

- ADDENDUM No. 4 -

ADDENDUM No. 4 – 16 Pages
March 28, 2023

ON-CALL ARCHITECTURE & ENGINEERING DESIGN CONSULTING SERVICES FOR MULTIPLE FACILITIES / LOCATIONS OPERATED AND MAINTAINED BY NJSEA

This Addendum is used for the purpose of amending the February 28, 2023 Request for Qualifications (RFQ) as identified below and is hereby made part of said RFQ to the same extent as though it were originally included therein. This Addendum makes the following changes and clarifications to the RFQ Documents:

I. RFQ Section

- 1) **RFQ Important Dates and Table of Contents**
Pages 2-4

Delete:

Table of Contents – issued with the March 16, 2023 RFQ Addendum No. 3.

Add:

Table of Contents – issued with the March 28, 2023 RFQ Addendum No. 4.

- 2) **RFQ Section V,
Form of Contract**

Add:

Form of Contract – Issued with the March 28, 2023 Addendum No. 4

II. ADDENDUM DOCUMENT SUMMARY

- 1) **RFQ Important Dates and Table of Contents – 3 pages**
- 2) **Form of Contract – 12 pages**

-----**END of ADDENDUM NO. 4**-----

- REQUEST FOR QUALIFICATIONS -

- IMPORTANT DATES -

Date	Time	Event
February 28, 2023	9:00 AM	RFQ Public Advertisement Begins
March 7, 2023	2:00 PM	RFQ Video Conference Meeting
March 14, 2023	2:00 PM	RFQ Question Deadline
March 20, 2023 PER ADDENDUM NO. 3	4:00 PM	NJSEA Response to Questions
April 6, 2023	12:00 PM	RFQ Response Submission Deadline
April / May 2023 PER ADDENDUM NO. 3	TBD	Respondent Interviews
April/May 2023	TBD	Anticipated Shortlist Selection

The tabulated dates and times above is a partial list of required RFQ Dates and deadlines.

See all RFQ Documents and Addenda for all required dates and deadlines.

- REQUEST FOR QUALIFICATIONS -

Table of Contents

Section	Title	Page #
I	Procurement Release Information	
	1. Request for Qualifications General Overview.....	5
	2. Definitions	6
	3. Examination of RFQ and NJSEA Contact Information	7
II	Overview	
	1. General Overview of Procurement Process	9
	2. Eligible Respondents and Evaluation	11
	3. General Scope of Services for Future Task Orders	11
	4. Participation Goals – Added via Addendum No. 2	13
III	Minimum Qualification Requirements	
	1. Minimum Qualification Requirements	14
	2. Minimum Insurance Requirements	16
	3. RFQ Selection Process and Evaluation Criteria	17
IV	Request for Qualification (RFQ) Process	
	1. General Information	18
	2. Exclusivity and Respondent Changes	20
	3. Response Packaging and Submission Requirements	21
	4. Response Content Requirements	23
	5. NJSEA Disclaimers and Reserved Rights	31
V	Required Forms and Acknowledgements	
	1. RFQ Response Submission Checklist.....	34
	2. Acknowledgement of Addenda	36
	3. Statement of Understanding	37
	4. Respondent Team Information Form.....	38
	5. Minimum Qualifications Form.....	40
	6. NJSEA Case Study Form – Prior Experience Details & References Deleted via Addendum No. 3	41

- REQUEST FOR QUALIFICATIONS -

7. Experience Affidavit.....	43
8. State of New Jersey Business Registration Certificate.....	44
9. Vendor Certification of Political Contribution Disclosure Form	45
10. Moral Integrity Affidavit.....	52
11. Corporate Resolution Form	54
12. Ownership Disclosure Form	55
13. Non-Collusion Affidavit	56
14. Acknowledgement of Set-off State Tax Form.....	57
15. Affidavit of Authorization Form	58
16. Disclosure of Investigations and Other Actions Involving Vendor Form	59
17. MacBride Principles Form	60
18. Disclosure of Investment Activities in Iran Form	61
19. Affirmative Action EEO	63
20. Potential Participation Plan Form – Added via Addendum No. 2	64
21. Form of Contract – Added via Addendum No. 4	TBD

