

RESOLUTION NO. 24 - 55

RESOLUTION OF THE NEW JERSEY INFRASTRUCTURE AUTHORIZING THE AWARD OF A CONTRACT FOR AN ARBITRAGE COMPLIANCE SERVICES PROVIDER

WHEREAS, pursuant to Section 5(d) of the New Jersey Infrastructure Trust Act, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State of New Jersey (“State”), as amended and supplemented (N.J.S.A. 58:11B-1 *et seq.*) (the “Act”), the New Jersey Infrastructure Bank (“I-Bank”) is authorized to make and enter all contracts necessary and/or incidental to the performance of its duties; and

WHEREAS, there is a need for the I-Bank to secure the services of an Arbitrage Compliance Services Provider (“ACSP”) to calculate arbitrage rebate compliance in accordance with federal laws and regulations to maintain the tax-exempt status of I-Bank bonds issued by the I-Bank’s New Jersey Environmental Infrastructure Financing Program, the Transportation Infrastructure Financing Program and any other I-Bank programs; and

WHEREAS, the current contract for an ACSP expires on December 31, 2024; and

WHEREAS, at its September 12, 2024 meeting, the I-Bank Board of Directors (“Board”) approved Resolution No. 24-43 authorizing the Executive Director to prepare and issue a Request for Proposals (“RFP”) for the appointment of an ACSP for a contract term of three years with the option for two additional one-year periods upon approval by the Board; and

WHEREAS, on September 27, 2024, the Executive Director issued an RFP soliciting proposals for the appointment of an ACSP for the period of January 2, 2025 through December 31, 2027 with an option for two additional one-year periods upon approval of the Board in accordance with the I-Bank Policy No. 4.00 Purchase of Goods and Services; and

WHEREAS, the RFP solicited proposals and enumerated the criteria and associated weights to be applied in the evaluation process as follows: (i) the firm’s proposal; (ii) the qualifications and experience of the assigned team; (iii) the firm’s resources, experience and qualifications to perform the proposed services; (iv) the firm’s reputation as a respected, nationally known, arbitrage compliance consultant; (v) the firm’s presence in New Jersey; and (vi) the cost proposal (the “Selection Criteria”); and

WHEREAS, the I-Bank received two (2) proposals, both of which were deemed to be compliant with the requirements of the RFP; and

WHEREAS, the Executive Director of the I-Bank appointed an Evaluation Committee (“Committee”) consisting of three (3) I-Bank staff members to independently review and rank the proposals in accordance with the Selection Criteria; and

WHEREAS, the Committee members independently reviewed and ranked the proposals; and

WHEREAS, after consideration of all the proposals, the Committee recommended that the proposal presented by BLX Group, LLC (“BLX Group”) provided terms most favorable to meet the needs of the I-Bank as stated in the scope of services set forth in the RFP; and

WHEREAS, the Executive Director reviewed the Committee’s recommendation and recommends that the I-Bank engage BLX Group to serve as the ACSP to provide the scope of services as set forth in the RFP.

NOW THEREFORE, BE IT RESOLVED that the recitals set forth above are incorporated by reference as if set forth herein.

Section 1. The I-Bank selects and appoints BLX Group as the ACSP to perform the scope of services set forth in the RFP. The appointment shall be for a period of January 2, 2025 through December 31, 2027 with the option to extend for two one-year periods upon further approval by the Board (the “Contract Term”) and contingent upon the subsequent execution by all parties of an agreement with respect to the RFP, substantially in the form presented at this meeting (**Attachment A**), which is hereby approved; provided that the Chairperson, Vice-Chairperson, Treasurer, and Executive Director of the I-Bank are hereby authorized with the advice of the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate; and

Section 2. The Executive Director is hereby authorized to send a confirming letter to BLX Group of the intent to award the contract for the Contract Term described above; and

Section 3. The Chairperson, Vice-Chairperson, and Treasurer of the I-Bank are hereby authorized to execute and deliver such agreement with BLX Group, substantially in the form of the agreement approved by the Board at this meeting, with such changes, insertions, deletions and omissions as the Chairperson, Vice-Chairperson, and Treasurer of the I-Bank determine to be necessary and appropriate, with the advice of the State Attorney General.

