

**NEW JERSEY WATER SUPPLY AUTHORITY**

**CLINTON, NEW JERSEY**

**WSA – B19024**

**INVITATION FOR BIDS**

**FOR THE**

**DREDGING OF INTAKE POND AND CHANNEL  
AT THE SOUTH BRANCH PUMPING STATION**

**AND**

**REPLACEMENT OF THE ICE DEFLECTORS  
AT THE RELEASE STRUCTURE**

**TOWNSHIP OF CLINTON, HUNTERDON COUNTY  
NEW JERSEY**

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## TABLE of CONTENTS

	Page
Cover Page .....	1
Table of Contents .....	2
 <b>SECTION I - PURPOSE and INTENT</b>	
A.    General Scope of Work .....	6
B.    Requesting Agency .....	6
C.    Environmental Standards .....	6
 <b>SECTION II - BID INFORMATION</b>	
A.    Issuing Office .....	7
B.    Bid Preparation .....	7
C.    Prequalification of Bidders .....	7
D.    Debarment and Suspension.....	7
E.    Obligation of Bidder .....	8
F.    Interpretations and Addenda.....	8
G.    Revisions to the Invitation for Bids .....	8
H.    Types of Bids/Acceptance of Bid Content.....	9
I.    Mandatory Pre-Bid Site Meeting .....	9
J.    Bidders Proposal .....	10
K.    Response Date.....	10
L.    Completing Bid Form .....	10
M.    Non-Collusion Certification.....	12
N.    Bid Security .....	12
O.    Performance/Payment/Environmental Maintenance Bonds .....	13
P.    Rejection and Selection of Bids .....	13
Q.    Withdrawal of Bid.....	14
R.    Protests Against Award.....	14
S.    Prevailing Wage/Public Works Contractor Registration .....	14
T.    Insurance.....	15
U.    Permits and Approvals.....	15
V.    New Jersey Business Certification.....	15
W.    Nondiscrimination/Affirmative Action.....	15
X.    Diane B. Allen Equal Pay Act .....	16
Y.    Americans with Disabilities Act .....	16
Z.    Conflict of Interest Law.....	16
AA.   Restrictions of Political Contributions.....	16
AB.   Subcontracting Requirements .....	17
AC.   Tax Exemptions .....	17
AD.   Set-off for State Tax.....	18
AE.   Safety .....	18

AF.	Security .....	18
AG.	Contract Provisions Ensuring Security of Authority Structures and Processes.....	19
AH.	Access to Site and Project Records.....	19
AI.	Water Supply Project Inspection and Testing.....	19
AJ.	The Worker & Community Right to Know .....	19
AK.	Standards Prohibiting Conflict of Interest .....	19

**SECTION III - CONTRACT INFORMATION**

Article I	Scope of Work .....	21
Article II	Contract Documents.....	22
Article III	Authority of Executive Director .....	22
Article IV	Completion Date .....	23
Article V	Contract Price.....	23
Article VI	Payment Procedures.....	23
Article VII	Default.....	24
Article VIII	Termination of Contract.....	25
Article IX	Delays .....	25
Article X	Liquidated Damages .....	26
Article XI	Final Acceptance.....	27
Article XII	Guarantee .....	27
Article XIII	Nondiscrimination/Affirmative Action.....	27
Article XIV	Diane B. Allen Equal Pay Act .....	33
Article XV	Americans with Disabilities Act .....	33
Article XVI	Business Certification .....	34
Article XVII	Contract Remaining Valid .....	34
Article XVIII	Waiver of Breach .....	35
Article XIX	Assignment .....	35
Article XX	Applicable Law .....	35
Article XXI	Amendments .....	35
Article XXII	Notices .....	35
Article XXIII	Indemnification .....	36
Article XXIV	Changes and Extra Work .....	36
Article XXV	Insurance.....	38
Article XXVI	Working Hours.....	41
Article XXVII	New Jersey Prevailing Wage Act .....	41
Article XXVIII	Subcontracting Requirements .....	42
Article XXIX	Restrictions on Political Contributions .....	43
Article XXX	Engineer .....	43
Article XXXI	Safety .....	44
Article XXXII	Security .....	44
Article XXXIII	Contract Provisions Ensuring Security of Authority Structures and Processes .....	45
Article XXXIV	The Worker & Community Right to Know Act .....	46
Article XXXV	Standards Prohibiting Conflict of Interest .....	46

