

**BASIC AGREEMENT**  
**AMONG THE**  
**STATE OF NEW JERSEY**  
**DEPARTMENT OF TRANSPORTATION**  
**THE**  
**SOUTH JERSEY TRANSPORTATION AUTHORITY**  
**AND THE**  
**SOUTH JERSEY TRANSPORTATION PLANNING ORGANIZATION**  
**FOR**  
**UNIFIED PLANNING WORK PROGRAM ACTIVITIES**

This Basic Agreement, made this *06<sup>th</sup>* day of *November*, *12009* in the year of Two Thousand Nine, made among the SOUTH JERSEY TRANSPORTATION PLANNING ORGANIZATION, whose address is 782 Brewster Road, Unit B-6, Vineland, New Jersey (hereinafter referred to as "SJTPO"), the SOUTH JERSEY TRANSPORTATION AUTHORITY, whose address is P O Box 351, Hammonton, New Jersey 08037, (hereinafter referred to as "SJTA") and the STATE OF NEW JERSEY, acting through its Commissioner, Department of Transportation, whose address is 1035 Parkway Avenue, P.O. Box 600, Trenton, New Jersey 08625-0600 (hereinafter referred to as "STATE") witnessed that:

WHEREAS, under 23 U.S.C. Section 134 and 49 U.S.C. Section 5303, it is in the national interest to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and through urbanized areas, while minimizing transportation-related fuel consumption and air pollution; and

WHEREAS, to accomplish the objective cited above, designated metropolitan planning organizations, in cooperation with the STATE and public transit operators, shall develop transportation plans and programs for urbanized areas of the State; and

WHEREAS, the STATE is a direct recipient of annual federal appropriations, designated as metropolitan planning or PL funds, from the Federal Highway Administration and the Federal Transit Administration to be used to fund metropolitan planning organization work programs, activities, and special studies; and

WHEREAS, the STATE distributes the metropolitan planning funds in accordance with the PL allocation formula agreed upon by the STATE and New Jersey's three metropolitan planning organizations; and

WHEREAS, the SJTPO was designated by the Governor of the State of New Jersey in 1993 to serve as the responsible metropolitan planning organization for the geographic region comprised of Atlantic County, Cape May County, Cumberland County, and Salem County; and

WHEREAS, SJTA has agreed to provide all personnel, facilities, payroll and related administrative support for the SJTPO, including, but not limited to: purchasing, grants accounting, human resource management, payroll, accounts payable and accounts receivable in the furtherance of the annual SJTPO Unified Planning Work Program activities; and

WHEREAS, the STATE, the SJTPO and the SJTA desire to specify the conditions applicable to the funding of the administrative support provided by SJTA and the obligations of the STATE, the SJTPO and the SJTA with respect to said funds; and

WHEREAS, the Commissioner, Department of Transportation, under powers vested by law and as more particularly set forth in N.J.S.A. 27:1-5, 27:1A-5, and 27:7-21, has determined that it is in the best interest of the STATE to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and pursuant to all applicable federal, state, and local laws, statutes, codes or ordinances, the STATE, the SJTPO and the SJTA agree to abide by the attached TERMS and CONDITIONS.

IN WITNESS WHEREOF, the SJTPO and the SJTPA have caused this instrument to be signed, attested and sealed by their duly authorized representatives and the STATE has caused this instrument to be signed by the Commissioner of Transportation, or a designee of the Commissioner, and attested and sealed by the Secretary of the Department of Transportation as of the day, month and year first written above.