Adopted Date: November 14, 2024

Motion Made By: Mr. David Bruccoleri

Motion Seconded By: Mr. Mark Longo

Ayes: 8

Nays: 0

Abstentions: 0

**NEW JERSEY INFRASTRUCTURE BANK
AGREEMENT FOR ARBITRAGE COMPLIANCE SERVICES**

This Agreement (hereinafter defined) made and entered into on or about this ____ day of _____, 2024 between the New Jersey Infrastructure Bank hereinafter referred to as “the I-BANK” and BLX Group, LLC, hereinafter referred to as “the CONTRACTOR.”

WHEREAS, the I-BANK desires to engage the CONTRACTOR to provide arbitration compliance services, which include but are not limited to the scope of services set forth in the Request for Proposals for Arbitration Compliance Services dated September 27, 2024 (the “RFP”); and

WHEREAS, the CONTRACTOR has submitted a proposal dated November 1, 2024 to provide such services and represents that it is qualified by training and experience to perform the required services in the manner and on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties hereto covenant and agree as follows:

ARTICLE I

A. The CONTRACTOR shall provide the required arbitration compliance services with respect to the projects designated by the I-BANK in accordance with the terms, conditions, specifications, and scope of the work set forth in:

1. The RFP, the I-BANK’s Standard Contract Terms and Conditions, and related materials attached and enclosed with the RFP;
2. The CONTRACTOR’s proposal dated November 1, 2024; and
3. I-Bank letter dated _____ informing CONTRACTOR of its successful bid.

The aforementioned documents are hereby incorporated in their entirety by reference into this contract as if set forth in their full text herein (the “Agreement”).

B. In the event that there exists a conflict in terms, conditions, specifications, or scope of work between the RFP and the CONTRACTOR’S proposal, the I-BANK’s letter dated _____, the I-BANK’s Standard Contract Terms and Conditions and this Agreement, the provisions of the RFP and the I-BANK’s Standard Contract Terms and Conditions shall prevail. In the event that there exists a conflict in terms, conditions, specifications, or scope of work between the RFP and the I-BANK’s Standard Contract Terms and Conditions, the provisions of the I-BANK’s Standard Contract Term and Conditions shall prevail.

ARTICLE II

The addresses given below shall be the addresses of the representative parties to which notices and reports required by this Agreement shall be sent by mail:

For the I-BANK:

DAVID E. ZIMMER, CFA
Executive Director
New Jersey Infrastructure Bank
3131 Princeton Pike, Building 4, Suite 216
Lawrenceville, NJ 08648

For the CONTRACTOR:

ROBIN SCHLIMGEN
Managing Director
BLX Group, LLC
1525 S. Higley Street, Suite 104, PMB 1103
Gilbert, AZ 85296

IN WITNESS WHEREOF, the parties, hereto have caused this Agreement to be executed by these duly authorized representatives as of the dates indicated.

Witness:

BLX GROUP, LLC

By: _____

Dated:

Witness:

NEW JERSEY INFRASTRUCTURE BANK

By: _____
Robert A. Briant, Jr.
Chairperson

Dated:

And _____
David E. Zimmer, CFA
Executive Director

Dated:

Approved as to form only:
MATTHEW J. PLATKIN
Attorney General State of New Jersey By:

Deputy Attorney General

Dated:

STANDARD CONTRACT TERMS AND CONDITIONS
NEW JERSEY INFRASTRUCTURE BANK

ARTICLE I

Unless specifically instructed otherwise in the Request for Proposal (“RFP”), the following terms and conditions will apply to all contracts or purchase agreements made with the New Jersey Infrastructure Bank (the “I-BANK”) a public body corporate and politic with corporate succession, constituted as an instrumentality of the State of New Jersey (“State”). These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same, unless the RFP specifically indicates otherwise.

A. The I-BANK's obligations hereunder are contingent upon the availability of assessed or appropriated funds from which payment for contract purposes can be made in accordance with the provisions of the New Jersey Infrastructure Trust Act, N.J.S.A. 58:11B-1 et seq. (the "Enabling Act"). No legal liability on the part of the I-BANK for payment of any money shall arise unless and until funds are available each year to the I-BANK from administrative fees or loan surcharges lawfully assessed against local government units or otherwise made available each year to the I-BANK by the State Legislature as may be required by the Enabling Act.

B. Maintenance of Records - The CONTRACTOR shall maintain records for products and/or services delivered against the Agreement for a period of five (5) years from the date of final payment unless a longer period is required by law. Such records shall be made available to the State, including the Comptroller, for audit and review.

