**AGREEMENT COVER PAGE**

**AGREEMENT NUMBER 2010F**

# BETWEEN STATE OF DELAWARE AND

**MCCORMICK TAYLOR, INC.**

**PROJECT DEVELOPMENT AND DESIGN SERVICES**

|  |  |
| --- | --- |
| **Division:** | **Transportation Solutions** |
| **Section:** | **Project Development North** |
| **Section Contact:** | **Matthew Vincent** |
| **Primary Contact Title:** | **Consultant Control Coordinator** |

**Consultant Project Manager: Stefan Rukowicz**

**Consultant Executive Contact: James C. Wiggans**

*This page is not a part of the agreement and is for reference only.*

# AGREEMENT NUMBER 2010F BETWEEN STATE OF DELAWARE AND

**MCCORMICK TAYLOR, INC.**

This **AGREEMENT** made and executed 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, hereinafter designated as **DEPARTMENT**, and **MCCORMICK TAYLOR, INC.**, hereinafter referred to as the **CONSULTANT**, whose address is 1818 Market Street, 16th Floor, Philadelphia, PA 19103.

**WITNESSETH:**

**WHEREAS,** the **DEPARTMENT** requires transportation related design services as outlined in the **DEPARTMENT’S** Request for Proposals; on an 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 theservicesas hereinafter set forth.

## SECTION 1. GENERAL PROVISIONS

1. The **CONSULTANT** will be responsible for services as required in the

**DEPARTMENT’S** Request for Proposals; on an on-call task order basis.

1. The term of this **AGREEMENT** shall be for five (5) years from the effective date of this

**AGREEMENT**.

1. All work must stop upon the expiration date of this **AGREEMENT**, or upon the expenditure of the maximum contract dollar amount identified in Section 4. B. 7, whichever applies first.
2. The **CONSULTANT** assures the **DEPARTMENT** that it is committed to make a good faith effort to attain the five percent (5%) Disadvantaged Business Enterprise (DBE) participation goal as established by the **DEPARTMENT.** 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 throughout the state of

Delaware for services described in the **DEPARTMENT’S** Request for Proposals. 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

1. 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.
2. 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.

1. 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 – COST PLUS FIXED FEE

1. The **CONSULTANT** certifies that they have thoroughly investigated the

**DEPARTMENT’S** requirements and that they shall claim no compensation in addition to the amounts for work and services as set forth in this **AGREEMENT**.

1. 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 approved subconsultant costs, as follows:
   1. **DIRECT SALARY COSTS** defined as salaries paid to technical personnel engaged in fulfilling the work and services delineated in the **AGREEMENT**. 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. **INDIRECT COSTS** of salaries paid to 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 rate established by the **DEPARTMENT**. All indirect cost rate determinations will become a part of this **AGREEMENT**. Payments are subject to audit and will be based on actual allowable costs. The **CONSULTANT’S** combined **FAR Part 31** audited indirect cost 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 indirect cost rate payments until such time as the proper audited report is submitted. Rate preparation and audit costs are not chargeable to the projects.
   3. Reasonable allowable **DIRECT COSTS** attributed to the **PROJECT** as follows:
   4. 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**.

* 1. 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.
  2. Procurement of any goods, services or documents not specifically listed above will require prior written approval from the **DEPARTMENT**. Receipts or certified inhouse listings of non-salary direct costs are required in support of billings. Nonsalary direct costs are subject to audit review upon completion of the project.

1. **FIXED FEE** payments shall be made for performance of work described in this **AGREEMENT.**  The fixed fee shall be negotiated based on current **DEPARTMENT** policy on a task-by-task basis. The amount for fixed fee is not to be expressed as a percentage in either the Task Order proposal or subsequent billings. Fixed fee shall not be permitted on **DIRECT COSTS**. Payments for fixed fee 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.
2. The **CONSULTANT** shall provide an updated **DEPARTMENT INVOICE** form 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 Task Order 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 task/project.
3. Payments made under the **AGREEMENT** are subject to audit and will be based on actual costs.

1. The total compensation by the **DEPARTMENT** to the **CONSULTANT** for services under this **AGREEMENT** shall not exceed $30 Million Dollars ($30,000,000.00). This amount cannot be increased.

