

Purchasing

8/8/12

**CONTRACT BETWEEN
COUNTY OF GLOUCESTER
AND
SICKELS & ASSOCIATES, INC.**

THIS CONTRACT is made effective this 08th day of **August 2012**, by and between the **COUNTY OF GLOUCESTER**, a body politic and corporate, with administrative offices at 2 South Broad Street, Woodbury, New Jersey 08096, hereinafter referred to as "**County**", and **Sickels & Associates, Inc.**, with offices at Sherwood Mews, 833 Kings Highway, Woodbury, NJ 08096-3110, hereinafter referred to as "**Contractor**".

RECITALS

WHEREAS, there exists a need for the County to contract for Professional Engineering Services for Construction Management and Inspection Services required for the County's construction of the project known as "Construction of a Roundabout at Kings Highway/ Woodstown Road (CR605) and Ferry Road/Salem Avenue (CR620) in the Borough of Swedesboro, Gloucester County", Engineering Project #08-135A (hereinafter the "Project"); and

WHEREAS, the County issued RFP-012-038 for the said construction management and inspection services, to which the Contractor responded; and

WHEREAS, Contractor represents that it is qualified to perform said services, and desires to so perform pursuant to the terms and provisions of this Contract.

NOW, THEREFORE, in consideration of the mutual promises, agreements and other considerations made by and between the parties, the County and the Contractor do hereby agree as follows:

TERMS OF AGREEMENT

1. **COMMENCEMENT OF SERVICES.** This Contract shall be effective for the length of time necessary for the actual completion of the Project.

2. **COMPENSATION.** Contractor shall be compensated in an amount not to exceed **\$94,635.00** for Construction Managements and Inspection Services, **per RFP-012-038**, required by the County for the construction of the Project, as per the specifications identified as **Engineering Project #08-13SA.**

Contractor shall be paid in accordance with this Contract document upon receipt of an invoice and a properly executed voucher. After approval by the County, the payment voucher shall be placed in line for prompt payment.

Each invoice shall contain an itemized, detailed description of all work performed during the billing period. Failure to provide sufficient specificity shall be cause for rejection of the invoice until the necessary details are provided.

It is also agreed and understood that the acceptance of the final payment by Contractor shall be considered a release in full of all claims against the County arising out of, or by reason of, the work done and materials furnished under this Contract.

3. **DUTIES OF CONTRACTOR.** The specific duties of the Contractor shall be as set forth in the County's RFP 012-038 (hereinafter the "RFP") and the Contractor's Proposal, "Response to RFP #12-038 Construction Inspection Services Construction of Roundabout at Kings Highway/Woodstown Road (CR605) and Ferry Road/Salem Avenue (CR620) Borough of Swedesboro" dated July 06, 2012 for the Project (hereinafter the "Proposal") both of which are incorporated herein and made a part hereof by reference. Should a conflict occur between this form of contract and the proposal documents, the proposal documents shall prevail.

Contractor agrees that it has or will comply with, and where applicable shall continue throughout the period of this Contract to comply with, all of the requirements of the RFP and the Proposal, and all applicable laws.

4. **FURTHER OBLIGATIONS OF THE PARTIES.** During the performance of this Contract, the parties agree as follows, where applicable:

A. Contractor will not discriminate against any employee or applicant for employment because of gender, age, race, creed, color, religion, Vietnam-era veteran status, national origin, ancestry, marital status, disability, affectional or sexual orientation, genetic information, sex or atypical hereditary cellular or blood trait. Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment without regard to their gender, age, race, creed, color, religion, Vietnam-era veteran status, national origin, ancestry, marital status, disability, affectional or sexual orientation, genetic information, sex or atypical hereditary cellular or blood trait. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination clause.

B. The Contractor or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to gender, age, race, creed, color, religion, Vietnam-era veteran status, national origin, ancestry, marital status, disability, affectional or sexual orientation, genetic information, sex or atypical hereditary cellular or blood trait.

C. The Contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Agency Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127, as amended and

supplemented from time to time.

E. The Contractor or subcontractor, where applicable, agrees to attempt in good faith to employ minority and female workers consistent with the applicable County employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable County employment goals determined by Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time.

F. The Contractor or subcontractor, where applicable, agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of gender, age, creed, color, religion, Vietnam-era veteran status, national origin, ancestry, marital status, affectional or sexual orientation, or disability and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

G. The Contractor or subcontractor, where applicable, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decision of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

H. The Contractor or subcontractor, where applicable, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to gender, age, creed, color, religion, Vietnam-era veteran status, national origin, ancestry, marital status, affectional or sexual orientation, or disability and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey and applicable Federal law and applicable Federal court decisions.

I. The Contractor or subcontractor, where applicable, shall furnish such report or other document to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

J. Only manufactured products of the United States of America, wherever available, shall be used in the execution of the work specified herein.