C. Ownership of all data, material and documentation originated and prepared for the I-BANK pursuant to the Agreement shall belong exclusively to the I-BANK. All such data, materials or documentation shall be delivered to the I-BANK without any additional charge upon demand after termination of the Agreement, except as otherwise provided under the terms of the Agreement.

D. Except as otherwise permitted by the Agreement, the CONTRACTOR shall not publish, permit to be published, or distribute, use or disclose to anyone for public consumption, any information which it acquires in performance of the Agreement, without prior written consent of the I-BANK. However, the CONTRACTOR may publish, permit to publish, distribute use or disclose the foregoing without such consent if required by law, governmental rule or regulation or by the order of any court or administrative body.

E. Termination of Contract

(a) For Convenience:

Notwithstanding any provision or language in the Agreement to the contrary, the I-BANK may terminate the Agreement at any time, in whole or in part, provided written notice has been given to the other party at the address set forth in Article V upon no less than thirty (30) days written notice to the CONTRACTOR.

(b) For Cause:

1. Where the CONTRACTOR fails to perform or comply with the contract or a portion thereof, the I-BANK may terminate the contract, in whole or in part, upon ten (10) days' notice to the CONTRACTOR with an opportunity to respond; and

2. Where, in the reasonable opinion of the I-BANK, the CONTRACTOR continues to perform a contract poorly as demonstrated by e.g., late delivery, poor performance of service, short-shipping, and there has been a failure on the part of the CONTRACTOR to make progress towards ameliorating the issue(s) or problem(s) after being advised of the poor performance, the I-BANK may terminate the contract, in whole or in part, upon ten (10) days' notice to the CONTRACTOR with an opportunity to respond.

(c) In cases of emergency, the I-BANK may shorten the time periods of notification and may dispense with an opportunity to respond.

(d) In the event of termination under this section, the CONTRACTOR shall be compensated for work performed in accordance with the contract, up to the date of termination in accordance with the provisions of the Agreement; provided, however, that upon receipt of any such notice of termination, the CONTRACTOR shall cease the performance of services, shall make no further commitments with respect thereto and shall reduce insofar as possible the amount of outstanding commitments (including, to the extent requested by the I-BANK, through termination of approved subcontracts which shall contain provisions therefore). Upon termination of this Agreement, the CONTRACTOR will deliver to the I-BANK within thirty (30) days of the date termination is effective, all work in progress and all other materials in its possession, which are the property of the I-BANK pursuant to the Agreement. The CONTRACTOR shall waive any lien on such information that it may have at law or equity.

F. CONTRACTOR'S Certification as to Representations - The CONTRACTOR certifies that all representations made by it in its proposal or other related and/or supporting materials are true, subject to penalty of law. Further, the CONTRACTOR agrees that its violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal, award or performance of the Agreement may be cause for rescission of the contract award. In addition, the CONTRACTOR's violation of any statute or regulation related to public contracts and/or its misrepresentation or concealment of any material fact in the proposal award or performance of the Agreement shall serve as a legal bar to the CONTRACTOR's enforcement of its rights under the Agreement including any and all claims at law or equity.

G. Subcontracting - CONTRACTOR may not subcontract other than as identified in the CONTRACTOR's proposal without the prior written consent of the I-BANK. Such consent, if granted in part, shall not relieve CONTRACTOR of any of their responsibilities under this Agreement, nor shall it create privity of contract between the I-BANK and any subcontractor. If CONTRACTOR uses a subcontractor to fulfill any of its obligations, CONTRACTOR shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the Agreement; and (c) compliance with the requirements of all applicable laws; and

H. Assignment - CONTRACTOR may not assign its responsibilities under this Agreement, in whole or in part, without the prior written consent of the I-BANK.

I. Change in Law - If, after award, a change in applicable law or regulation occurs which affects the Agreement, the parties may amend the Agreement, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith. However, if agreement is not possible after reasonable efforts, the I-BANK shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify CONTRACTOR of the final adjusted contract price.

ARTICLE II

A. In full consideration of all services to be performed under this Agreement, the CONTRACTOR shall be compensated in accordance with the compensation schedule set forth in the CONTRACTOR's bid proposal submitted on November 1, 2024. The Maximum Amount does not constitute a commitment, implied or otherwise, that the I-BANK will expend the entire amount indicated above or as set forth in the CONTRACTOR's bid proposal.