## SECTION 5. CONSULTANT PERFORMANCE OF WORK

The **CONSULTANT** agrees that it shall:

1. Save harmless the State of Delaware and the **DEPARTMENT**, their agents, officers and employees, from all claims or liability, related to any and all acts or failures to act on the part of the **CONSULTANT**, the **CONSULTANT’S** agents, assignees, servants, officers, employees or sub consultants and their officers and employees.
2. The **CONSULTANT** shall secure and furnish yearly to 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:
   * 1. Worker’s Compensation and Employer’s Liability Insurance in accordance with applicable law.
     2. Commercial General Liability - $1,000,000 per occurrence/$3,000,000 per aggregate.
     3. Miscellaneous Errors and Omissions - $1,000,000 per occurrence/$3,000,000 per aggregate.
     4. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:
     5. $1,000,000 combined single limit each accident, for bodily injury;
     6. $250,000 for property damage to others;
     7. $25,000 per person per accident Uninsured/Underinsured Motorists coverage;

* + 1. $25,000 per person, $300,000 per accident PIP benefits if carrying any of our clients or employees; and
    2. Comprehensive coverage for all vehicles leased from the State of Delaware Fleet Services which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

Should any of the above described policies be cancelled before expiration date thereof, notice must be delivered in accordance with the policy provisions.

Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Delaware Department of Transportation

P.O. Box 800, Dover, DE 19903

Agreement No. 2010F

In no event shall the State or Department be named as an additional insured on any policy required under this agreement.

Nothing contained herein shall restrict or limit the Vendor’s right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Vendor procures insurance coverage in amounts higher than the amounts required by this Agreement, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

To the extent that Vendor has complied with the terms of this Agreement and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of this

Agreement, the State of Delaware’s self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

The **DEPARTMENT** must be named a certificate holder (*not additional insured*) on each of the certificates of insurance named above.Theinsurance 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 any 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.

1. 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.
2. 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 at no additional charge for the initial copy. 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**.**
3. 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. 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.
4. 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** and receipt of a Notice to Proceed**.**
5. 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.
6. Retain all books, documents, papers, accounting records and any other material pertaining to costs 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 entire **AGREEMENT** to include all tasks regardless of individual task completion date are subject to audit for up to three (3) years after final payment or work related to the agreement. The **CONSULTANT**, or applicable **SUBCONSULTANT**, shall be liable for **DEPARTMENT** costs incurred for subsequent audit reviews requested by the **CONSULTANT**, as per **DEPARTMENT** guidelines.
7. 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**.
8. 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 for that purpose. If the

**CONSULTANT** is not found to be negligent in the performance of it’s 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.

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

## SECTION 6. CONSULTANT CERTIFICATION

1. 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.
2. 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:

1. 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**.
2. 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, computeraided 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

1. 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.
2. 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.
3. All approved subconsultant work shall be performed and billed in accordance with the terms, conditions, and limitations of this **AGREEMENT**.
4. Subconsultants shall be paid on a cost plus fixed fee 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 page intentionally left blank*

**IN WITNESS WHEREOF**, the parties to these presents have duly executed this **AGREEMENT** **2010F** the day, month and year affixed by their signatures.

SEALED, AND DELIVERED IN THE

presence of

Name of Consultant

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:    Charlanne Thornton, Director Finance |  | By:    Shanté Hastings, Chief Engineer  Transportation Solutions |
|  |  | Dated: |

|  |  |
| --- | --- |
|  |  |
| Recommended as to Process:    Amy Miller  Consultant Control Coordinator | Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Approved as to Form:    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  George T. Lees III  Deputy Attorney General | Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

APPENDIX A

# AGREEMENT 2010F

**PROJECT DEVELOPMENT AND DESIGN SERVICES**

**MCCORMICK TAYLOR, INC.**

**DEPARTMENT** approved subconsultants for this Agreement:

(Consultant must submit signed subconsultant contracts prior to signatures)

**Subconsultant Firm Name**:

No subconsultants at this time

Recommended by CONSULTANT:

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Stefan Rukowicz

Consultant Project Manager

Recommended by DEPARTMENT:

Dated:

Matthew Vincent

Department Project Manager

Approved as to Process:

Dated:

Amy Miller

Consultant Control Coordinator

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

**CONSULTANT’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:*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**===============================================================================**

## TRUTH-IN-NEGOTIATION CERTIFICATION

**KNOW ALL MEN BY THESE PRESENCE,** that the professional service firm hereinafter listed, by and through the undersigned, its lawful agent, in accordance with 29 Del. C. §6982 (b) (3), and pursuant to this

Agreement by and between said professional service firm 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 professional service firm 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.