Attest / Witnessed/ Affix Seal:

Susan Drake  
Secretary

SOUTH JERSEY TRANSPORTATION  
AUTHORITY

BY Scott Pludd  
Executive Director

Date 10/14/09

Date 10/13/09

Attest / Witnessed/ Affix Seal:

Monica Lo Giudice  
Secretary

SOUTH JERSEY TRANSPORTATION  
PLANNING ORGANIZATION

BY Anthony Stabile  
Executive Director

Date 10/8/09

Date 10/8/09

Attest / Witnessed/Affix Seal:

Jacqueline Trausi  
Jacqueline Trausi  
Secretary, NJDOT

STATE OF NEW JERSEY  
DEPARTMENT OF TRANSPORTATION

BY: David A. Kuhn  
David A. Kuhn  
Executive Director  
Capital Investment Strategies

Date November 06, 2009

Date 11-6-09

Anne Milgram  
Attorney General of New Jersey

BY: Richard Harcar  
Richard Harcar  
Deputy Attorney General

Date 10/22/09

## TABLE OF CONTENTS

ARTICLE I	GENERAL TERMS AND CONDITIONS
ARTICLE II	REFERENCES
ARTICLE III	DEFINITIONS
ARTICLE IV	TASK ORDERS
ARTICLE V	BASIC AGREEMENT TERMS
ARTICLE VI	WARRANTS
ARTICLE VII	NOTIFICATIONS
ARTICLE VIII	INDEMNIFICATIONS
ARTICLE IX	ASSIGNABILITY
ARTICLE X	SUBCONTRACTORS
ARTICLE XI	REVIEWS
ARTICLE XII	HALTS
ARTICLE XIII	MODIFICATIONS
ARTICLE XIV	INVOICES
ARTICLE XV	SJTPO CENTRAL STAFF
ARTICLE XVI	TERMS OF PAYMENTS
ARTICLE XVII	RECORDS
ARTICLE XVIII	COMPLETION
ARTICLE XIX	AUDITS
ARTICLE XX	FINAL INVOICE

I. GENERAL TERMS AND CONDITIONS.

The clauses and General Terms and Conditions hereinafter set forth are agreed upon by the parties for use in negotiated Task Orders assigned or entered into on or after the date of execution of this Basic Agreement, and prior to its termination, for the type of services identified in the Task Order. It is further agreed that these clauses and General Terms and Conditions shall be incorporated by reference in each Task Order of work awarded to the SJTPO under this Basic Agreement.

II. REFERENCES.

All parties agree to follow applicable federal, state and local laws, statutes, codes or ordinances including but not limited to the following:

- A. Title 23, U.S.C. Chapter 1, Federal-Aid Highways
- B. Title 49, U.S.C. Chapter 53, Mass Transportation
- C. 23 CFR Parts 420, Planning and Research Program Administration
- D. 23 CFR Part 450, FHWA Planning Assistance and Standards
- E. 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- F. 49 CFR Part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations
- G. 49 CFR Part 20, New Restrictions on Lobbying
- H. 49 CFR Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964
- I. 49 CFR Part 26, Participation by disadvantaged business enterprises in Department of Transportation financial assistance programs.
- J. 49 CFR Part 613, FTA Planning Assistance and Standards
- K. OMB Circular A-21, Cost Principles for Educational Institutions
- L. OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments
- M. OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments
- N. OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations
- O. OMB Circular A-122, Cost Principles for Non-Profit Organizations
- P. OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations
- Q. FTA Circular 4220.1D, Third Party Contracting Guidelines
- R. FTA Circular 5010.1C, Grant Management Guidelines
- S. FTA Circular 8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Program Grants; and
- T. NJDOT Code of Ethics for Vendor

III. DEFINITIONS.

A. As used in this Basic Agreement, the following terms are defined in the manner indicated below:

- 1. The "Basic Agreement" is this agreement among the STATE, the SJTPO and the SJTA and all modifications and amendments hereto.
- 2. The "Task Order" is a supplement to the Basic Agreement authorizing the SJTA to incur costs for eligible planning and administrative services in support of the SJTPO up to the maximum amount specified in each such executed Task Order.
- 3. The "Agreement" is comprised of the "Basic Agreement" and the "Task Order".

