

ATTACHMENT 95
SAMPLE NYMTC NON-DISCLOSURE AGREEMENT

For CONSULTANTS working at NYMTC's Offices
Under a New York State Department of Transportation Contract

Date: _____

With: _____ (Hereinafter the "Consultant")

Parent Firm: _____

Contract # _____

Task Assignment Name & Number: _____

The Consultant acknowledges that the parent firm has signed the contract knowing it includes a Confidentiality clause, that all NYMTC contracts are NYSDOT contracts, and that all NYMTC contracts are held by NYSDOT on behalf of NYMTC. The Consultant further acknowledges that during the course of delivering services under a contract with NYSDOT, there may be Confidential Information disclosed to certain Consultant staff consisting of, but not necessarily limited to:

- a. Technical information: Methods, processes, formulae, systems, techniques, computer programs and research projects
- b. Business information: Consultant lists, customer lists, customer addresses, constituent lists, financial data, strategic plans, or information regarding NYSDOT's or NYMTC's business dealings and relations with other Consultants
- c. NYSDOT Decision Support System information: NYSDOT and NYMTC Pre-letting, letting and post letting data involving but not limited to all data and code tables, the result of any models, reports and maps of any kind
- d. Future Procurements: Any information, specifications or confidential information related to conducting future competitive procurements
- e. Any inquiries, reports, investigations of any kind or discussions with agencies external to NYSDOT and NYMTC including but not limited to any state or federal department or agency

This Non-Disclosure Agreement sets forth the terms and conditions under which the parties will treat Confidential Information:

1. Information Gained: Consultant agrees to treat all information given to him/her by staff or by members of NYMTC in the course of its contract with NYSDOT as Confidential Information, unless provided written release from this designation for specified information by authorized NYSDOT and/or by NYMTC staff.
2. NYMTC agrees to clearly identify any confidential information given to the Consultant as confidential. The Consultant will be given an opportunity to review said confidential material and ask any questions regarding said material before agreeing to accept said confidential material.
3. Consultant agrees: That all Consultant staff now working for NYSDOT at NYMTC will be instructed to: a) to protect the Confidential Information from unauthorized use or disclosure with the same degree of care that Consultant uses to protect its own confidential information

of a similar nature; b) use the Confidential Information only for the purpose of the projects or assignments they are performing for NYSDOT at NYMTC; c) not reproduce the Confidential Information in any form except as necessary for the Project; d) not disclose the Confidential Information or otherwise permit access thereto except to employees and/or consultants designated by the NYSDOT for NYMTC, with the explicit understanding that this prohibition includes disclosure of Confidential Information by Consultant staff employed by NYSDOT at NYMTC to Consultant sales, marketing, management, and any other Consultant staff not directly employed by NYSDOT at NYMTC. Consultant further agrees not to disclose the nature of the work to any third party without prior NYSDOT and/or NYMTC consent. At the NYSDOT/NYMTC's request, Consultant will destroy any material received from NYSDOT and NYMTC immediately. All products, whether physical or intellectual, produced in this relationship are NYSDOT property and the Consultant has no rights to claim, distribute, or market such any product or related information without prior written consent from NYSDOT Management and from NYMTC Management. Consultant will comply with all NYSDOT and with all NYMTC security policies, procedures and standards and follow good industry accepted security practices.

4. Exceptions: Confidential Information shall not include information to the extent that it: a) is or becomes, through no act or omission of the Consultant or an employee or agent of the Consultant, publicly known by third parties in the same trade or business as the Consultant; b) is lawfully received from a third party having the right to disseminate the information without restriction on disclosure; c) is furnished to others by the disclosing party without restriction on disclosure; d) is independently developed by the Consultant without reference to Confidential Information; or e) is disclosed by the Consultant under proper judicial or governmental process with reasonable prior notice to the other party.

5. Upon termination of the business relationship: Consultant agrees to return any and all confidential material received from NYSDOT/NYMTC to NYMTC and destroy any copies, whether electronic, paper, or other media within 1 week of agreement/task assignment termination.

6. Possible Sanctions: Violation of this agreement could involve penalties, up to and including, relationship and/or agreement termination, and civil and criminal prosecution in accordance to NYS Law.

Consultant Representative: _____ Firm: _____

Title: _____ Date: _____

Also Agreed to by:

Consultant's Staff person(s): _____

Name (printed): _____

Consultant's Staff person(s): _____

Name (printed): _____

NYSDOT Representative _____ Title: _____ Date: _____