=================================================================================== FIRM: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SIGNATURE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(enter name of firm) (authorized signature)

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SWORN TO AND SUBSCRIBED before me, a Notary Public this day of , 20\_\_\_\_

My Commission Expires .

Signature of Notary Public\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Agreement 2010F*

**POLICY IMPLEMENT**

**STATE OF DELAWARE**

**DEPARTMENT OF TRANSPORTATION**

P.I. Number: A-26

Errors and Omissions Policy

References: AASHTO 2009 Final Report, Issued: 01/01/1999

Best Practices in the Mgt. of Design E&O Revised: 03/19/2018

Effective: 03/29/2018

**Table of Contents**

**Errors & Omissions**

1. Purpose
2. Definitions
3. Process
4. Effective Date

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This document defines the process the Department will follow in pursuing an errors and omissions (E&O) claim against a Consultant. The Department will seek reimbursement for additional costs (defined below) incurred as a result of Consultant errors and omissions in the work products created in accordance with the performance of their professional services agreement with the Department.

## II. DEFINITIONS

* ***Errors*:** Errors include, but are not limited to, cases in which the Consultant’s work product such as plans, specifications, Contract documents, or contract administration actions are incorrect, conflicting, or ambiguous. 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 Department requirements as outlined in the Consultant Agreement, or failure to adhere to accepted industry standards for the type of work being done by the Consultant.
* ***Omissions*:** Omissions include, but are not limited to, cases in which the Consultant’s work product such as plans, specifications, Contract documents, or contract administration actions are missing or silent on an issue that should otherwise have been addressed by the Consultant, or so insufficiently detailed as to create uncertainty, ambiguity, or conflicting direction, or failure to identify and implement cost-effective solutions.
* ***Work Product***: Refers to the actual professional service provided by the Consultant and all documents and materials created or modified by the Consultant in the performance of their work including, but not limited to, transportation infrastructure design, construction, inspection, administration, management, operation, repair, maintenance, reconstruction, and improvement; information technology development, integration, implementation, upgrade, and maintenance; materials testing and evaluation; environmental and cultural resource identification, evaluation, and permitting; scientific evaluations, studies, findings and recommendations; and other similar management, planning, engineering, and scientific activities, services and endeavors that create the product(s) contemplated in the project scope of work.
* ***Standard of Care*:** The Consultant will perform all services in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.
* ***Negligence***: The failure to meet the standard of care, skill, and diligence that a consultant of a professional discipline would ordinarily exercise under similar circumstances resulting in damages.
* ***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. The additional costs are deemed damages to the Department under this policy.
* ***Consultant:*** Refers to the individual hired by the Department to provide professional services in accordance with 29 *Del. C.* §6902(19). The Consultant is the individual obligated to perform the duties and provide the deliverables detailed in the project scope of work under a duly executed contract or agreement.
* ***Project Manager***: Refers to the individual who is the responsible person in charge of managing the Consultant agreement and/or task order. The Project Manager is the person responsible for seeing that the project objectives are met.
* ***Program Manager***: Refers to the individual who is the responsible person in charge of the section’s program and oversees the project manager. Responsibilities are the oversight of the program.
* ***Assistant Director***: Refers to the individual who is the responsible person in charge of overseeing the Program Manager.
* ***Division Director***: Refers to the individual who is the responsible person in charge of overseeing the Assistant Director.
* ***Secretary***: Refers to the individual who is the responsible person in charge of the Department of Transportation in accordance with 17 *Del. C.* §111 and §152.