4. The "Unified Planning Work Program" (UPWP) is the annual federal approved written detailed description of the work to be accomplished by SJTPO and any of its subcontractors, as required by the STATE in accordance with the terms and conditions of the Basic Agreement.
5. Authorized "STATE" representative shall mean the Commissioner, Department of Transportation, or the designated representative of the Commissioner, who has been authorized to execute any and all documents on behalf of the STATE or to accept notice or service of applicable notices under the Agreement.
6. Authorized "SJTPO" representative shall mean the SJTPO Executive Director, or the designated representative of the SJTPO Executive Director, who has been authorized to execute any and all documents on behalf of the SJTPO or to accept notice or service of applicable notices under the Agreement.
7. Authorized "SJTA" representative shall mean the SJTA Executive Director, or the designated representative of the SJTA Executive Director, who has been authorized to execute any and all documents on behalf of the SJTA or to accept notice or service of applicable notices under the Agreement.
8. "SJTPO Central Staff" shall mean those employees of SJTA who are assigned on a full-time or part-time basis to provide the central planning, programming and administrative services identified in the authorized SJTPO UPWP.
9. "FHWA" shall mean the Federal Highway Administration.
10. "FTA" shall mean the Federal Transit Administration.
11. "Fiscal Year" shall mean the twelve-month period ending on June 30 of any given year.
12. "Quarter" shall mean the three-month period ending September 30, December 31, March 31 and June 30 of each program fiscal year.
13. "Quarterly Package" shall mean the Quarterly Financial and Program Summary Report jointly prepared and submitted at the end of each quarter by SJTA and SJTPO.
14. "Quarterly Program Summary Report" shall mean the detailed program progress report prepared by the SJTPO for each authorized program quarter.
15. "SJTA" shall mean the South Jersey Transportation Authority.
16. "SJTPO" shall mean the South Jersey Transportation Planning Organization.
17. "STATE" shall mean the State of New Jersey, Department of Transportation.

#### IV. TASK ORDERS.

- A. Task Orders shall be issued under the sole discretion of the STATE. They shall be effective upon execution by the STATE, SJTA, and SJTPO. Each Task Order shall contain the following information:
  1. Task Order Number;
  2. Title of Task Order;
  3. Title and date of this Basic Agreement;
  4. Total Cost ceiling for completion of the Task Order;
  5. Start and completion dates of the Task Order;
  6. Catalog of Federal Domestic Assistance (CFDA) Number;
  7. Relevant FHWA and FTA Agreement numbers;
  8. Name and address of the Task Order project managers for the STATE, SJTA, and SJTPO; and
  9. Specific program reporting requirements.

B. The obligations of the STATE hereunder are limited to approved tasks or services. The issuance of a Task Order is essential to the satisfactory completion of the SJTPO UPWP. The SJTA and the SJTPO acknowledge and agree that the STATE shall issue Task Order(s) subject to state and federal authorization and appropriation of supporting program funds.

C. Upon the execution of this new Basic Agreement, those task orders that were previously issued under Basic Agreement No. 2004-SJTA-001, dated March 19, 2004, shall continue in full force under the authority of this new Basic Agreement until such time as each issued task order may expire.

V. BASIC AGREEMENT TERMS.

A. This Basic Agreement shall be effective upon proper execution by the STATE, SJTPO and SJTA and shall continue in full force and effect for a period of five (5) years from said date of execution.

B. Upon proper execution by the STATE, SJTPO and SJTA, this Basic Agreement No. 2010-SJTA-001 shall supersede Basic Agreement No. 2004-SJTA-001, dated March 19, 2004.

C. This Basic Agreement may be terminated by either of the two parties upon thirty (30) calendar day's written notice to the other parties and upon satisfaction and payment of all obligations undertaken pursuant to each and every fully executed Task Order, or upon such other terms as are agreed to by the parties.