Article XXXVI	Set Off for State Tax .....	48
Article XXXVII	Debarment.....	48
Article XXXVIII	Disputes.....	48
Article XXXIX	Effective Date of Contract .....	49
Article XL	Entire Contract .....	49

**SECTION IV - TECHNICAL SPECIFICATIONS**  
(Under separate cover)

**SECTION V - BID FORMAT & CONTENT REQUIREMENTS**

**Forms to be submitted with Bid**

- Proposal Submission Checklist
- Bid Form & Attachment A
- Bid Security
- Stockholders Disclosure Form
- Bidders Affidavit
- Non-Collusion Affidavit Form
- Acknowledgement of Receipt of Changes to Bid Document Form
- Affirmative Action Form
- Affirmative Action Certification (Construction Contracts)
- Business Certification Form
- Subcontractor Utilization Plan
- Bidders Qualification Form
- Public Works Contractor Certification Form
- State of NJ Information and Certifications

## **SECTION I - PURPOSE and INTENT**

### **A. General Scope of Work or Purpose of Solicitation**

This Invitation for Bids (IFB) is being released by the New Jersey Water Supply Authority, hereinafter referred to as the "Authority," to obtain bids for Dredging of Intake Pond and Channel at the South Branch Pumping Station and Replacement of the Ice Deflectors at the Release Structure, Township of Clinton, Hunterdon County, New Jersey. The work required includes the provision of all labor, materials, equipment and services necessary as required by the contract documents.

### **B. Requesting Agency**

The Authority was created by an Act of the New Jersey Legislature on October 7, 1981 and operates and maintains wholesale water supply facilities, including the Spruce Run/Round Valley Reservoir Complex, the Delaware and Raritan (D&R) Canal Transmission Complex, and the Manasquan Reservoir Water Supply System in accordance with the provisions of the New Jersey Water Supply Authority Act (N.J.S.A. 58:1B-1 et seq.). The Authority also operates the Manasquan Water Treatment Plant for and under the terms of an agreement with the Southeast Monmouth Municipal Utilities Authority.

### **C. Environmental Standards**

The Environmental Standards required for this project are located in Section IV- Technical Specifications. Please be advised that the specifications from N.J.A.C. 7:22-10.11 and N.J.A.C. 10:12, which spell out the environmental and cultural resource protection/restoration, shall have precedence over the other potentially contradictory language contained elsewhere in the design contract documents. In instances where the provisions of a Department-issued permit contradict a provision of the specifications, the environmental resource protection and/or restoration and cultural resource mitigation measures identified in the Department-issued permit shall govern.

## **SECTION II - BID INFORMATION**

### **A. Issuing Office**

This Invitation for Bids (IFB) is issued by the New Jersey Water Supply Authority Procurement Office, which is the sole point of contact for purposes of this solicitation.

### **B. Bid Preparation**

The Bidder shall follow the instructions contained in Section II, paragraph J, and Section V of this document in preparing and submitting its bid.

### **C. Prequalification of Bidders**

Each Bidder is hereby put on notice that prequalification with the State of New Jersey, or any agency or subdivision thereof, may or may not serve as a basis to qualify the Bidder for the award of services stated herein. The Bidder should not rely on the prequalification received from another agency for evidence of qualifications required herein.

Bidders shall be experienced in the kind of Work to be performed, shall have the necessary equipment therefore, and shall possess sufficient capital to properly execute the Work within the time allowed. Bids received from Bidders who have previously failed to complete work within the time required, or who have previously performed similar work in an unsatisfactory manner, may be rejected. A Bid may be rejected if bidder cannot show that it has the necessary ability, plant and equipment to commence the Work at the time prescribed and thereafter to prosecute and complete the Work at the rate or within the time specified. A Bid may be rejected if bidder is already obligated for the performance of other work, which would delay the commencement, prosecution or completion of the Work.

As evidence of its competency to perform the Work, Bidder shall complete and submit with his Bid Bidders Qualifications (Section V, paragraph O). Low Bidders may be asked to furnish additional data to demonstrate competency.

### **D. Debarment and Suspension**

A Bidder shall not be on the State Treasurer's list of debarred, suspended or disqualified bidders and shall not be debarred, suspended or disqualified from New Jersey Department of Environmental Protection (Department) contracting pursuant to N.J.A.C. 7:1D-2. A Bidder included on the State Treasurer's list may present information to the Authority why this action should not apply, and the Authority may grant an exemption for this particular Contract, pursuant to N.J.A.C. 7:1D-2.9.