New Jersey Sports & Exposition Authority
RFQ – PS-083 - On-Call Architecture and Engineering Design Consulting Services



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NEW JERSEY SPORTS & EXPOSITION AUTHORITY

Form of Contract

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PROFESSIONAL CONSULTING SERVICES AGREEMENT BETWEEN THE
NEW JERSEY SPORTS AND EXPOSITION AUTHORITY

AND

Design Consultant (“Consultant”)

The Consultant’s Subconsultants are as follows:

SUBCONSULTANT NO. 1 NAME

ADDRESS

SUBCONSULTANT NO. 2 NAME

ADDRESS

SUBCONSULTANT NO. 3 NAME

ADDRESS

New Jersey Sports & Exposition Authority
RFQ – PS-083 - On-Call Architecture and Engineering Design Consulting Services
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This Professional Consulting Services Agreement (“Agreement”) is dated as of _____, 2023, by and between the New Jersey Sports and Exposition Authority (the “NJSEA” or “Authority or Owner”) with principal offices at One DeKorte Park Plaza, Lyndhurst, New Jersey 07071, and _____, (“Consultant”), with principal offices at _____, (individually, “Party” or collectively, the “Parties”).

WHEREAS, Eligible RFQ Respondents that were issued Letters of Selection (as a result of evaluation of formal RFQ responses, including, without limitation: qualifications, experience, technical capabilities, firm capacities, and other information) are considered Shortlisted Respondents.

WHEREAS, Shortlisted Respondents are eligible to be invited by the NJSEA for a Task Order Solicitation through a Mini-Solicitation and/or Rotational Assignment pursuant to the RFQ.

WHEREAS, on or about _____ 2023, the Authority issued Task Order Solicitation [PS- TBD] “[Project Name]” to all eligible RFQ Shortlisted Respondents for Design Consulting Services at the Meadowlands Sports Complex located in East Rutherford, New Jersey and other locations operated and maintained by the NJSEA, and;

WHEREAS, Consultant responded to the Task Order Solicitation with a proposal dated _____, 2023, directed to the New Jersey Sports and Exposition Authority (“the Response”); and

WHEREAS, on or about _____, 2023, the Authority selected Consultant as the highest ranking firm that responded to the Mini-Solicitation; and/or

WHEREAS, on or about _____, 2023, the Authority selected Consultant provided a fair and reasonable proposal responded to the Rotational Assignment; and

WHEREAS, the Task Order Solicitation provides that the Authority will seek to negotiate an agreement and fee structure with the highest ranking firm or firms; and

WHEREAS, the Parties have come to an agreement with respect to the terms under which Consultant will perform the services in connection with the Task Order Solicitation.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, the Parties agree as follows:

I. ON-CALL DESIGN CONSULTING SCOPE OF SERVICES

- A. The Authority hereby engages Consultant to provide on-call professional design consulting services (“Scope of Services”), and Consultant hereby agrees to provide the Services as defined below.

New Jersey Sports & Exposition Authority
RFQ – PS-083 - On-Call Architecture and Engineering Design Consulting Services
Form of Contract

- B. “Services” is defined as those tasks set forth in “Scope of Services” in the Task Order Solicitation and in the Task Order Solicitation Response, which is attached as **Exhibit “1”** and is hereby incorporated into this Agreement.
- C. “Additional Services” is defined as those tasks not set forth in the Response, or tasks differing from or in addition to those set forth in the Response, which are authorized in writing by the Authority.

II. PAYMENT FOR SERVICES

Payment for Services shall be as set forth in the Fee Summary in the Response, which is hereby made a part of this Agreement. Payment for any Additional Services shall be on terms mutually agreed to in writing by the Parties.

III. INVOICES AND PAYMENT TERMS

Unless otherwise agreed to in writing, invoices for all Services and Additional Services regardless of billing type (time and expense, lump sum etc.) will be issued on a monthly basis, payable within 30 days of the Authority’s receipt of the invoice. For services on a fixed price basis, billing shall be made, and payment remitted, on the basis of estimated percentage complete.