D. Any of the STATE, SJTPO or SJTA may request the termination of each or all Task Orders issued hereunder at any time upon thirty days written notice to the other parties in which case compensation shall be made for the costs of eligible work actually performed, subject to FHWA and FTA concurrence. Eligible costs incurred by SJTA as a result of a termination action by the STATE may be included in a SJTA claim for compensation. Eligible costs incurred by the STATE as a result of a termination action by SJTA may be set off against a SJTA claim for compensation.

VI. WARRANTS.

A. SJTA warrants that to solicit or secure this Agreement, no company or person, other than a bona fide employee working solely for SJTA has been employed or retained; and that SJTA has not paid or agreed to pay any company or person, other than a bona fide employee working solely for SJTA, any finder's fee, commission, percentage, brokerage fee, gift, or any other consideration, either contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, the STATE shall have the right either to annul the Agreement without liability, or in its discretion to deduct or otherwise to recover from the contract price or consideration the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

B. SJTA and SJTPO warrant that its representatives who have signed this Agreement on behalf of SJTA and SJTPO is authorized to do so. Copies of the corporate resolution authorizing SJTA and SJTPO to enter into this Agreement are attached.

C. SJTA warrants that it shall furnish all personnel, facilities, equipment and support services necessary for the accomplishment of the SJTPO UPWP in accordance with the terms and conditions set forth herein and as outlined in executed Task Order (s).

VII. NOTIFICATIONS.

A. All reports, documents and notices required by the Agreement shall be sent to the following addressees:

1. If to the STATE:

Mr. Thomas A. Wospil  
Director, Capital Investment Planning and Development  
New Jersey Department of Transportation  
1035 Parkway Avenue, P.O. Box 609  
Trenton, New Jersey 08625-0609

2. If to SJTA:

Mr. Bart Mueller  
Executive Director  
South Jersey Transportation Authority  
P O Box 351  
Hammonton, New Jersey 08037

3. If to SJTPO:

Mr. Timothy Chelius  
Executive Director  
South Jersey Transportation Planning Authority  
782 Brewster Road  
Unit B-6  
Vineland, New Jersey 08361

VIII. INDEMNIFICATION.

A. As permitted by law, SJTA and SJTPO shall defend, indemnify, protect, and save harmless the STATE, its agents, servants, and employees from and against all suits, claims, losses, demands or damages arising out of or claimed to arise out of negligent or willful acts, errors, or omissions of SJTA and SJTPO, their agents, servants, employees and subcontractors solely when such suits, claims, losses, demands or damages relate to the provision of administrative support services required by this Agreement, to assure compliance with pertinent State and federal laws and guidelines with respect to the proper application of federal funds. SJTA and SJTPO shall, at their 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 for which indemnification is provided under this article, SJTA and SJTPO shall, at their own expense, satisfy and discharge the same. It is understood that the obligations accepted by SJTA pursuant to this Article VIII. "INDEMNIFICATION" do not relate to the program work encompassed in the SJTPO UPWP.

B. The STATE shall, as soon as practicable after a claim has been made against it, give written notice thereof to SJTA and SJTPO along with full and complete particulars of the claim. If suit is brought against the STATE or any of its agents, servants, and employees, the STATE shall expeditiously forward or have forwarded to SJTA and SJTPO every demand, complaint, notice, summons, pleading, or other process received by the STATE or its representatives.

C. It is expressly agreed and understood that any approval by the STATE of the services performed in support of the SJTPO UPWP shall not operate to limit the obligations SJTA assumed in this "Article VIII "INDEMNIFICATION" or in the other provisions of the Agreement. It is further understood and agreed that the STATE assumes no obligation to indemnify or save harmless either SJTA or SJTPO, their agents, servants, employees and

subcontractors for any claim which may arise out of their performance of the Agreement.