K. In accordance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), it is expressly understood that if the net amount paid to Contractor pursuant to this Contract exceeds Ten Thousand Dollars (\$10,000.00) in a twelve-month period,

Contractor will grant to the Department of Health and Human Services and/or the general Accounting Office access to such of Contractor's books, documents, and records as are necessary to verify the nature and extent of costs of services furnished under this Contract. Contractor agrees to grant such access until the expiration of four (4) years after the services are furnished under the contract. In the event that Contractor carries out any duties of the contract through a subcontract with a related organization which will result in payment to the related organization of Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, Contractor agrees that any such subcontract shall require that the related organization shall make available such books, documents, and records which are necessary to verify the nature and extent of the costs.

5. **LICENSING AND PERMITTING.** If the Contractor or any of its agents is required to maintain a license, or to maintain in force and effect any permits issued by any governmental or quasi-governmental entity in order to perform the services which are the subject of this Contract, then prior to the effective date of this Contract, and as a condition precedent to its taking effect, Contractor shall provide to County a copy of its current license and permits required to operate in the State of New Jersey, which license and permits shall be in good standing and shall not be subject to any current action to revoke or suspend, and shall remain so throughout the term of this Contract.

Contractor shall notify County immediately in the event of suspension, revocation or any change in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or permit held by Contractor, or its agents.

6. **TERMINATION.** This Contract may be terminated as follows:

A. Pursuant to the termination provisions set forth in the RFP, if any, which are specifically referred to and incorporated herein by reference.

B. If Contractor is required to be licensed in order to perform the services which are the subject of this Contract, then this Contract may be terminated by County in the event that the appropriate governmental entity with jurisdiction has instituted an action to have the Contractor's license suspended, or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.

C. If, through any cause, the Contractor or subcontractor, where applicable, shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the County shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this Contract, shall be forthwith delivered to the County.

D. The County may terminate this Contract for public convenience at any time by a notice in writing from the County to the Contractor. If the Contract is terminated by the County as provided herein, the Contractor will be paid for the services rendered to the time of termination.

and policy shall be necessary prior to this Contract taking effect. Contractor also hereby agrees to continue said policy in force and effect for the period of the applicable statute of limitations following the termination of this Contract and shall provide the County with copies of certificates of insurance as the certificates may be renewed during that period of time.

10. **SET-OFF.** Should Contractor either refuse or neglect to provide the labor and materials that Contractor is required to provide in accordance with the terms of this Contract, and if expense is incurred by County by reason of Contractor's failure to perform, then and in that event, such expense shall be deducted from any payment due to Contractor. Exercise of such set-off shall not operate to prevent County from pursuing any other remedy to which it may be entitled.

11. **PREVENTION OF PERFORMANCE BY COUNTY.** In the event that the County is prevented from performing this Contract by circumstances beyond its control, then any obligations owing by the County to the Contractor shall be suspended without liability for the period during which the County is so prevented.

12. **METHODS OF WORK.** Contractor agrees that in performing its work, it shall employ such methods or means as will not cause any interruption or interference with the operations of County or infringe on the rights of the public.

13. **NON-WAIVER.** The failure by the County to enforce any particular provision of this Contract, or to act upon a breach of this Contract by Contractor, shall not operate as or be construed as a waiver of any subsequent breach, nor a bar to any subsequent enforcement.

14. **PROCEDURE FOR PAYMENT OF BILLS.** The Contractor shall bill on a monthly basis for work performed pursuant to this Contract, including interim bills, final bills and bills for the release of retainage.

The Contractor shall submit its bill only on the County's periodic billing date.

The periodic billing date for such bills shall be that date which is 20 days prior to the second monthly meeting of the County Board of Chosen Freeholders, (the "Bill Approval Meeting"). At each such Bill Approval Meeting, the Board of Freeholders shall approve and certify the submitted bills, and direct that payment be made within ten (10) days of such meeting date.

All bills received for a particular billing cycle shall be deemed to have been received on the billing date.

The County shall examine the bills submitted on the periodic billing date prior to the Bill Approval Meeting. In the event that the County shall determine that all or some portion of the payment should be withheld, the County shall notify the Contractor in writing of the amount withheld and of their reasons for withholding payment.

The balance of the bill will be presented for payment at the Bill Approval Meeting.

Either party to this Contract may demand that a dispute concerning whether a party has failed to make payments pursuant to the provisions of N.J.S.A. 2A:30A-1 et. seq., be submitted

to non-binding mediation.

If mediation is demanded, it shall be demanded consistent with the County's provisions concerning Alternative Dispute Resolution for contracts to which N.J.S.A. 40A:11-50 is applicable. Those provisions are set forth below, [Note: Alternative Dispute Resolution shall not be available with regard to disputes concerning the bid solicitation or award process or the formation of contracts or subcontracts entered into pursuant to the New Jersey Local Public Contracts Law.]

The County's Alternative Dispute Resolution procedure is as follows:

- A. **Controversies and Claims Subject to Mediation.** Any controversy or claim arising out of or related to the contract, or the breach thereof, shall be settled by mediation.

If a dispute between County and Contractor arises during the course of the contract, the parties will make a good faith effort to resolve the dispute through non-binding mediation.