**E. Obligations of Bidder**

The Bidder is required to carefully examine the bid documents, plans and specifications before submitting a bid. The submission of a bid will be considered the Bidder's representation that the Bidder has made such an examination and understands the conditions to be encountered; the character, quality and quantities of work to be performed; the material(s) to be furnished; and the requirements of the specifications and bid form. The Authority will make no allowance or concession for a Bidder's failure to examine the bid documents and specifications before submitting a bid.

**F. Interpretations and Addenda**

All questions about the meaning or intent of the Invitation for Bids shall be submitted to the Authority in writing to:

Marc Brooks  
Chief Engineer  
New Jersey Water Supply Authority  
1851 Route 31, Post Office Box 5196  
Clinton, NJ 08809  
E-mail: [mbrooks@njwsa.org](mailto:mbrooks@njwsa.org)  
Fax Number: 908-638-5241

In order to receive adequate consideration, questions should be received by the Authority at least fifteen (15) calendar days prior to the date fixed for the opening of Bids. Any question(s), which in the opinion of the Authority requires interpretations or clarifications, will be answered by Addenda in accordance with, paragraph G below. The Authority will not be responsible for oral interpretations or clarifications that anyone presumes to make on their behalf.

**G. Revisions to the Invitation for Bids**

In the event it becomes necessary to revise any part of this IFB prior to the public opening of the bids, it will be done by issuance of an addendum no less than seven (7) days, Saturdays, Sundays and holidays excepted, in advance of the date required for submission of the bids. ALL ADDENDA WILL BE POSTED TO THE AUTHORITY WEBSITE. There are no designated dates for the release of addenda. It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this procurement.

Each addendum will become an integral part of the bid documents and part of any contract resulting from this bid. The Bidder must acknowledge receipt of each addendum, if any, on the "Acknowledgement of Receipt of Changes to Bid Documents Form" of the bid package located in the Appendices (Section V, paragraph F) hereof.



## H. Types of Bids/Acceptance of Bid Content

Types of Bids for work specified in Authority Contract Documents will be unit price, lump sum, or a combination of unit price and lump sum as set forth on the Bid Form.

- i. When the Bid for all or part of the work is to be submitted on a unit price basis, unit prices shall be inserted in the appropriate places. The estimate of quantities of unit price work to be done as tabulated on the Bid Form is approximate and is for the basis of calculation upon which the award of Contract may be made. Payment to the Contractor will be made on the measurement of the work actually performed by the Contractor. The Authority reserves the right to increase or diminish the amount of any class of work as may be deemed necessary during the course of construction.
- ii. When the Bid for all or part of the work is to be submitted on a lump sum basis, a lump sum price shall be inserted in the appropriate place. The total amount to be paid the Contractor shall be the amount of the lump sum bid as adjusted for additions or deletions resulting from approved changes in the work. After Contract award, the Bidder shall provide a detailed breakdown of any lump sum price requested by the Authority within thirty (30) days after such request.

The contents of the bid of the successful Bidder and the contents of this Invitation for Bids and any Addenda thereto, will become a part of any Contract awarded.

## I. Mandatory Pre-Bid Site Meeting

**A mandatory pre-bid meeting will be held at the South Branch pumping Station, 512 River Road, Clinton, NJ at 9:00 AM on May 21, 2019.** Failure to attend the mandatory pre-bid site meeting shall be cause for rejection of any bid submitted.

No matter(s) discussed during the mandatory pre-bid meeting shall be construed to have changed the Bidding Documents. Any clarification(s) or change(s) which may be deemed necessary by the Authority as a result of the mandatory pre-bid meeting will be issued in an Addendum to the Invitation for Bids in accordance with paragraph F above.

## **J. Bidders Proposal**

In order to be considered for selection, the Bidder must submit a complete response to this IFB in accordance with the format in Section V. **Partial bids will not be accepted.** The complete bid package should be returned sealed in an envelope with the Bid Number and Title on the exterior. Bids will be publicly opened and read at the office of the Authority, 1851 Route 31, Clinton, New Jersey 08809 on the date and at the time specified on the Bid Form.