IV. EFFECTIVE DATE AND TERM OF AGREEMENT

This Agreement shall become binding upon the parties hereto when executed on behalf of the Authority by its President and Chief Executive Officer. Contingent upon Consultant’s timely completing its services and force majeure occurrences beyond the reasonable control of Consultant, it shall complete the Project services in accordance with the Authority’s completion schedule, unless such date is extended by written agreement executed by the parties.

V. OWNERS REPRESENTATIVE

Consultant shall provide its services in coordination with the President and Chief Executive Officer or his designee. The designation of Owner to be made hereunder shall be made in writing and may be changed from time to time by notice to the Consultant.

VI. PROFESSIONAL STANDARD OF CARE

Notwithstanding anything to the contrary, Consultant shall perform its services in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances at the time of the provision of its services. No other representations to the Authority, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, document or other communication of any nature.

New Jersey Sports & Exposition Authority
RFQ – PS-083 - On-Call Architecture and Engineering Design Consulting Services
Form of Contract

VII. INDEMNITY

To the fullest extent allowed by law, the Consultant shall indemnify, defend and hold harmless the Authority, its officers, directors, partners, employees, representatives, and agents from and against any and all losses, claims (including claims for bodily injury to persons, death or damages to property), demands, fines, penalties, damages and expenses (including reasonable attorney fees and court costs) arising out of or in connection with (i) any negligence, default or breach by Consultant, its employees and/or sub-consultants of its obligations and performance under the Agreement; (ii) violations or non-compliance with federal, statutory, local or municipal laws and/or ordinances, building code (including Americans with Disabilities Act, OSHA, Environmental Protection Act) as they may relate to Consultant's, its employees and/or sub-consultants performance under the Agreement. The foregoing defense and indemnity obligation do not apply to the extent the losses and damages are caused by the Authority's negligence.

VIII. INSURANCE

The Consultant shall purchase and maintain insurance of the types and in the amounts set forth below.

The Consultant shall purchase and maintain insurance and in addition require each Sub-consultant or Sub-consultant (collectively Sub-consultant) to purchase specific insurance that will protect the Consultant Sub-consultant, and the additional parties designated below from claims which may arise out of the Consultant's operations or completed operations including the operations or completed operations of any Sub-consultant.

I.

1. **(a) Statutory Worker's Compensation Insurance** (including occupational disease) in accordance with the law.
(b) Employer's Liability for \$1,000,000 per accident or disease
2. **Commercial General Liability ("CGL")** with a per occurrence limit for Bodily Injury and Property Damage of at least \$2,000,000. The limit may be provided through a combination of primary and umbrella/excess liability policies.

Coverage shall provide and encompass at least the following:

- (a) X, C, and U hazards, where applicable
- (b) Third-party-over-action
- (c) Independent Consultants
- (d) Blanket Written Contractual Liability
- (e) Products Liability and Completed Operations

3. **Business Auto Liability** insurance including owned, non-owned, and hired

New Jersey Sports & Exposition Authority
RFQ – PS-083 - On-Call Architecture and Engineering Design Consulting Services
Form of Contract

vehicles with combined single limits for bodily injury and property damage of \$1,000,000 each occurrence. The limit may be provided through a combination of primary and umbrella/excess liability policies.

4. **Umbrella / Excess Liability** coverage with limits of at least \$5,000,000 per occurrence and in the aggregate that attaches over the liability limits stated in 1., 2., and 3. above on a follow form basis.
1. **Professional Liability** - Professional Liability (Errors & Omissions) insurance covering the entire term of the contract, including two years beyond substantial completion with a limit not less than \$1,000,000 per claim and in the aggregate. If coverage is written on a "claims made" basis, the reporting requirement should include a Discovery (Awareness) Clause. Policy should also contain an extended reporting period of not less than twelve (12) months beyond the coverage obligations stated in this provision should coverage be cancelled or non-renewed.

II.