- D. SJTA and SJTPO expressly understand and agree that the provisions of this indemnification clause shall in no way limit either SJTA or SJTPO obligations assumed in the Agreement, nor shall they be construed to relieve SJTA or SJTPO from any liability, nor preclude the STATE from taking any other actions as are available to it under any other provisions of the Agreement or otherwise at law. The terms of this Article VIII. "INDEMNIFICATION" shall survive the expiration or termination of this Basic Agreement.

IX. ASSIGNABILITY.

- A. Neither SJTA nor SJTPO shall assign, transfer, convey or otherwise dispose of this agreement or any part thereof, or of its right, title or interest herein to any person, company or corporation without the written consent of the STATE, FHWA, and FTA.

X. SUBCONTRACTORS.

- A. Subject to the provisions of this Article, Task Order work may be subcontracted. SJTA and SJTPO, pursuant to annual federal and state audits, and as sub-recipients of federal and state funds, are required to comply with all federal and state procurement guidelines. As such, it is understood that SJTA and SJTPO shall ensure that the terms and conditions of proposed subcontracts are in full compliance with above said federal and state regulations. As part of its obligations under this Agreement, SJTA and SJTPO shall at all times give their personal attention to the provision of the services agreed to under this Agreement and shall keep all such services under its respective control.
- B. With regard to each subcontract, SJTA and SJTPO shall maintain all supporting documentation, including an executed agreement with the subcontractor, on file for review by representatives of the Federal Government and STATE as defined in Article XI, "REVIEWS". The subcontract shall provide that the subcontractor shall be responsible for complying with all federal, state or local laws and regulations applicable to the performance of the Agreement as well as the provisions of the Agreement affecting work performed by the subcontractor.
- C. Upon authorization of the FHWA/FTA project agreement, the STATE will issue a letter to incur cost to allow SJTA to establish a budget authorization for SJTPO to begin work.
- D. Neither SJTA nor SJTPO shall make a claim for reimbursement for expenditures incurred prior to the Task Order or Task Order modification for services performed by the subcontractor related to the Task Order or Task Order modification.
- E. The subcontract shall provide that the subcontractor shall look only to SJTA and SJTPO for the payment of any claims of any nature whatsoever arising out of said subcontract.

XI. REVIEWS

- A. To comply with federal requirements, SJTA and SJTPO shall allow representatives of the Federal Government and STATE to visit the offices of SJTA and SJTPO periodically, not always with prior notice, to inspect or monitor payrolls, and other data and records pertaining to the services performed by SJTA and SJTPO pursuant to this Agreement.
- B. The STATE shall, without delay review and act upon all invoices and program documents submitted by SJTA and SJTPO, respectively.
- C. In the event of a dispute or disagreement as to the obligations of the parties to this Agreement, said dispute or disagreement shall be submitted to the Executive Director of Capital Investment Strategies of the New Jersey Department of Transportation, and the Executive Director of the South Jersey Transportation Authority, or their respective designees, for review and determination. In the event that both Executive Director's disagree, then either party may seek all available legal or equitable remedies.

XII. HALTS.

- A. SJTA and SJTPO shall stop the performance of all services promptly if so directed by the STATE. When the notice is oral, the STATE shall, within seven (7) calendar days, confirm the notice in writing.

