

# CONTRACT FOR PROFESSIONAL SERVICES

## SPECIMEN FORM OF CONTRACT

(Reference 2023 RFP-163)

AGREEMENT made this \_\_\_\_ day of \_\_\_\_, 20xx, by and between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (the "Authority or NJEDA"), having its address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625-0990, and \_\_\_\_\_. having its address at \_\_\_\_\_.

### The Authority and the Contractor agree as follows:

1. **The Work.** The Contractor shall perform or shall provide the services as specifically detailed in the Contractor's Proposal, dated \_\_\_\_\_XX, 2023, the Task Order Request, and the Authority's Request for Proposal ("RFP"), dated \_\_\_\_\_ XX, 2023, which are attached hereto and made a part of this Contract.

2. **Time.** The Contractor shall render the services described in the Contractor's Proposal and RFP as required by the Authority and generally pursuant to the Fee Schedule included therein.

The term of this Contract is through and including calendar year 2026.

3. **Contract Price.** The Authority shall pay the Contractor for the performance of the Work based on the Prices, as stated in the *Fee Schedule* set forth in the Contractor's Proposal, with a maximum award of \$14,550,000. The Authority may require services in addition to those agreed to in the RFP and the Proposal. Compensation to the Contractor for additional services shall be in accordance with the *Fee Schedule* as set forth in Contractor's Proposal; or if not specified in Contractor's Fee Schedule, then reasonable and customary amounts as negotiated by the Authority.

4. **Ownership and Use of Documents.** All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the Contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of

the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the Authority and shall be delivered to the Authority upon thirty (30) days' notice by the Authority. Regarding software computer programs and/or source codes developed for the Authority, the work shall be considered "work for hire," that is, the Authority, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Agreement, the Contractor or subcontractor(s) hereby assigns to the Authority all rights, title and interest in and to any such material, and the Authority shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

In the event the Contractor's proposal identifies bringing pre-existing intellectual property into a work-for-hire, the background intellectual property ("Background Intellectual Property") owned by the Contractor on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the Contractor. This contract, grants to the Authority, a non-exclusive, perpetual royalty-free license to use any of the Contractor's Background IP delivered to the Authority for the purposes contemplated by the contract and any extensions thereto.

5. **Manner of Payment.** As specified in the RFP and the Fee Schedule, the Contractor shall submit to the Authority an original invoice and any other documentation, as may be required by the Authority to process payment. The Authority will make prompt payment to the Contractor, following receipt of and approval of the documentation. No project multipliers shall be used in billings submitted under this Contract, as set forth in the proposal. The Contractor must submit an Invoice as detailed in Section 5.17 of the RFP to the Authority.

6. **Indemnification.** The Contractor shall defend, indemnify, protect and hold harmless the State of New Jersey and the Authority, and its officers, agents, servants and employees from and against any and all suits, claims, demands, losses or damages of any kind arising out of or claimed to arise out of any act, error, or omission on the part of the Contractor, its officers, agents, servants, employees and subcontractors in the performance of services under this Contract. The Contractor shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit

or claim or incurred in connection therewith. If any judgment shall be rendered against the State of New Jersey and the Authority or its officers, agents, servants, and employees for which indemnification is provided under this Section 6, the Contractor shall, at its own expense, satisfy and discharge the same.

The Contractor shall be liable to the Authority for any reasonable costs incurred by the Authority to correct, modify, or redesign any technical information, reports, findings, analyses, surveys or drawings generated or produced by Contractor or any Work performed by the Contractor or its subcontractor(s) that is found to be defective or not in accordance with the provisions of the Contract as a result of any negligent act, error, or omission on the part of the Contractor, its officers, agents, servants, employees and subcontractors. The Contractor shall be given a reasonable opportunity to correct any deficiency.

The indemnification obligation set forth in Section 6 is not limited in any way by the insurance coverage required pursuant to Section 7 of this Contract and shall survive the terms of this contract.