- a) With the exception of the Professional Liability, all liability coverage must be written on an occurrence form (as compared to "claims-made") and shall be maintained without interruption from date of commencement to the completion of the Consultant's obligations outlined in the contract.
- b) All insurance policies shall be maintained with insurance companies licensed to do business in the State of New Jersey and shall maintain a rating of "A" or better in most current edition of Best's Key Rating Guide.
- c) Each policy, except Worker's Compensation and the Professional Liability, shall include the NJSEA and any other required parties as Additional Insureds.
- d) Consultant shall not commence work hereunder until Certificates of Insurance evidencing the required insurance have been submitted to and approved by the Owner. Consultant shall not allow any sub-consultant work to commence until evidence is provided that each Sub-consultant(s) has obtained not less than the insurance coverages set forth above where applicable.
- e) All renewal Certificates shall be delivered to the Owner prior to the expiration date of such policies. If any one of the foregoing coverages are required to remain in force after the final payment, an additional Certificate evidencing continuation of such coverage shall be submitted to the Owner.

New Jersey Sports & Exposition Authority
RFQ – PS-083 - On-Call Architecture and Engineering Design Consulting Services
Form of Contract

- f) No insurance Policy may be cancelled or materially changed except after thirty (30) days advance written notice to the Owner upon receipt of any notice of cancellation or material change, consultant shall within ten (10) days produce replacement policies of insurance. If Consultant fails to produce and maintain acceptable policies of insurance in accordance of the terms hereof, then the Owner may, at the Owner's option, obtain such insurance at the cost and expense of the Consultant, without need of any notice to Consultant.
- g) Commercial General Liability and Business Auto Liability insurance carried by the Consultant will be primary and that any insurance carried by any additional insured shall be excess and non-contributory. The Consultant shall require the same of any insurance carried by all Sub-consultants.
- h) Except for Professional Liability insurance, Consultant waives all rights of recovery against the additional insured parties, including their agents, officers, directors, and employees for any losses covered by the insurance maintained or required to be maintained under this contract and for any losses which fall within insurance policy deductibles. Consultant shall require of all Sub-consultants, by written agreement, similar waivers.
- i) The Consultant's insurance obligations are separate from, and in addition to, the Consultant's indemnification obligations contained in the contract.
- j) The Consultant shall be responsible to the Owner for the acts and omissions of their Sub-consultants and their agents and employees and any other persons performing any work under a contract with the Consultant.
- k) The Consultant and all Sub-consultants should secure and maintain Property insurance necessary for protection against loss of owned, borrowed, or rented capital equipment and tools, including tools owned by employees, and any tools, equipment, stages, tower, field office trailer, or any other temporary structure, and forms owned, borrowed, or rented by the Consultant and any sub-consultant.

All risk insurance should also be carried for the full replacement or recreation or reproduction cost of all documents, plans, designs, models, or other data regardless of the media pertaining to this project.

The recommendation to secure such insurance is solely for the benefit of the Consultant or Sub-consultant. Failure to secure such insurance or to maintain adequate levels of coverage shall not obligate the NJSEA or any of its agents for any losses.

New Jersey Sports & Exposition Authority
RFQ – PS-083 - On-Call Architecture and Engineering Design Consulting Services
Form of Contract

IX. THE AUTHORITY'S RESPONSIBILITIES

- A. The Authority will provide to Consultant all available information pertinent to Consultant's services, provide access to the Consultant and their sub-consultants to all public and private property controlled by the Authority as necessary for Consultant to perform its Services, and give prompt written notice to whenever the Authority becomes aware of anything that could affect the Services to be provided by Consultant.
- B. The Authority may make changes in the Scope of Services of this Agreement. The Authority may also make changes to the scope of the project, which may give rise to changes in the scope of services. In such case the amounts payable to the Consultant will be equitably adjusted.

X. TERMINATION

A. **TERMINATION FOR CONVENIENCE** The performance of services under this Agreement may be terminated by the Authority in accordance with this Section in whole, or from time to time in part, whenever the Authority shall determine that such termination is in the best interest of the Authority. Any such termination shall be effected by delivery to the Consultant of a Notice of Termination specifying the extent to which performance and work under the Agreement is terminated and the date upon which such termination becomes effective.