XIII. MODIFICATIONS.

- A. SJTA and SJTPO agree that all modifications to the scope of the services to be performed or any other significant change in the Basic Agreement or a Task Order shall be negotiated and written in a joint proposal submitted by SJTA and SJTPO, and documented by a modification to the Basic Agreement or Task Order on Form DC-45A as issued by the STATE.
- B. SJTA and SJTPO shall commence work on any modified Task Order after receipt of a fully executed copy of Form DC-45A.
- C. The STATE shall pay SJTA in accordance with the provisions of Article XVI, "Terms of Payment", for approved Task Order modifications. Task Order modifications are defined as follows:
1. Additional Work is work or services negotiated by the STATE, SJTA and SJTPO which was not anticipated at the time the Task Order was originally executed.
  2. Reduction is a decrease in the services previously negotiated by the STATE, SJTA and SJTPO.
  3. Termination is the discontinuation of all services authorized under an existing task order.
- D. In the event that the STATE, SJTA and SJTPO agree that the proposed Task Order modification does constitute Additional Work, with the concurrence of FHWA and/or FTA, the STATE, SJTA and SJTPO shall jointly execute a modification to the Task Order, which shall be prepared by the STATE, in writing on Form DC-45A, providing extra compensation to SJTA upon a fair and equitable basis. Notwithstanding the above, no expenditure of funds in excess of the Approved Budget of a Task Order shall be incurred without the written approval of the STATE.
- E. The STATE shall have no liability for any additional costs incurred in providing services not covered by a Task Order or a modification thereto.
- F. The STATE, SJTA and SJTPO agree that any deletion, amendment, or addition to the Basic Agreement required by statute or executive order shall be effected by execution of Consultant Contract Modification Form DC-45A.

XIV. INVOICES.

- A. Within 30 days of the end of the quarter, SJTA shall submit to the STATE Applications for Reimbursement. The billing will reflect the actual costs. The application shall be submitted on the State of New Jersey Payment Voucher, provided by the STATE. SJTA, subject to OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations, and OMB Circular A-21, Cost Principles for Educational Institutions, is required to comply with all federal cost guidelines. SJTA shall have attached to each application for reimbursement a summary report prepared by SJTPO detailing its UPWP progress during the time period covered by that quarterly application. The report shall contain the following at minimum:
1. Task Order Name and Number;
  2. Invoices must segregate costs by federal agreement number;
  3. The invoice must include a column showing the approved UPWP budget for

- each budget item and a column showing the amount of each budget item;
- 4. Comparison of actual performance with established goals;
- 5. Progress in meeting schedule;
- 6. Status of activity expenditures in a format compatible with the work program, including a comparison of budgeted (approved) amounts and actual costs incurred;
- 7. Cost overruns or under-runs;
- 8. Approved work program revisions; and
- 9. Other pertinent supporting program information or data

B. As part of its obligations under this Agreement, SJTA and SJTPO shall maintain supporting documentation of financial expenditures on file for review by representatives of the Federal Government and STATE as defined in Article XII, "Reviews" and Article XVII, "Terms of Payment" and subject to all applicable Federal and STATE audit requirements. SJTA and SJTPO recognize that FHWA and/or FTA must review and find acceptable all documents supportive of the costs incurred by SJTA on behalf of SJTPO.

C. SJTA must submit the following materials to the STATE with the first quarterly application of each contract year, and with the next application when changes occur in any of the following items:

- A documented average fringe benefit rate to be applied to all direct hourly wages; or documented individual fringe benefit rates for all project personnel.

XV. SJTPO CENTRAL STAFF.

A. Wage Rates

- 1. All SJTA employees, who, as being assigned on a full-time or part-time basis to provide central planning, programming and administrative services for the SJTPO UPWP, shall be subject to the currently approved SJTA wage rate schedule. SJTA shall provide a roster of SJTA employees, their titles and their annual salaries to the STATE at the beginning of the annual program year. If there are any additions or changes to the items listed above, SJTA shall provide said revision to the STATE with the next Quarterly invoice application submission.

B. Payment for Salaries

- 1. Payment for personal services shall include the direct actual straight time wages paid to employees corresponding to the salary and wage policy of SJTA, in compliance with applicable Federal regulations.
- 2. The wages paid to employees for overtime hours authorized by SJTA shall be in accordance with the appropriate SJTA bargaining unit agreement, and the SJTA salary and wage policies.

C. Payment for Employee Fringe Benefits

- 1. Payment for SJTA employees' fringe benefits, who as being assigned full-time or part-time to provide central planning, programming and administrative support to the SJTPO UPWP, will be allowed as a percentage of direct straight time wages, and will be allowed as approved by the appropriate Federal funding agency.