B. Invoices must be submitted to the Executive Director of the I-BANK before any payments will be made to the CONTRACTOR.

C. The CONTRACTOR must submit supporting evidence with the invoices identifying the project task and indicating among other things the actual time by employee (on an hourly basis) devoted to the project for which billing is submitted. All disbursements shall be itemized.

D. It is the responsibility of the I-BANK to ascertain that services have been performed in a proper and satisfactory manner in accordance with the terms and conditions set forth in the Agreement prior to the approval of such invoices. However, approval of invoices for payment by the I-BANK shall not constitute a release or waiver of any claim the I-BANK has, or may have, for latent defects or errors or other breaches of the Agreement on the part of the CONTRACTOR, or any claims for breach of warranty, negligence, willful misconduct or reckless disregard of its duties and obligations under the Agreement.

E. The CONTRACTOR shall be compensated for actual services performed and disbursements made in accordance with the terms of this ARTICLE II.

F. Final payment shall be withheld by the I-BANK until all services under the Agreement have been performed in a manner satisfactory to the I-BANK and upon submission of any final report if stipulated in the supporting documentation.

G. The CONTRACTOR agrees that it shall be directly responsible to, and shall submit drafts, reports, and other documents and information or other production items contracted for, to the Executive Director of the I-BANK, at the address indicated in ARTICLE V, for their approval on behalf of the I-BANK before any payments are made in accordance with the terms of this ARTICLE II.

ARTICLE III

A. This Agreement shall commence as of January 2, 2025, and continue in full force and effect until December 31, 2027, except as otherwise set forth in this Agreement.

B. The I-BANK and the CONTRACTOR reserve the right to extend the term of this Agreement for two additional periods of one year or less. In no event shall the term of this Agreement be extended beyond December 31, 2029. Such extensions shall be offered by the I-BANK in writing not less than 30 days prior to the termination of the initial term of the Agreement. Acceptance of any extensions by the CONTRACTOR is to be in writing and must be on file in the I-BANK's office within 5 days of the date of such offer of extension. In the event the Agreement is extended, all of the original terms will remain in effect for the extended period, except as otherwise agreed upon by the parties at the time of extension.

C. In the event of the termination of this Agreement, as provided in Article I, the CONTRACTOR shall furnish to the Executive Director of the I-BANK such report or reports as he may require, based upon work completed under the provisions of this Agreement. In the event the Agreement

is terminated for cause, the CONTRACTOR shall not be compensated for the time necessary to prepare such reports as may be required under this provision.

ARTICLE IV

A. The CONTRACTOR's status shall be that of any independent principal and not as agent or employee of the I-BANK.

B. The CONTRACTOR agrees not to assign the Agreement or any monies due hereunder, or enter into any subagreement under the Agreement, without the prior written approval of the I-BANK.

C. The CONTRACTOR agrees that in the performance of the Agreement it will obey, abide by and comply with all the applicable Federal and State laws, rules and regulations.

D. If incorporated in a state other than the State, the CONTRACTOR shall promptly file with the Secretary of the State any documents required in order to do business in the State and shall otherwise comply with the provisions of the laws of the State in that regard. The CONTRACTOR will provide proof of that registration by providing a copy of its business registration certificate (or interim registration) as part of its bid submission.

E. The CONTRACTOR must comply with all local, State and Federal laws, rules and regulations applicable to the Agreement and to the goods delivered and/or services performed hereunder. It is agreed and understood that any contracts and/or orders placed as a result of the Agreement shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State.

F. If it becomes necessary for the CONTRACTOR, either as principal or by agent, subcontractor, or employee, to enter upon the premises or property of the I-BANK or the State for any purpose whatsoever pursuant to the Agreement, the CONTRACTOR hereby covenants and agrees to take, use, provide and make all proper, necessary and sufficient precautions, safeguards and protections against the occurrence of happenings of any accidents, injuries or damages to any person or property in connection with performance of the services under the Agreement, and to be responsible for, and to indemnify, defend, and save harmless the I-BANK and the State, its agents, servants and employees, from the payment of all sums of money, including the cost of defense, by reason of all, or any, such accidents, injuries or damages that may happen in connection with the performance of services under this Agreement.