After receipt of notice of termination pursuant to Section A, Consultant shall not perform any services except those necessary for the orderly termination of the work, nor incur any expenses without the written approval of the Authority. The Authority will pay for services actually performed, completed and approved by the Authority up to the date of termination and reasonable termination expenses actually incurred. All costs shall be subject to audit. Authority shall not be liable for any consequential or special damages of any type.

B. **TERMINATION FOR CAUSE** The Authority may terminate this agreement in whole or in part at any time if the Consultant has materially failed to comply with terms of the Agreement. In the event of such failure, the Authority shall promptly give written notification to the Consultant of its intent to terminate and the reasons thereof. The Consultant shall have ten (10) days, or such additional time as the Authority in its sole discretion may grant, after receipt of notice to cure its failure. If the failure is not cured to the satisfaction of the Authority, the Consultant shall be held in breach of this Agreement and the contract may be terminated (in whole or in part) effective immediately.

Upon a termination under Section B the Consultant shall be liable for any and all costs incurred by the Authority arising out of or related to the termination including but not limited to the cost of completing the Consultant's work. In the event a termination under Section B is later determined to have been wrongful the Authority's liability to the Consultant shall be limited to that payable under Section A.

New Jersey Sports & Exposition Authority
RFQ – PS-083 - On-Call Architecture and Engineering Design Consulting Services
Form of Contract

The rights and remedies available to the Authority in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

XI. ENTIRE AGREEMENT

This Agreement, together with those sections of the Response referenced herein, and any subsequent writings agreed to by the Parties for Additional Services sets forth and constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the Parties respecting the subject matter hereof. This Agreement may not be released, discharged, amended, or modified in any manner except by an instrument in writing signed by each of the parties.

XII. ASSIGNMENT

Consultant shall not sell, transfer or otherwise dispose of this Agreement or its interest therein to any other party without the prior written consent of the Authority. Consultant shall not without the prior written approval of the Authority, assign or subcontract any of the Project Services under this Agreement. The foregoing notwithstanding, this Agreement shall be legally binding upon, inure to the benefit of, and be enforceable by the parties hereto and their assigns, successors, legal representatives, heirs and devisees as the case may be.

XIII. AFFIRMATIVE ACTION

The parties to this Agreement do hereby agree that the provisions of N.J.S.A. 10:5-31 et. seq. (P.L. 1975, c. 127) as amended and supplemented and the rules and regulations promulgated pursuant thereto and the provisions set forth in the State of New Jersey Equal Employment Opportunity Provisions for Professional Services Contract, as detailed in the Task Order Solicitation are deemed to be part of this Agreement as if set forth at length herein

In addition, Consultant agrees that the provisions of Title II of the Americans with Disabilities Act of 1990 (the "Act (42, USC § 12101 *et seq.*), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated thereto, are made a part of this Agreement. In providing any aid, benefit, or service on behalf of the Authority pursuant to this Agreement, Consultant agrees that the performance shall be in strict compliance with the Act. In the event that Consultant, its agents, servants, employees, or sub-consultants violate or are alleged to have violated the Act during the performance of this Agreement, Consultant shall defend the Authority and the State of New Jersey in any action or administrative proceeding commenced pursuant

New Jersey Sports & Exposition Authority
RFQ – PS-083 - On-Call Architecture and Engineering Design Consulting Services
Form of Contract

to this Act. Consultant shall indemnify, protect, and save harmless the Authority, its agents, servants, and employees from and against any kind of all suits, claims, losses, demands, or damages or whatever kind or nature arising out of or claimed to arise out of the alleged violation. Consultant shall, at its own expense, appear, defend and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection herewith. If any action or administrative proceeding results in an award of damages against the Authority or if the Authority incurs any expense to cure a violation of the Act by Consultant then Consultant shall satisfy and discharge the same at its own expense.

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

It is expressly agreed and understood that any approval by the Authority of the services provided by Consultant pursuant to this Agreement will not relieve Consultant of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the Authority, pursuant to this paragraph.