D. Payment for Non-Salary Direct Expense

- 1. The STATE shall reimburse SJTA for Non-Salary Direct Expenses as provided

for in the Approved Budget of the Task Order. SJTA shall be paid provided such amounts are incurred in the actual performance of services provided to the SJTPO program. Non-salary direct expenses are defined in appropriate Federal Acquisition Regulations, Codes of Federal Regulation and OMB Circulars. Expenses related to non-salary items must be documented within the guidelines of the appropriate federal funding agency.

2. Travel essential to the services performed in accordance with this Agreement may be reimbursed at actual cost on a public conveyance or in a privately owned vehicle at the lesser of the prevailing rate per mile or the amount authorized and paid by SJTA, but not to exceed the amount authorized by the STATE. The SJTPO Executive Director will determine what training or conferences the SJTPO staff will attend in accordance with SJTA, STATE and federal guidelines.

#### E. Facilities and Administrative (F&A) Costs.

1. Should SJTA choose to apply for an F&A cost rate, payment for F&A costs will be allowed at the rate approved by the cognizant Federal agency prior to billing under this Agreement. The F&A cost rate shall be developed in accordance with OMB Circular A-21.
2. A negotiated fixed amount in lieu of an F&A cost rate may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefit's derived from an institution's F&A services cannot be readily determined.
3. The selection of either an F&A cost rate or a negotiated fixed amount shall be specifically identified and outlined in the applicable task order.

### XVI. TERMS OF PAYMENT.

#### A. Funding

1. The obligations of the STATE pursuant to this Agreement shall be subject to the availability of federal funds and State legislative appropriation authority.
2. The STATE agrees to reimburse SJTA on behalf of SJTPO for eligible costs incurred in support of the SJTPO UPWP and associated programs that are in accordance with the approved Budget of a Task Order.
3. To be eligible for funding and reimbursement, costs must be in accordance with either Federal Acquisition Regulation, 48 CFR Part 31, Contracts with Commercial Organizations, OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, OMB Circular A-21, Cost Principles for Educational Institutions, or OMB Circular A-122, Cost Principles for Non-Profit Organizations, as appropriate.

#### B. Reimbursement

1. SJTA shall maintain a complete set of time sheets, records and accounts to identify all salaries, payroll burden and non-salary direct expenses incurred by SJTA personnel supporting the SJTPO Program. These expenditures shall be documented to be in compliance with applicable SJTA, STATE and Federal rules and regulations and made available for review. If such documentation is found, during annual audits and/or reviews to not be in compliance with applicable Federal or STATE rules or regulations, SJTA shall prepare an appropriate plan of corrective action to meet all guidelines or repay the undocumented costs to the STATE for remittance to the appropriate Federal funding agency.

#### C. Method of Payment

1. Upon compliance with Article XV, the STATE shall reimburse SJTA the amount of each Quarterly Application for Reimbursement and shall make such credits and debits on future payments as are submitted by SJTA on subsequent quarterly applications.

#### XVII. RECORDS.

- A. SJTA and SJTPO shall maintain all records relating to both negotiations and to costs incurred, which records shall include but not be limited to documents, papers, accounting records, and any other evidence pertaining to costs; and shall make such records available at the respective offices of SJTA and SJTPO at all reasonable times during the contract period and for three (3) years from the date of payment of the applicable Final Invoice, for inspection by the STATE, FHWA, FTA, or any authorized representative of the STATE or Federal Government; and shall furnish copies of the records if requested. Following passage of three (3) years from the date of payment of the applicable Final Invoice, the STATE may, at its option, ask SJTA and/or SJTPO to destroy the records or surrender the records to the STATE for additional storage.
- B. SJTA and SJTPO acknowledge that provisions of FHWA and FTA federal funding agreements with the STATE require the preparation of suitable reports to document the results of actual activities performed with federal planning funds and federal funding agency approval prior to publishing such reports. The STATE may request a waiver of this requirement for prior approval. Federal or STATE funding agency approval constitutes acceptance of such reports as evidence of work performed but does not imply endorsement of a report's findings or recommendations.
- C. Reports prepared shall include appropriate credit references and disclaimer statements. SJTA and SJTPO shall deliver to the STATE all documents of every nature prepared in pursuance of the terms of this Agreement and the documents shall become the property of the STATE.