G. Indemnification and Insurance

(a) INDEMNIFICATION

The CONTRACTOR's liability to the I-Bank and its employees in third party suits shall be as follows:

Indemnification for Third Party Claims – the CONTRACTOR shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the State of New Jersey, the I-Bank and its agents, servants, and employees from and against any and all claims, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this Agreement, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

The CONTRACTOR's indemnification and liability under this subsection (a) is not limited by, but is in addition to, the insurance obligations contained in Section G subsection (b).

In the event of a patent and copyright claim or suit, the CONTRACTOR, at its option, may: (1) procure for the I-BANK the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

(b) INSURANCE

The CONTRACTOR shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide sixty (60) days' written notice of cancellation or material change to the I-BANK at the address shown below. The CONTRACTOR shall provide the I-BANK with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within thirty (30) days of the expiration of the insurance. The CONTRACTOR shall not begin to provide services or goods to the I-BANK until evidence of the required insurance is provided. The certificates of insurance shall reference the title of the Agreement or purchase order number in the Description of Operations box and shall list the I-BANK, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, NJ 08648 and the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the I-BANK at: Procurement@njib.gov.

The insurance to be provided by the CONTRACTOR shall be as follows:

1. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the I-BANK, the State, its officers and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State, which shall not be circumscribed by any endorsement limiting the breadth of coverage;

2. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The I-BANK must be named as an "Additional Insured" and a blanket additional insured endorsement, or its equivalent must be provided when the services being procured involve vehicle use on the I-BANK's behalf or on I-BANK controlled property;

3. Worker's Compensation Insurance applicable to the laws of the State and Employers Liability Insurance with limits not less than:

- i. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
- ii. \$1,000,000 DISEASE EACH EMPLOYEE; and
- iii. \$1,000,000 DISEASE AGGREGATE LIMIT.

4. This \$1,000,000 amount may have been raised by the RFP when deemed necessary by the I-BANK; and

5. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections 1., 2., and 3. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the I-BANK.

Professional Liability Insurance

The CONTRACTOR shall carry Errors and Omissions, Professional Liability Insurance, and/or Professional Liability Malpractice Insurance sufficient to protect the CONTRACTOR from any liability arising out of the professional obligations performed pursuant to the requirements of this Agreement. The insurance shall be in the amount of not less than \$1,000,000 and in such policy forms as shall be approved by the I-Bank. If the CONTRACTOR has claims-made coverage and subsequently changes carriers during the term of this Agreement, it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

H. **Anti-Discrimination** - All parties to any Agreement with the I-Bank agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations promulgated by the State Treasurer, as amended and supplemented from time to time.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of the Agreement, the CONTRACTOR must agree as follows:

(a) The CONTRACTOR or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the 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 age, race, creed, color, national origin, ancestry, marital status affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action 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. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination 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 age, race, creed, color, national origin ancestry, marital status, affectional or sexual orientation, gender identify or expression, disability, nationality or sex; and

(c) The CONTRACTOR or subcontractor, where applicable will send to each labor union or representative of 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 worker's 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.

N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:

1. The CONTRACTOR or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;

2. The CONTRACTOR or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;

3. The CONTRACTOR or subcontractor 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 decisions of the State and as established by applicable Federal law and applicable Federal court decisions; and

4. In conforming with the targeted employment goals, the CONTRACTOR or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

(d) The CONTRACTOR hereby agrees to comply with all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations promulgated by the State Treasurer, as amended and supplemented from time to time.

I. **Prevailing Wage Act** - The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.26 et seq. is hereby made part of every Agreement entered into on behalf of the I-Bank, except those agreements which are not within the contemplation of the Act. The CONTRACTOR's signature on the Agreement is their guarantee that neither they nor any subcontractors they might employ to perform the work covered by the Agreement has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the CONTRACTOR's signature on the proposal is also their guarantee that they and any subcontractors they might employ to perform the work covered by the Agreement shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

J. **Americans With Disabilities Act** - The CONTRACTOR agrees to comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq.

K. The CONTRACTOR does hereby warrant and represent that the Agreement has not been solicited or secured, directly or indirectly, in a manner contrary to the laws of the State and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the Agreement by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly, or indirectly, to any State employee, officer or official or to any Special State officer or employee as defined in N.J.S.A. 52:13D-13.

L. The CONTRACTOR warrants and represents that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any Agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business.

M. Unless it has already done so as part of its response to the RFP, the CONTRACTOR agrees to complete the Stockholder Disclosure Form attached to the Request for Proposals before executing the Agreement.

