend the work, but not terminate the contract, this will be done by verbal notification followed by written confirmation from the **Department**. The work may be reinstated upon 30 days advance written notice from the **Department**.

ARTICLE TWO. Payment to the **CM/GC Contractor** is addressed in the RFP. The **CM/GC Contractor** certifies that they have thoroughly investigated the **Department's** requirements and shall claim no compensation in addition to the amounts for work and services as set forth in this Agreement. Compensation provided to the **CM/GC Contractor** herein shall be the total compensation payable hereunder by the **Department**. It is further mutually agreed between the parties hereto that no payment made under this Agreement shall be conclusive evidence of the performance of this Agreement either wholly or in part.

ARTICLE THREE. The **CM/GC Contractor** shall and will provide and furnish all services as described in the referenced RFP prepared by the **Department**. Following the execution of this Contract, the **CM/GC Contractor** shall begin work within ten (10) days from the Notice to Proceed, at such points as the Engineer may direct, and shall thereafter prosecute the work at such points and in such order as the Engineer may from time to time prescribe in accordance with the RFP.

ARTICLE FOUR. The **CM/GC Contractor** shall hold its work and records open at all times for the inspection and/or audit by the **Department** and other authorized State and Federal auditors. The location of the inspection will be at the **Department's** discretion. 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**.

ARTICLE FIVE. It is understood and agreed by and between the parties hereto that drawings, plans and specifications as may be necessary to detail and illustrate the work to be done are and remain the property of the **Department** whether furnished by the Engineer or **CM/GC Contractor**, as it may be consistent with the purpose and intent of the original RFP incorporated by reference as part of this Contract. The **CM/GC Contractor** shall furnish the **Department** with copies of any studies, design information, cost analysis, surveys, documents, reports, designs, plans, specifications, maps, computations, digital media, charges and the like prepared or obtained under the terms of this Agreement upon request of the **Department**.

ARTICLE SIX. If the work to be done under this Contract shall be abandoned, or if this contract, or any part thereof shall be sublet without the previous written consent of the **Department**, or if the Contract shall be assigned by the **CM/GC Contractor**, otherwise than as herein specified, or if at any time the Engineer shall be of the opinion, and shall so certify in writing, that the work, or any part thereof, is unnecessarily or unreasonably delayed, or that the **CM/GC Contractor** has violated any provision of this contract, the **Department** may notify the **CM/GC Contractor** to discontinue all work or any part thereof; and thereupon the **CM/GC Contractor** shall discontinue such work or such part thereof as the **Department** may designate, and the **Department** may thereupon terminate this contract, and payment to the **CM/GC Contractor** will be a percentage of the Pre-Construction Services Fee matching the percentage of project plans completed at that time, unless otherwise specifically described in the RFP.

ARTICLE SEVEN. The **CM/GC Contractor** agrees that it shall:

- Comply with all Federal and State laws applicable to the work and services to be done under this Contract.
- Meet with the **Department** and others in the event that any matters arising out of this Contract 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.

- Provide the standard of performance and degree of care and skill ordinarily exercised under similar conditions by contractors currently practicing in this state.
- Save harmless the State of Delaware and the **Department**, their agents, officers and employees, from all claims or liability. In meeting this obligation the **CM/GC Contractor** 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. The **Department** must be named a certificate holder on the certificate of insurance. The **CM/GC Contractor** shall provide the **Department** with 30 days' notice in the event the policy is cancelled or not renewed. Nothing contained in this section shall be construed as limiting the **CM/GC Contractor's** obligation to indemnify the **Department** due to the **CM/GC Contractor's**, its agents', assignees', servants' or employee's negligence.

ARTICLE EIGHT. The **Department** and the **CM/GC Contractor** each binds itself, its successors, legal representative, agents, employees, officers, and assigns, to each other to this Contract. The **CM/GC Contractor** shall not assign, sell or in any way transfer its interest in this Agreement without the prior written consent of the **Department**.

ARTICLE NINE. 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 **CM/GC Contractor**, its assignees, agents, members, partners, officers, and successors, in interest hereinafter referred to as the **CM/GC Contractor**, agrees as follows.