#### XVIII. COMPLETION.

- A. When it appears that the TASK ORDER schedule in any part or as a whole cannot be met, SJTA and SJTPO shall request in writing an extension of time from the STATE, but in no event shall said request be made later than ten (10) business days prior to the TASK ORDER schedule completion date.
- B. The STATE shall authorize the extension of time with a Form DC-45A, and if deemed necessary, shall obtain necessary approval from the appropriate Federal funding agency.
- C. SJTA and SJTPO shall collectively notify the STATE in writing when, in the opinion of SJTA and SJTPO; all services required by the TASK ORDER have been completed. Said notification shall be submitted to the STATE within ten (10) business days of said completion date accompanied by a Fourth Quarter and Final Report.
- D. The STATE shall respond to SJTA and SJTPO within a reasonable time either acknowledging that all services required by the Task Order have been completed satisfactorily or describing the services that remain to be completed.
- E. After agreeing that the services performed pursuant to a Task Order are complete, the STATE shall notify SJTA and SJTPO in writing that the STATE will immediately perform an audit of the costs previously unaudited or defer audit for later scheduling.

#### XIX. AUDITS.

- A. SJTA shall provide the STATE with a fiscal year, organization-wide audit that has been conducted in accordance with the requirements of OMB Circular A-133. SJTA shall ensure that the STATE receives the audit in a timely manner.
- B. The STATE, FHWA and/or FTA, or their agents, shall be entitled to perform an audit of SJTA records at the following times:
  - 1. At any time during the performance of work set forth in applicable Task Order(s).
  - 2. During a period of up to three (3) years after either the date of payment of the applicable Final Invoice or a date mutually agreed to by the parties.
- C. SJTA and SJTPO acknowledge that changes in payment due SJTA resulting from audits performed by the STATE shall be made as follows:
  - 1. In the event of overpayment by the STATE, SJTA shall refund the amount of such overpayment within sixty days of the request by the STATE. In the event SJTA fails to comply with said request, the STATE is hereby authorized to deduct such overpayment amounts from other monies due SJTA under the terms of this Agreement. Furthermore, SJTA expressly understands and agrees that the provisions of this Article XIX shall in no way be construed to relieve SJTA from any liability, or preclude the STATE from taking any other actions as are available to it under any other provisions of this Agreement or otherwise at law. The terms of this Article XIX shall survive the expiration or termination of the Agreement.
  - 2. In the event of underpayment by the STATE, the STATE shall pay sufficient funds to SJTA to correct the underpayment as soon as is practicable.

XX. FINAL INVOICE.

- A. A Final Invoice shall be submitted to the STATE sixty (60) calendar days after the completion date of the Task Order.
- B. The following release clause shall be included on the Final Invoice:

"In consideration of the requested payment of this Final Invoice, the SOUTH JERSEY TRANSPORTATION AUTHORITY ("SJTA") and SOUTH JERSEY TRANSPORTATION PLANNING ORGANIZATION ("SJTPO"), hereby release the State of New Jersey and the New Jersey Commissioner of Transportation and his/her agents, employees, officers, directors, commissioners, successors and assigns from all claims and liability for work done or services performed by SJTA and SJTPO under this Agreement."

Payment of a Final Invoice to SJTA for services does not waive either the right of the STATE to establish adjustments and collect overpayments that are disclosed by audits performed subsequent to payment of the Final Invoice, or the right of SJTA to collect underpayments based upon adjustments disclosed by said audits, subject to the Task Order ceiling limitations.