N. It is agreed and understood that the I-BANK reserves the right under this Agreement to determine whether a conflict of interest or the appearance of a conflict of interest exists which would under State law adversely affect the Agreement or would otherwise be contrary to the best interest of the I-BANK and the State.

O. The CONTRACTOR and I-BANK agree that any claims asserted against the I-BANK shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. (except for section 9 of the Contractual Liability Act, N.J.S.A. 59:13-9), notwithstanding that the Contractual Liability Act is not applicable by its provisions to claims arising under contracts with the I-BANK. Nothing in this Agreement shall be construed to be a waiver by the I-BANK and/or the State of any warranty, expressly or implied, or any remedy at law or in equity.

P. The CONTRACTOR does hereby warrant and represent that it is qualified by training and experience to perform the required services in the manner and on the terms and conditions set forth herein.

Q. Invalidation of any one of the provisions of the Agreement, by judgment or court order, shall in no way affect any other provisions herein contained, which provisions shall remain in full force and effect.

R. The Agreement may only be amended, modified or supplemented in writing consented to by the parties hereto.

S. The Agreement may be executed by the parties hereto in two counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart, which together shall constitute but one and the same Agreement.

T. **Confidentiality**

(a) The I-BANK's obligation to maintain the confidentiality of the CONTRACTOR's confidential information provided to the I-BANK under the Agreement is conditioned upon and subject to the State of New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any other lawful document request or subpoena.

(b) By virtue of the contract, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the contract. The CONTRACTOR's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("CONTRACTOR Confidential Information"). Notwithstanding the previous sentence, the CONTRACTOR acknowledges the terms and pricing of the contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.

(c) The I-BANK's Confidential Information shall consist of all information or data in any form whatsoever supplied by the I-BANK and/or the State, any information or data gathered by the CONTRACTOR in fulfillment of the Agreement and any analysis thereof (whether in fulfillment of the Agreement or not).

(d) A party's Confidential Information shall not include information that: (1) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the I-BANK Standard Terms and Conditions domain through other means, the other party must maintain full efforts under the Agreement to keep it confidential; (2) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (3) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (4) is independently developed by the other party.

(e) The parties agree to hold each other's Confidential Information in confidence, using at least the same degree of care in doing so that it uses to protect its own confidential information.

(f) In the event that the I-BANK receives a request for Contractor Confidential Information related to the Agreement pursuant to a court order, subpoena, lawful document request or other operation of law, the I-BANK agrees, if permitted by law, to provide the CONTRACTOR with as much notice, in writing, as is reasonably practicable and the I-BANK's intended response to such request. The CONTRACTOR shall take any action it deems appropriate to protect its documents and/or information.

(g) In addition, in the event the CONTRACTOR receives a request for I-BANK Confidential Information pursuant to a court order, subpoena, or other operation of law, the contractor shall, if permitted by law, provide the I-BANK with as much notice, in writing, as is reasonably practicable and the CONTRACTOR's intended response to such request. The I-BANK shall take any action it deems appropriate to protect its documents and/or information. Notice to the I-BANK shall not relieve the CONTRACTOR of its obligation to take action to protect such information if the CONTRACTOR is aware of a legal reason to do so.

(h) Notwithstanding the requirements of nondisclosure described in this Section T, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the I-BANK, if the I-BANK determines the documents or information are subject to disclosure and the CONTRACTOR does not exercise its rights as described in subsection (f), or if the CONTRACTOR is unsuccessful in defending its rights as described in subsection (f), or (iv) in the case of the CONTRACTOR, if the CONTRACTOR determines the documents or information are subject to disclosure and the I-BANK does not exercise its rights as described in subsection (g), or if the I-BANK is unsuccessful in defending its rights as described in subsection (g).

OWNERSHIP OF MATERIAL: All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the I-BANK and/or the State and shall be delivered to the I-BANK and/or the State upon 30 days' notice by the I-BANK. With respect to software computer programs and/or source codes developed for the I-BANK and/or the State, the work shall be considered "work for hire", i.e. the I-BANK and/or the State, not the CONTRACTOR or subcontractor, shall have full and complete ownership of all software

computer programs and/or source codes developed. To the extent that any of such materials may not, by operation of law, be a work made for hire in accordance with the terms of the Agreement, CONTRACTOR or subcontractor hereby assigns to the I-BANK and/or the State all right, title and interest in and to any copyright, and the I-BANK and/or the State shall have the right to obtain and hold in its own name any copyrights, registrations and any other proprietary rights that may be available.