COMPLIANCE WITH REGULATIONS: The **CM/GC Contractor** 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.

ARTICLE TEN. The **CM/GC Contractor** shall be an independent contractor, and as such, shall have no authority, express or implied to bind the **Department** to any agreement, settlement, liability, or understanding whatsoever; and agrees not to perform any acts as agent for the **Department**, except as specifically authorized and set forth herein. Persons employed by the **Department** and acting under the direction of the **Department** shall not be deemed to be employees or agents of the **CM/GC Contractor**.

ARTICLE ELEVEN. This Agreement and the terms thereof shall be construed in accordance with the laws of the State of Delaware. In addition, **CM/GC Contractor** agrees to the jurisdiction and venue of a competent court within the State of Delaware. The declaration by any court, or other binding legal source, that any provision of this Agreement is illegal and void and shall not affect the legality and enforceability of any other provision of this Agreement, unless said provisions are mutually dependent.

signature page follows

IN WITNESS WHEREOF, the parties to these presents have duly executed this **AGREEMENT CM/GC-T201609002** in quadruplicate the day, month and year affixed by their signatures.

SEALED, AND DELIVERED IN THE
presence of

Name of CM/GC Contractor

Attest: _____

By: _____

Authorized Signature

CORPORATE SEAL

Title

Dated: _____

In the case of a corporation, firm, or partnership, this contract must be signed by the appropriate officials of such corporation, firm, or partnership and their corporate seal must be affixed hereto.

FOR THE STATE OF DELAWARE, DEPARTMENT OF TRANSPORTATION

SEAL

Attest: _____

By: _____

Charlanne Thornton, Director,
Finance

Shante Hastings, Director
Transportation Solutions

Dated: _____

Approved as to Form:

George T. Lees III,
Deputy Attorney General

Dated: _____

CM/GC CONTRACTOR'S CERTIFICATION STATEMENTS

SUSPENSION AND DEBARMENT

I, under penalty of perjury under the laws of the United States, certifies that, except as noted below, (the company) or any person associated therewith in the capacity of (owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of federal funds):

- *is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency:*
- *has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency:*
- *has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three 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 three years.*

Exceptions will not necessarily result in denial of award, but will be considered in determining consultant responsibility. For any exception noted, indicate below to who it applies, initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions. *Insert Exceptions:*

TRUTH-IN-NEGOTIATION CERTIFICATION

KNOW ALL MEN BY THESE PRESENCE, that the company hereinafter listed, by and through the undersigned, its lawful agent and pursuant to this Agreement by and between said company and the State of Delaware, Department of Transportation,

HEREBY CERTIFIES THAT:

- Wage rates and other factual unit costs supporting the compensation under the aforesaid Agreement are accurate, complete and current at the time the Agreement was executed.
- The undersigned, on behalf of the company hereinafter listed below, further **CERTIFIED** that said firm **AGREES** that:
- In the event that the State of Delaware, Department of Transportation determines the compensation was, in fact, increased due to inaccurate, incomplete or noncurrent wage rates or other factual unit costs, the original compensation and additions thereto shall be adjusted to exclude any such sum. All such adjustments shall be made within one year following the termination of said Agreement.
- **IT IS AGREED** that this document be attached to the aforementioned Agreement and become a part thereof.

COMPANY: _____ SIGNATURE: _____
(enter name of company) (authorized signature)

SWORN TO AND SUBSCRIBED before me, a Notary Public this ____ day of _____, 20 ____

My Commission Expires _____.

Signature of Notary Public _____

CERTIFICATION OF CM/GC CONTRACTOR

I hereby certify that I am an officer and duly authorized representative of the firm of XXXXXXXXXXXXXXXXXXXXXXXXXXXX, whose address is XXXXXXXXXXXXXXXXXXXXXXXXXXXX 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.

Date

(Signature)

S
A
M
P
L
E

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 firm or the firm'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 is subject to applicable State and Federal Laws, both criminal and civil.

Date

Signature

SAMPLE

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.

DATE

SIGNATURE