## **K. Response Date**

In order to be considered for selection, bids must arrive at the issuing office on or before the date and time specified on the Bid Form. Bidders forwarding their bids via the U.S. Post Office mail service, overnight express services or by courier should allow for timely delivery of their bids to the issuing office. The Authority shall not be responsible for late postal, overnight express or courier deliveries. Delivery dates imprinted on bid packages and/or postmark dates will not be considered in honoring bids, nor will the Authority consider any bids transmitted by electronic means. (Fax, telephone, computer, etc.) Failure of the Bidder to have the Sealed Bid reach the Authority by the prescribed time will result in a return of the submission unopened and unread.

## **L. Completing Bid Form**

- (1) The Bidder's total cost must be stated in writing on the Authority's Bid Form. Failure to do so shall be cause for automatic rejection of the Bid.
- (2) Any corrections to entries made on Bid Forms shall be initialed by the person signing the form.
- (3) Where applicable, Bidders must quote unit prices for all items where appropriate. In the case of inconsistencies or errors in unit prices, extensions, and totals: for the purposes of comparison of bids received, the grand total stated will be considered to be the amount bid for the Project, with the exception that the total of each item must equal the grand total. Should the grand total be unequal to the sum of the individual totals, it will be made equal to the sum of these totals. In the event that there is a discrepancy between unit prices and the extended totals, the unit price shall prevail. In case there is an error in the summation of the extended totals, the extended totals shall govern and the computed summation by the Authority shall be accepted as the amount bid.
- (4) The Authority reserves the right to accept any item or group of items of any bid.

- (5) In evaluating bids, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and total price will be resolved in favor of unit prices. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the correctly multiplied totals. In the multiplication of unit process and units of work discrepancies between the total indicated in the Bid and the actual total will be resolved in favor of the actual total. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum of the column of figures. The Authority can waive any minor formalities or irregularities in Bids received.
- (6) Subcontracting is allowable for purposes of this Bid. Any intent to subcontract on the part of the Bidder must be specifically described in the Bid (Section V, paragraph I) provided that in no such event shall the Contractor's duties, obligations, or liabilities under this contract be deemed to be diminished thereby.

The Authority reserves the right to disapprove the use of any subcontractors and the contractor shall procure the services of a subcontractor acceptable to the Authority at no additional expense to the Authority. If subcontracting is planned, the Bidder may be asked to submit additional information as required. The Contractor is responsible for assuring subcontractor compliance with all terms and conditions of this Bid. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the Authority.

If during the term of the contract, the Contractor cannot provide the personnel or subcontractor(s) as proposed and requests a substitution, that substitution must be equal or better in terms of qualifications for services and at no extra cost. The Contractor will provide identical information as required on the original subcontractor and justification, which will be forwarded to the Authority for approval of the proposed substitution of the subcontractor or personnel prior to the substitution.

Should the Authority disapprove substitute contractors or personnel, the contractor shall submit a proposed substitution within 10 days after being notified of the disapproval.

Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between the Authority and any subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of the Authority to pay or to see to the payment of any moneys due any subcontractor or other person or

organization, except as may otherwise be required by law. The Authority or Engineer may furnish to any subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.

All Work performed for Contractor by a subcontractor will be pursuant to an appropriate Contract between Contractor and Subcontractor which specifically binds the subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the Authority and the Engineer. Such Contract shall specifically hold the Authority and Engineer harmless for any payments due the subcontractor and shall specify that the subcontractor is acquainted with the Contract Documents and agrees thereto. The Contractor shall provide the Authority with copies of all such subcontractor Contracts, if necessary.

**M. Non-Collusion Certification**

All bidders must complete the Non-Collusion Affidavit (Section V, paragraph E) evidencing the bid has been submitted in good faith.

**N. Bid Security**

All bids submitted shall be accompanied by a bid security amounting to not less than ten (10%) percent of the total bid price, or \$20,000 whichever is less. Such security shall be in the form of a certified check or bid bond, payable or firmly bound to the New Jersey Water Supply Authority. Any bond submitted shall be written by a surety company licensed in the State of New Jersey and listed in Department Circular 570, 2009 Revision, of the U. S. Department of the Treasury, incorporated herein by reference. All bid bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

The bid security of the successful Bidder will be retained until such Bidder has executed the contract and furnished the required contract security, whereupon the bid security will be returned. If the successful Bidder fails to execute and deliver the contract and furnish the required contract security within ten (10) calendar days after the Contract is presented to him for signature, the Authority may annul the Notice of Award and Contract, and the bid security of the Bidder will be forfeited. The bid security of other Bidders whom the Authority believes to have a reasonable chance of receiving the award may be retained by the Authority until the earlier of the seventh day after the effective date of the contract or the ninety-first (91st) day after the bid opening, whereupon each bid security furnished by such Bidders will be returned. Bid security accompanying bids which are not in the competitive decision making range will be returned within seven (7) days after the bid opening.