Consultant expressly understands and agreed that the provisions of the indemnification clause shall in no way limit the Consultant's obligations assumed in this Agreement, nor shall they be construed to relieve Consultant from liability, nor preclude Consultant from taking any other actions available to it under any other provision of this Agreement or otherwise at law.

XIII. COMPLIANCE WITH PUBLIC LAW 2005, CHAPTER 51

Consultant agrees that it will comply with the provisions of Public Law 2005, Chapter 51, which requires all businesses having been awarded a State contract to submit a Public Law 2005, Chapter 51 Certification and Disclosure of Political Contributions, and hereby represents that it has not made any political contributions that would preclude its ability to provide the services contracted for hereunder. In addition, Consultant understands that it is under a continuing duty to disclose during the time of the Agreement all contributions made during the term of this Agreement covered under Public Law 2005, Chapter 51. Compliance with Public Law 2005, Chapter 51 is a material term and condition of this Agreement.

XIV. AUDIT AND INSPECTION OF RECORDS

Consultant shall retain all agreements and records and permit the authorized representatives of the Authority, upon request, to inspect and audit all data and records of Consultant relating to its performance under this agreement from the effective date hereof until the expiration of three (3) years after completion of and final payment for the project services.

New Jersey Sports & Exposition Authority
RFQ – PS-083 - On-Call Architecture and Engineering Design Consulting Services
Form of Contract

Documents of every nature prepared pursuant to this Agreement shall be available to and become the property of the Authority and basic notes and other pertinent data shall be made available to the Authority upon request.

XV. MISCELLANEOUS

- A. Assignment. Consultant shall not assign any rights or delegate any responsibilities pursuant to this Agreement except for such third-party services as are approved by the Authority, in writing. The foregoing notwithstanding, Consultant shall be entitled to subcontract Services. Subject to the foregoing, this Agreement shall be legally binding upon, inure to the benefit of, and be enforceable by the Parties hereto and their assigns, successors, legal representatives, heirs and devisees as the case may be.
- B. Third Parties. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Parties hereto. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Parties and not for the benefit of any other party.
- C. Precedence of Documents. In the event the Authority issues a purchase order or other instrument related to Consultant's services, it is understood and agreed that such document is for the Authority's internal accounting purposes only, and shall not operate to amend, supplement, modify, or delete any terms or conditions of this Agreement. In the event of any conflict between the terms and conditions of any such purchase order or other instrument and this Agreement, this Agreement shall take precedence.
- D. Public Information. Consultant shall not release or publish any information or material generated from the Project to others outside of the Authority without the express written permission of the Authority.
- E. This Agreement shall be governed by the laws of the State of New Jersey. The parties agree that the courts of the State of New Jersey shall have exclusive jurisdiction of any action regarding or relating to this Agreement. All parties consent to be subject to the jurisdiction of the courts of New Jersey.
- F. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed to have been duly given or made: (a) the fourth (4th) business day after the date of mailing; (b) upon delivery, if delivered by registered or certified mail (postage prepaid, return receipt requested); (c) upon delivery, if sent by hand delivery; or (d) upon delivery, if sent by prepaid courier, with a record of receipt, to the Parties at the following addresses:

New Jersey Sports & Exposition Authority
RFQ – PS-083 - On-Call Architecture and Engineering Design Consulting Services
Form of Contract

If to the Authority, to:

John Duffy, P.E.

Senior Vice President of Sports Complex Operations and Facilities

New Jersey Sports and Exposition Authority

Meadowlands Sports Complex

50 State Route 120

East Rutherford NJ 07073-2160

W: 201-842-5115

C: 201-406-4074

jduffy@njsea.com

If to Consultant to:

_____(Firm)

_____(Contact)

_____(Address)

_____(Phone Number)

_____(Email)

Either party hereto may change its address by giving notice thereof to the other party hereto in conformity with the foregoing.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date first set forth herein.

NEW JERSEY SPORTS AND

EXPOSITION AUTHORITY

(Consultant)

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____