- B. **Contract Performance Pending Mediation.** During mediation proceedings, Contractor shall continue to perform, and County shall continue to make payments pursuant to the terms of the Contract.

- C. **When Mediation May be Demanded.** Prior to either party demanding mediation, the aggrieved party shall attempt to resolve the problem directly with the other party. The aggrieved party shall submit a written notice of dispute to the other party. The other party shall respond in writing.

Demand for mediation of any claim shall not be made until the earlier of the following:

- (a) five (5) business days after the other party has provided its written response to the aggrieved party's notice of dispute;
- (b) 30 days have passed after submission of the original, written claim by the aggrieved party and the other party has not responded.

If the written response from the other party does not resolve the dispute, the aggrieved party shall have 30 days from the delivery of the other party's response to file a demand for mediation. If the aggrieved party fails to do so, it shall be deemed to have waived its right pursuant to this contract to demand Alternative Dispute Resolution.

A party who files a "Notice of Demand for Mediation" must assert in the demand all claims then known to that party for which mediation may be demanded. If a party fails to include a claim because of excusable neglect, or when a claim has matured or been acquired subsequently, the mediator or mediators may permit amendments.

- D. **Procedure to Request Mediation.** Either party may demand mediation by

written notice to the other party. The written notice shall contain at minimum (1) a brief statement of the nature of the dispute, and (b) the name, address and the phone number of that party's designated representative for purposes of mediation. The other party shall designate its representative for mediation in writing no later than five (5) business days after receipt of the demand for mediation.

The respective designees shall thereupon promptly, and with due regard for the need for timely action, choose a mediator. If the parties cannot agree on a mediator, they shall choose a reputable mediation firm.

Any mediation firm so chosen shall present a list of at least five (5) proposed mediators to the parties and shall provide the parties with a summary of each person's qualifications to serve as mediator. Each party shall rank the proposed mediators in order of preference.

The fifth and any lower ranked persons on each list will be excluded from further consideration.

The chosen mediator shall be the remaining person who is the combined highest ranking mediator on both preference lists, after deleting all excluded persons.

In the event of a tie, the mediator shall be chosen by lot.

- E. **Procedures at Mediation.** The mediation shall be conducted in such reasonable and efficient manner as may be agreed between the parties and the mediator or, if the parties cannot agree, as may be determined by the mediator.

The parties will not be bound by the Rules of Evidence in presenting their positions before the mediator.

- F. **Cost of Mediation.** Each party will bear its own cost of participation in the mediation. The mediator's fee will be divided equally between the parties.

- G. **Failure of Mediation.** If a good faith effort to resolve the dispute through mediation is unsuccessful, either party may terminate the mediation by written notice to the mediator and to the other party. Thereafter, either party may submit the dispute to the Superior Court of New Jersey, Gloucester County, for adjudication, which court shall have exclusive original jurisdiction over the dispute.

15. **PARTIAL INVALIDITY.** In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

16. **CHANGES.** This Contract may be modified by approved change orders, consistent with applicable laws, rules and regulations. The County, without invalidating this Contract, may order changes consisting of additions, deletions, and/or modifications, and the contract sum shall be adjusted accordingly. This Contract and the contract terms may be changed only by change order. The cost or credit to the County from change in this Contract shall be determined by mutual agreement before executing the change involved.

17. **NOTICES.** Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the addresses set forth above, or by personal service, or if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

18. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall at all times during the course of the effective period of this Contract comply with and be subject to all applicable laws, rules and regulations of the State of New Jersey and of any other entity having jurisdiction pertaining to the performance of Contractor's services.

19. **INDEPENDENT CONTRACTOR STATUS.** The parties acknowledge that Contractor is an independent contractor, and is not an agent of the County.

20. **CONFIDENTIALITY.** Contractor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorized County personnel or upon prior approval of the County.

21. **BINDING EFFECT.** This Contract shall be binding on the undersigned, and their successors and assigns.

22. **CONTRACT PARTS.** This Contract consists of this Contract document, and the RFP, and the Contractor's Proposal, all of which are referred to and incorporated herein by reference. Should there occur a conflict between this form of Contract and the RFP, then this Contract shall prevail. If there should occur a conflict between either this form of Contract or the RFP and the Contractor's Proposal, then this Contract and the RFP shall prevail.

THIS CONTRACT is effective as of this **08th** day of **August 2012**.

IN WITNESS WHEREOF, the County has caused this instrument to be signed by its Director, attested by its Clerk, and its corporate seal affixed hereunto, pursuant to a Resolution of the said party of the first part passed for that purpose, and Contractor has caused this instrument to be signed by its properly authorized representative and its corporate seal affixed the day and year first above written.

ATTEST:




ROBERT N. DI LELLA, CLERK

COUNTY OF GLOUCESTER



ROBERT M. DAMMINGER, DIRECTOR

SICKELS & ASSOCIATES, INC.

By: 

PATRICIA A. OWENS
(Please Print Name)