7. **Insurance.** The Contractor shall procure and maintain, at its own expense, liability insurance for damages of the kinds and in the amounts hereinafter provided, from insurance companies licensed, admitted and approved to do business in the State of New Jersey. The Contractor shall obtain this coverage from A VII or better - rated companies as determined by A.M. Best Company. The types and minimum amounts of insurance required are as follows:

(a) **Commercial General Liability Insurance.**

The minimum limits of liability for this insurance shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate and cover liability based on property damage, death and bodily injury.

The Commercial General Liability Insurance policy shall name the Authority and as additional insured. The coverage to be provided under this policy shall be at least as broad as the standard, basic, unamended and unendorsed commercial general liability policy and shall include contractual liability coverage.

(b) **Workers' Compensation and Employers' Liability.**

Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of this State and shall include an endorsement to extend coverage to any State, which may be interpreted to have legal jurisdiction. Employers' Liability Insurance shall also be provided in an amount acceptable to the Authority.

(c) **Professional Liability Insurance.**

The Contractor shall carry Errors and Omissions and/or Professional Liability Insurance sufficient to protect the Contractor from any liability arising out of professional obligations performed pursuant to this Contract. The insurance shall be in the amount of \$1,000,000 each claim and in such policy form as shall be approved by the Authority.

Professional Liability Insurance shall include coverage for Contingent Bodily Injury and Property Damage.

(d) **Cyber Security Insurance**

The Contractor shall carry Cyber Security Insurance in the amount of \$1,000,000 each claim which shall include coverage for breach of the Privacy Act or HIPAA regulations. This coverage will be either a part of or separate from the Professional Liability Insurance.

(e) **Automobile Liability Insurance**

The Contractor shall carry Commercial Automobile Liability insurance, at all times. The policy shall cover any owned, hired or non-owned automobiles/vehicles used by the insured or its staff with minimum limits for liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.

The General Liability, Professional Liability and Cyber Security policies are to be written on a claims-made or occurrence basis. If coverage is written on a claims-made basis, the Contractor shall maintain continuous claims-made coverage for the life of the contract and any extensions thereto and for a period of two (2) years beyond the expiration of the contract. If continuous claims-made coverage is not maintained, Tail Coverage shall be purchased to cover claims received up to two (2) years beyond the expiration of the Contract.

Limits indicated above may be provided through of combination of underlying and excess policies as needed.

ACORD Certificates of Insurance acceptable to the Authority in respect to each of the aforementioned policies shall be filed with the Authority prior to commencement of Work. All policies and corresponding Certificates must show thirty (30) days' prior written notice of cancellation (10 days' notice for non-payment cancellation) to the Authority. If the insurance policies cannot be endorsed to provide

notice of cancellation to third parties, then it is the responsibility of the Contractor to provide notice of cancellation to the Authority within forty-eight (48) hours of receipt of notification from their insurance company.

8. **Termination.** The Authority shall have the right without cause and in its complete discretion to terminate the Contract at any time upon seven (7) days' advance written notice to the Contractor. In such event, absent a default on the part of the Contractor, the Contractor shall be entitled to compensation for all services properly provided to the Authority pursuant to the Contract prior to such termination.

In addition to other remedies available under law to the non-defaulting party, this Contract may be terminated by either party upon thirty (30) days' advance written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

9. **Confidential Information of the Authority.** In connection with performing the Work, the Contractor, its employees and subcontractors may receive, review and become aware of proprietary, personnel, commercial, and financial information of the Authority, its employees, members, borrowers or business associates that is confidential and/or proprietary in nature ("Confidential Information"). The Contractor agrees that the use and handling of Confidential Information by the Contractor, its employees and subcontractors, shall be done in a responsible manner and solely for furtherance of the Work. Other than to its employees and subcontractors who have a need to know Confidential Information in connection with performance of the Work, the Contractor agrees not to disclose any Confidential Information, without the prior written consent of the Authority. The Contractor shall be responsible to assure that its employees and subcontractors do not disclose any Confidential Information without the prior written consent of the Authority. The Contractor shall inform each of its employees and subcontractors that receives any Confidential Information of the requirements of this Section 9 of the Contract and shall require each such employees and subcontractors to comply with such requirements.