**O. Performance/Payment/Environmental Maintenance Bonds**

The successful Bidder shall be required to furnish the New Jersey Water Supply Authority with a Performance Bond satisfactory to the Authority's Counsel, in the penal sum of the full value of the contract. Performance security shall consist of either a certified or cashier's check drawn to the order of the Authority in a form acceptable to the Authority from a reputable financial institution, or an individual, or Performance Bond submitted written by a surety company licensed in the State of New Jersey and listed in Department Circular 570, 2009 Revision, of the U. S. Department of the Treasury, incorporated herein by reference. All Performance Bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act. The performance security shall conform in its terms and conditions to the requirements in N.J.S.A. 2A:44-143, et seq. Performance security shall be submitted within ten (10) days of date after the contract is presented to the contractor for signature.

The successful bidder will be required to submit a one hundred percent (100%) payment security for the total amount bid on the bid form. The payment security shall cover all subcontractors, material men et al, as required by law, for all work under the contract. This requirement may also be satisfied by submitting and maintaining any combination of the above security instruments whose face values and/or penal sums add up to the total amount bid on the bid form. The payment security shall consist of a certified or cashier's check drawn to the New Jersey Water Supply Authority, an irrevocable letter of credit payable to the New Jersey Water Supply Authority in a form acceptable to the Authority from a reputable financial institution, or an individual or payment bond issued by an insurance or savings company authorized to do business in the State of New Jersey. The payment security shall conform in its terms and conditions to the requirements in N.J.S.A. 2A:44-143, et seq. Payment security shall be submitted within ten (10) days of date after the contract is presented to the contractor for signature.

**P. Rejection and Selection of Bids**

Bidders are advised to read thoroughly the entire IFB and any addenda subsequently issued before preparing and submitting their bid.

The Authority reserves the right to reject any or all bids, to waive informalities and/or minor irregularities.

The Authority intends to award this Contract to the lowest qualified Bidder that, in the opinion of the Authority, is both responsible and responsive in accordance with the criteria stated in these instructions. All bid proposals must meet the threshold criteria for a responsible and responsive bid as defined herein.

Responsiveness:

In order for a Bid Proposal to be considered responsive, a Bidder must agree to:

- Perform the Scope of Work described in the specifications;
- Agree to the conditions provided in this IFB;
- Complete the attachments provided with this IFB and;
- Submit a bid bond.

**Responsibility:**

In order for a Bid Proposal to be considered responsible, a bidder must have:

- Financial resources, technical qualifications, experience, organization and facilities adequate to carry out the project, or demonstrate ability to obtain these;
- Satisfactory performance record for completion of contracts;
- Accounting and auditing procedures adequate to control property, funds and assets;
- Demonstrate compliance or willingness to comply with civil rights, equal employment opportunity, labor law and other statutory requirements;
- Where a Bidder or a subcontractor has a history of performance problems, a bidder may be bypassed for this award unless the Bidder submits with his/her bid (A) an explanation of why those past performance problems occurred; and (B) an explanation of those steps which the Bidder has taken that will preclude those problems from recurring if the Bidder is awarded this Contract.

**Q. Withdrawal of Bid**

Bidders may withdraw, modify, alter or amend bids by written request received by the Authority prior to the date and time set for the opening of the bids. After such time a Bidder may not withdraw his bid unless the Authority fails to accept it within ninety (90) days after the date of bid opening.

**R. Protests Against Award**

The Authority will notify all bidders in writing of the most responsive bid. Any objection to the decision of the Authority must be submitted in writing to the Manager, Contracts & Risk Management within five (5) working days of issuance of said written notification by the Authority. Any objection filed must set forth specific grounds for challenging the award.