## II. PROCESS

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|  | **STEP AND LEVEL** |  | **ACTIONS TO BE TAKEN** |
| **1** | **Discovery** |  | Whenever the Department becomes aware of a problem on a project that may lead to an E&O claim, The Project Manager shall be notified immediately by the person who identifies the problem. |
|  |  |  | The Project Manager shall conduct an initial review of circumstances to assess whether the problem is likely: |

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|  |  |  | 1. related to the Consultant’s work product; 2. within the Consultant’s scope of work; 3. to result in damages to the Department; or 4. outside the responsibility of the Consultant. |
| **2** | **Initial Notification;**  **Opportunity to**  **Mitigate Damages;**  **Tracking Costs** |        | The Project Manager shall provide prompt notice to the Consultant as soon as the Project Manager has deemed a potential E&O claim will be pursued by the Department.  Upon notification, the Consultant may be required, to promptly provide the corrected or omitted information to the Department that is the source of the potential E&O claim.  Time is of the essence. The Consultant shall respond to the  Department’s reasonable requests for information promptly in order to minimize costs and damages resulting from the error or omission.  The Department may make reasonable requests of the Consultant to collaborate on corrective actions and methods to mitigate the project delays and damages resulting from the error or omission and the Consultant shall not unreasonably withhold providing such services. |
|  |  |  | The Consultant shall track separately any professional services required to address the E&O claim. The billing of some or all of these services will be evaluated for payment if the E&O claim is not pursued after giving notice, or dropped by the Department during processing of the claim, or overturned by Appeal. |
|  |  |  | Any involvement by the Consultant in resolving project impacts as a result of the error or omission is at the sole discretion of the Department. |
| **3** | **Investigation;**  **Determination by Department regarding Liability, and Calculation of Resulting Damages** |    | The Project Manager will investigate the alleged E&O by reviewing the Consultant’s work products and the actual problems encountered by those using and/or implementing the Consultant’s work. The Project Manager shall seek to establish the facts of the case as a first step.  The Project Manager will document E&O identified in the investigation, including, but not limited to, where the E&O occurred in the Consultant’s work product; determine whether he/she believes the Consultant is responsible for those E&O; and review the findings with the Consultant. |
|  |  |  | The Consultant shall submit a written response to the Project Manager’s findings. Such responses will become a part of the E&O claim documentation. |
|  |  |  | After reviewing the claim in its entirety, including the |

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|  |  |  | Consultant’s response to the Project Manager’s findings, the Project Manager shall make a determination as to whether or not to pursue the E&O claim further. |
|  |  |  | If the E&O claim will be pursued, the Project Manager will calculate the amount of additional costs. The additional costs will be the damages sought under the claim. |
| **4** | **Review of Project Manager**  **Determination by**  **Assistant Director;**  **Notification to**  **Consultant of Department decision by**  **Assistant Director** |      | After making a determination that a Consultant E&O occurred and resulted in additional costs to the Department, and after calculating the amount of those damages, the Program Manager will present the proposed E&O claim to the Assistant Director with management control over the project.  The Assistant Director will review all documentation provided by the Program Manager, including the Consultant’s response, and make an independent determination on the E&O claim.  The Assistant Director will communicate the Department’s decision on the E&O claim to the Consultant in writing. That decision will state whether the Department intends to drop the claim or demand restitution of damages, including the amount of those damages. |
| **5** | **Division Director Appeal** |        | The Consultant may appeal (the “Appeal”) the Assistant  Director’s decision in writing to the Division Director within 10 business days of receiving the Assistant Director’s written decision.  The Appeal must include the reason for the Appeal.  The Division Director shall schedule a meeting with the Consultant and relevant Department staff within 30 calendar days of receipt of the Appeal to discuss the basis and details of the Appeal. This time period may be extended upon the mutual agreement of the parties, which shall not be unreasonably withheld. All extensions shall be documented by the Division Director.  The Consultant shall provide to the Department its reasons for the appeal and all supporting documentation no later than 10 business days prior to the meeting. Any supporting documentation or reasons not provided within this time frame shall not be considered by the Division Director. |
|  |  |  | No formal hearing will be held on the appeal. |
|  |  |  | The Division Director has 30 calendar days from the date of the meeting to issue a decision in writing (the “Director’s Decision”). The initial 30 calendar day time period for the  Director to issue the Director’s Decision may be extended an additional 30 calendar days in the sole discretion of the Division Director upon written notice to the Consultant. The time period |