U. **Non-Solicitation Clause** - For the term of this Agreement, and for one (1) year from the dates of either (a) satisfaction or (b) termination of this Agreement, the I-BANK and CONTRACTOR agree not to solicit any employee who has been directly involved with the services exchanged between the parties to this Agreement. Notwithstanding the foregoing, the parties will not be prohibited from hiring or contracting for the services of an employee of the other party who (i) has terminated their employment relationship with the other party without solicitation or inducement from such party, or (ii) responds to a bona fide job advertisement of general circulation made by such party (whether posted on a public site on the internet or in a newspaper, magazine or other publication).

V. **Force Majeure** - Neither party shall be liable for failure to fulfill its obligations under this Agreement if that failure is caused, directly or indirectly, by flood, communications failure, extreme weather, fire, mud slide, earthquake, or other natural calamity or act of God, interruption in water, electricity, heating or air conditioning (depending on the season), acts of terrorism, riots, civil disorders, rebellions or revolutions, acts of governmental agencies, epidemics, quarantines, embargoes, malicious acts of third parties, labor disputes affecting vendors or subcontractors and for which the party claiming force majeure is not responsible, or any other similar cause beyond the reasonable control of that party.

W. **Applicable Law and Jurisdiction** - This Agreement and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles. Any litigation arising from this Agreement shall be under the jurisdiction of, and filed in, Mercer County, New Jersey.

ARTICLE V

A. **Service Performance Within U.S.** - In accordance with Public Law 2005, c.92 (N.J.S.A. 52:34-13.2) the CONTRACTOR covenants and agrees that all services performed under the Agreement by the CONTRACTOR shall be performed within the United States, except when the Executive Director of the I-BANK certifies in writing that a required service cannot be provided by a contractor or subcontractor within the United States. A shift to performance of services outside the United States during the term of the Agreement shall be deemed a breach of contract. If, during the term of the contract, the CONTRACTOR or subcontractor, proceeds to shift the performance of any of the services outside the United States, the CONTRACTOR shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause under pursuant to Art. I, Section E(b) of the Standard Terms and Conditions unless previously approved by the Executive Director.

B. **MacBride Principles** - In accordance with Public Law 1995, c. 134, (N.J.S.A. 52:34-12.2), the CONTRACTOR certifies that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any such business operations in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5, and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

C. **Certification of Non-Involvement in Prohibited Activities in Iran** - The CONTRACTOR certifies pursuant to N.J.S.A. 52:32-57 et seq. (P.L. 2012, c.25 and P.L. 2021, c.4) that neither the CONTRACTOR, nor any of its parents, subsidiaries and/or affiliates is listed on the list

developed by the New Jersey Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activity in Iran pursuant to section 3 of P.L. 2012, c.25 (N.J.S.A. 52:32-57) and that neither the CONTRACTOR nor one of its parents, subsidiaries and/or affiliates is involved in any one of the investment activities set forth in N.J.S.A. 52:32-56.

D. **Certification of Non-Involvement in Prohibited Activities in Russia or Belarus** - The CONTRACTOR certifies pursuant to N.J.S.A. 52:32-60.1 et seq. (P.L. 2002, c.3) that the CONTRACTOR, is not identified on the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) Specially Designated Nationals and Blocked Persons list (<https://sanctionssearch.ofac.treas.gov/>) on account of activity related to Russia and/or Belarus. For the purpose of this disclosure, CONTRACTOR is defined as follows: "(1) A natural person, corporation, company, limited partnership, limited liability partnership, limited liability company, business association, sole proprietorship, joint venture, partnership, society, trust, or any other nongovernmental entity, organization, or group; (2) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in Section 1701(c)(3) of the International Financial Institutions Act, 22 U.S.C. 262r(c)(3); or (3) Any parent, successor, subunit, direct or indirect subsidiary, or any entity under common ownership or control with, any entity described in paragraph (1) or (2)."