Notwithstanding the foregoing, the term Confidential Information shall not include information which: (i) is already known to the Contractor, its employees and subcontractors from sources other than the Authority; (ii) is or becomes generally available to the public other than as a result of a disclosure by the Contractor, its employees and subcontractors; or (iii) is required to be disclosed by law or by regulatory or judicial process. The Contractor, its employees and subcontractors may be required to execute a Non-

Disclosure Confidentiality Agreement, as may be deemed appropriate by the Authority, in its sole discretion.

Pursuant to *Section 6 Indemnification* of the Contract, the Contractor shall indemnify and hold the State of New Jersey and the Authority, its employees and members harmless for any breach of *Section 9* “Confidential Information of the Authority”, by the Contractor, its employees or subcontractors.

10. **Debarment Liability.** The Contractor acknowledges that it shall be rendered liable to debarment in the public interest, pursuant to procedures established by Executive Order No. 34 (1976), and updated by Executive Order No. 189 (1988), and pursuant to N.J.A.C. 19:30-2, for violating any of the following provisions:

- a. No Contractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Authority officer or employee or special Authority officer or employee, as defined by N.J.S.A. 52:13D-13(b) and (e), with which such Contractor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13(i), of any such officer or employee, or any partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13(g).
- b. The solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by any Authority officer or employee or special Authority officer or employee from any Authority Contractor shall be reported in writing forthwith by the Contractor to the Attorney General of New Jersey and the Executive Commission on Ethical Standards.
- c. No Contractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Contractor to, any Authority officer or employee or special Authority officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationships subject to this subsection shall be reported in writing forthwith to the Executive Commission on Ethical Standards,

which may grant a waiver of this restriction upon application of the Authority officer or employee or special Authority officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

- d. No Contractor shall influence, or attempt to influence or cause to be influenced, any Authority officer or employee or special Authority officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No Contractor shall cause or influence, or attempt to cause or influence, any Authority officer or employee or special Authority officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the Contractor or any other person.

11. **Time for Completion and Damages.** The time for beginning and the time for completion of the Work are essential conditions of the Contract, and the Work embraced shall be commenced on the date of the "Notice to Proceed."

The Contractor shall proceed with the Work at such rate of progress to ensure full completion as set forth in the RFP and the Contractor's Proposal.

For reasons within the Contractor's control, if the Contractor shall fail to complete the Work, or shall be responsible for a delay which results in the failure to complete the Work within the time specified, or extension of time granted by the Authority, then the Contractor will pay the Authority an amount sufficient to compensate the Authority for its damages incurred as a result of such failure to complete.

12. **Contractual Liability Act.** Notwithstanding any provision in this Contract or in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to the contrary, the parties hereto agree that any and all claims made by the Contractor against the State of New Jersey and/or the Authority for damages, including, but not limited to costs and expenses, shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act.

13.

14. **General Conditions.**

A. The Work shall be performed in a professional manner, in accordance with the standards generally expected or required within the profession and the Work shall also be performed in accordance with all applicable state, federal and local laws, rules, regulations and ordinances.

B. The Contractor shall provide such reports, certificates, and documents as the Authority may reasonably require.

C. The Contractor shall provide to the Authority, at Contractor's expense, copies of all drawings, plans, cost estimates, design analyses, reports, schedules, charts, graphs and/or other documents required for the Project.

D. If the Authority or Contractor observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with any of the Contract Documents, prompt written notice thereof shall be given by the party discovering the defect to the other.

E. The Authority shall furnish all information available to the Authority, and reasonably required for the performance of the Work and shall render approvals and decisions as expeditiously as possible for the orderly progress of the Contractor's services and of the Work.

F. The Contractor shall comply with the affirmative action requirements set forth in the Law Against Discrimination, N.J.S.A. 10:5-31 et seq., and the regulations promulgated thereunder by the State Department of Treasury.

G. The Contractor is required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq., which are expressly included within the terms of this Contract, refer to "Exhibit A" annexed hereto and made a part hereof.

The Contractor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of



any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$ 50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

H. In accordance with N.J.S.A. 52:32-44, Prior to contract award or authorization, the Contractor shall provide the Authority with proof of business registration of any named subcontractor(s).