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|  |  |  | may be extended further upon the mutual agreement of the parties, which agreement shall not be unreasonably withheld. All extensions shall be documented in writing by the Division Director. |
| **6** | **Appeal to the Secretary** |        | The Consultant may appeal the Director’s Decision to the Secretary of the Department within 10 business days of receipt of the Decision (the “Final Appeal”). If the Director’s Decision is not appealed within 10 business days it will become final.  The Final Appeal must be made in writing and include all reasons for the appeal.  The Secretary’s review shall be based solely on the Director’s  Decision, the Final Appeal, and the record before the Division Director. The Secretary will not consider any supporting documentation that was not provided to the Division Director for his/her consideration during the Final Appeal.  The Secretary shall issue a decision in writing (the “Secretary’s Decision”) on the Final Appeal within 30 business days of receipt of the Final Appeal. The 30 business days may be extended at sole discretion of the Secretary upon written notice to Consultant. |
|  |  |  | Pursuant to 17 *Del. C.* §152, the Secretary’s Decision shall be the final determination made by the Department on the E&O claim. There is no further right of administrative appeal. |
|  |  |  | There is no right of appeal pursuant to 29 *Del. C.* §10121 et. seq. as the Delaware Department of Transportation is not listed in 29 *Del. C.* §10161(a) as an agency to which that portion of Chapter 101 applies. |
| **7** | **Recovery &**  **Collection** |    | Once a final decision regarding the E&O claim has been rendered either by the Consultant failing to timely appeal the Director’s Decision or receiving a determination by the Secretary that damages are owed to the Department, the Department will initiate appropriate actions to collect.  If an E&O Claim is either not pursued or dropped by the  Department, or overturned by Appeal, the Project Manager and Consultant shall confer regarding what additional compensation, if any, is owed to the Consultant as a result of work performed on the Project during the E&O process. Additional  compensation, if any, shall be determined in the sole discretion of the Department and shall be limited only to compensation for actual work performed and shall not include any fees or costs related to preparing and responding to inquiries regarding the E&O claim. For the avoidance of doubt, the Department shall not reimburse any legal or consultant fees incurred by the Consultant related to the E&O claim. |
|  |  |  | If the Consultant agrees to restitution of damages at any point during the E&O claim process, the Department will advise the  Consultant on procedure and processes for payment. |
|  |  |  | The Project Manager shall notify the Department’s Audit Section in writing of the disposition of the issue. |
|  |  |  | If the Consultant agrees to restitution of damages at any point during the E&O claim process, the parties shall execute a Release and Settlement Agreement with copies to Department’s Audit Section and Contract Administration Section. |
|  |  |  | Monetary payments received in connection with the resolution of an E&O claim shall be credited to the program in which E&O occurred. |
|  |  |  | If the project on which the E&O occurred is federally funded, the Project Manager will notify the federal agency and credits coded accordingly. |
|  |  |  | The Department’s Project Manager will note the E&O issue in the next Consultant Performance Evaluation taking into account the Consultant’s efforts to cooperate with the Department to resolve the claim and mitigate resulting impacts to budget and schedule. |
|  |  |  | Contract Administration shall note the E&O issue on the Evaluation Summaries utilized in the selection process for new agreements. |
| **8** | **Default** |  | Should the Consultant refuse to enter into a Release and Settlement Agreement, not honor the terms of such Agreement, or not comply with the Director’s Decision or the Secretary’s Decision, the Department may, in its discretion, take any and all legal actions available to recover damages, including but not limited to, filing a claim with the Consultant’s insurance carrier, filing a complaint in a court of competent jurisdiction for restitution, and/or terminating all current agreements. |

**IV. Effective Date**

This policy shall become effective upon signature by the Secretary.

State Contract Number: **2010F**

Federal Aid Project Number: State:

**CERTIFICATION OF CONSULTANT**

I hereby certify that I am an officer and duly authorized representative of the firm of MCCORMICK TAYLOR, INC., whose address is 1818 Market Street, 16th Floor, Philadelphia, PA 19103 and that neither I, nor the above firm I hereby represent, has:

1. 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,

1. 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

1. 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):

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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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of the Firm’s Authorized Official

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name and Title of the Firm’s Authorized Official

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date

*Agreement 2010F*

**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 of 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.

1. 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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of the Firm’s Authorized Official

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name and Title of the Firm’s Authorized Official

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*Agreement 2010F*