E. **Pay To Play Prohibitions** - Pursuant to N.J.S.A. 19:44A-20.13 et seq. (L. 2005, c. 51), as amended by the Elections Transparency Act, P.L.2023, c.30 ("Chapter 51"), and specifically, N.J.S.A. 19:44A-20.21, and Executive Order No. 333 (Murphy 2023) ("E.O. No. 333"), it shall be a breach of the terms of the contract for the business entity to:

- (a) make or solicit a contribution in violation of the statute;
- (b) knowingly conceal or misrepresent a contribution given or received;
- (c) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- (d) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
- (e) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- (f) fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- (g) engage in any exchange of contributions to circumvent the intent of the Legislation; or
- (h) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

Note: Contributions to Legislative Leadership Committees and Municipal Political Party Committees no longer need to be reported by vendors and will not be considered for possible vendor disqualification.

Pursuant to Chapter 51, State departments, agencies and authorities are precluded from awarding contracts exceeding \$17,500 to vendors who make certain political contributions on and after October 15, 2004, to avoid any appearance that the selection of State contractors is based on the contractors' political contributions. The CONTRACTOR agrees to complete the attached Chapter 51 Disclosure, execute, and submit same with the Agreement to the I-BANK. Chapter 51 also requires the disclosure of all contributions to any political organization organized under 26 U.S.C. 527 that also meet the definition of a "continuing political committee" within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. If the CONTRACTOR fails to fully comply with Chapter 51 upon Agreement execution, the Agreement is void *ab initio*, as a material defect that invalidates this Agreement. If the CONTRACTOR solicits or makes any Chapter 51 political contributions prior to the completion of the Agreement, such act shall constitute a material breach of the Agreement.

The CONTRACTOR represents and warrants that all information, certifications and disclosure statements previously provided in connection with Chapter 51 and E.O. 333, are true and correct as of the date hereof and all such statements have been made with full knowledge that the I-BANK and the State will rely upon the truth of the statements contained therein in engaging CONTRACTOR. The CONTRACTOR agrees that it shall maintain continued compliance with Chapter 51, E.O. 333 and regulations promulgated thereunder during the term of the Agreement. The CONTRACTOR acknowledges that upon its failure to make required filings thereunder or the making of a contribution prohibited thereunder, the I-BANK may terminate the Agreement and any remedies available to the I-BANK may be exercised against CONTRACTOR at law or in equity.

F. **Chapter 271** - Pursuant to Public Law 2005, Chapter 271 ("Chapter 271") the CONTRACTOR is required to disclose its (and its principals') political contributions within the immediately preceding twelve (12) month period as set forth in the attached Chapter 271 disclosure statement. The CONTRACTOR agrees to complete the attached Chapter 271 Disclosure Form (Exhibit C) execute and submit same with this Agreement to the I-BANK. The CONTRACTOR also has a continuing duty to immediately report any Chapter 271 political contributions it makes during the term of this Agreement to the I-BANK. The CONTRACTOR will not be precluded from entering a contract with the I-BANK by virtue of the information provided in the Chapter 271 disclosure provided the form is fully and accurately completed. If the CONTRACTOR fails to fully comply with Chapter 271 upon contract execution, the Agreement is void *ab initio*, as a material defect that invalidates the Agreement.

Please also be advised of your responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271 section 3, as amended) if the CONTRACTOR receives one or more contracts valued at \$50,000 or more from a public entity during a calendar year. It is the CONTRACTOR's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or www.elec.state.nj.us.

G. **Standards Prohibiting Conflicts of Interest** - The following prohibitions on CONTRACTOR activities shall apply to all contracts or purchase agreements made with the I-Bank and State, pursuant to Executive Order No. 189 (Kean 1988) ("E.O. 189").

(a) No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer

or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

(b) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

(c) No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

(d) No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in their official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

(e) No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, their official position to secure unwarranted privileges or advantages for the vendor or any other person.

(f) The provisions cited above in paragraphs F(a) through F(e) of this Article V shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of E.O. 189.

H. **Buy American** - Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the CONTRACTOR shall be required to so certify.

I. **New Jersey Prompt Payment Act** - The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the I-Bank prior to processing any payments for goods and services accepted by the I-Bank. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

ARTICLE VI

The addresses given below shall be the addresses of the representative parties to which notices and reports required by this Agreement shall be sent by mail:

For the I-BANK: DAVID ZIMMER, CFA
Executive Director
New Jersey Infrastructure Bank
3131 Princeton Pike, Building 4, Suite 216
Lawrenceville, New Jersey 08648

For the CONTRACTOR: ROBIN SCHLIMGEN
Managing Director
BLX Group, LLC
1525 S. Higley Street, Suite 104, PMB 1103
Gilbert, AZ 85296