Subcontractors named in a bid or other proposal shall provide proof of business registration to the Proposer, who in turn, shall provide it to the Authority prior to the time a contract, purchase order, or other contracting document is awarded or authorized. During the course of Contract performance:

the Contractor shall not enter into a Contract with a subcontractor unless the subcontractor first provides the Contractor with a valid proof of business registration.

Any subcontractor providing goods or performing services under the Contract and each of their affiliates, shall collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the use tax due pursuant to the Sales and Use Tax Act, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at (609) 292-6400. Form NJ-REG can be filed online at

<http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

Before final payment is made under the contract, the Contractor shall submit to the Authority a complete and accurate list of all subcontractors used and their addresses.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration as required, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000, for each proof of business registration not properly provided under a contract with a contracting agency.

I. In accordance with the requirements of N.J.S.A. 52:32-17 et seq. N.J.A.C. 17:13-1.2 et seq., and N.J.A.C. 17:14-1.2 et seq., as amended, the Authority is required to develop a set-aside plan for Small Businesses and Disabled Veteran-Owned businesses. The Contractor agrees that, if awarded a contract based on this plan, it shall comply with all requirements of these provisions. If the Contractor fails to comply with the requirements of these provisions, the Authority may declare this Contract void.

J. Pursuant to N.J.S.A. 52:34-13.2, all Work and all subcontractor services performed in connection with or as part of the Work shall be performed within the United States.

K. Pursuant to N.J.S.A. 52:15C-14(d), relevant records of private Contractors or other persons entering into contracts with the Authority are subject to audit or review by the New Jersey Office of the State Comptroller. Therefore, the Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

L. The Contractor shall not disclose to any third party the contents of the information, reports, findings, analysis, surveys, drawings and creative elements generated or produced in performance of this Contract, or provide copies of same, without the prior written consent of the Authority, except where such information, reports, etc. are legally required by order of court or administrative agency, state or federal.

M. The Authority and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party of this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither the Authority nor the Contractor shall assign, sublet, or transfer any interest in this Contract without the prior written consent of the other party.

N. Any notices required to be given under this Contract shall be mailed to:

New Jersey Economic Development Authority  
PO Box 990  
36 West State Street  
Trenton, New Jersey 08625-0990

Attn: \_\_\_\_\_ – Title

AND

CONTRACTOR NAME  
Contractor Street Address  
Contractor City, State, Zip Code  
Attn: \_\_\_\_\_ - Title

O. To the extent that there is any conflict between the terms and conditions of the Contractor's Proposal and the terms and conditions of the Contract and the Authority's RFP, the Contract and RFP shall control.

P. This Contract shall be construed under the laws of the State of New Jersey.

Q. The headings of the various paragraphs of this Contract are inserted for the convenience of reference only, and in no way define, describe or limit the scope or intent of this Contract or any of the provisions hereof, and shall not affect the interpretation of this Contract or any of the provisions hereof.

R. This Contract shall be construed without any presumptions against the drafter and shall be considered as though it were drafted cooperatively by both parties.

S. In the event that any portion of this Contract is found to be contrary to law and unenforceable; the validity of remaining covenants, agreements, terms and provisions contained in this Contract, shall be in no way affected, prejudiced or disturbed thereby.

T. This Contract constitutes the entire Agreement between the parties. Any changes or amendments to the Contract must be in writing and signed by the Contractor and an authorized representative of the Authority.

U. The parties hereto represent that they have the proper authority to sign on behalf of the entities entering this Contract and they fully intend for the Authority and Contractor to be legally bound.

V. Pursuant to N.J.S.A. 54:49-19, and notwithstanding the provision of another law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of state government, is entitled to payment for those good or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any state tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which

might be attributable to the taxpayer partner or shareholder subsection of set-off under this Act. The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

This Contract for Marketing and Business Attraction is entered into as of the day and year first written above.

ATTEST:

**NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
NAME:  
Title:

\_\_\_\_\_  
NAME:  
Title:

ATTEST:

**CONTRACTOR NAME**

By: \_\_\_\_\_  
NAME:  
Title:

By: \_\_\_\_\_  
NAME:  
Title:

Attachment: Exhibit A – Mandatory Equal Employment Opportunity Language