**S. Prevailing Wage/Public Works Contractor Registration**

Bidders shall agree to pay not less than the applicable wage rate to workers employed in the performance of any contract for the project, in accordance with the rate determination by the Commissioner of the New Jersey Department of Labor pursuant to N.J.S.A. 34:11-56.25 et seq. These provisions are set forth in Section III Article XXVII thereof.

The New Jersey Contractor Registration Act requires all contractors, subcontractors, and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56-26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

**T. Insurance**

The Authority requires the prime Contractor to comply with insurance requirements as set forth in Section III at Article XXV thereof.

Certificate(s) of Insurance shall be submitted to the Authority within ten (10) days of said written notification.

**U. Permits and Approvals**

The Authority has secured and paid for , or is in the process of obtaining permits and approvals.

The Contractor shall conform to all requirements of these permits. A copy of each available permit is attached in Section IV-Technical Specifications. Pending permits and/or permit modifications will be provided to the Contractor as they are received. If required, the contractor will be responsible to obtain the local building permits and comply with all requirements including but not necessarily limited to scheduling and being present for all necessary building inspections.

All other permits and approvals necessary for this project are the responsibility of the Contractor, i.e. lake lowering permit, building permit, etc. The Authority shall reimburse the contractor for any building permit related fees.

**V. New Jersey Business Certification**

Bidders will be required to comply with provisions of N.J.S.A. 52:32-44, “Procedures Relative to Registration of Certain Businesses.” These provisions are set forth in Section III at Article XVI thereof.

**W. Nondiscrimination/Affirmative Action**

Bidders shall agree to the N.J.S.A. 10:2-1, as supplemented by N.J.S.A. 10:5-31 et seq., and all Affirmative Action Regulations issued pursuant to N.J.S.A. 10:5-31. These provisions are set forth in Section III at Article XIII thereof.

**X. Diane B. Allen Equal Pay Act**

On April 24, 2018 Governor Phil Murphy signed into law New Jersey's Diane B. Allen Equal Pay Act (P.L. 2018 c.9). Bidders shall agree to the provisions as set forth in Section III Article XIV thereof.

**Y. Americans with Disabilities Act**

Bidders are advised that the Contractor and the Owner do hereby agree that the provision of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. 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 pursuant thereto, are made a part of this Agreement, as set forth in Section III at Article XV thereof.

**Z. Conflict of Interest Law**

Each Bidder must comply with the New Jersey Conflict of Interest Law, N.J.S.A. 52:13D-12 through 27. If the low or successful Bidder is a member of the Legislature or is a State officer or State employee or if the Bidder is a business entity of which more than ten percent (10%) is owned or controlled by a member of the Legislature or State officer or State employee, approval of the Joint Legislative Committee on Ethical Standards or the Executive Commission on Ethical Standards, as the case may be, must be received by the Authority within ten (10) days of notice to the Bidder that its bid was the low or successful bid. Failure to comply with the above or any provision of the New Jersey Conflict of Interest Law will result in disqualification of the bid. The Bidder is to detail this information on the Ownership Disclosure Form (Section V paragraph L) hereof.

**AA. Restrictions on Political Contributions**

Pursuant to P.L. 2005, c. 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 appearances that the selection of State contractors is based on the contractor's political contributions. P.L. c. 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. The bidder is required to submit P.L. c. 51 disclosures to the Authority with its bid package. The bidder's compliance with this requirement shall be a material term to its bid.



Pursuant to P.L. 2005, c. 271 bidders are required to disclose its (and its principals') political contributions within the immediately preceding twelve (12) month period as set forth in the attached P.L. 2005, c. 271 disclosure statement. The Bidder is required to submit P.L. 2005, c. 271 disclosures to the Authority with its bid package. No prospective bidder will be precluded from entering a contract with the Authority by virtue of the information provided in the Chapter 271 disclosure provided the form is fully and accurately completed. The bidder's compliance with this requirement shall be a material term to its bid.

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-20.13 (P.L. 2005, c.271 section 3) if your firm receives contracts in excess of \$50,000 from a public entity during a calendar year. It is your firm'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](http://www.elec.state.nj.us).

#### **AB. Subcontracting Requirements**

Pursuant to N.J.S.A. 52:32-17 et. seq., N.J.A.C. 17:13-4 et. seq. and Executive Order No. 71, and, the Authority suggests that the prime Contractor consider awarding twenty-five percent (25%) of this contract to New Jersey based, Division of Revenue-Small Business Enterprise Unit registered small businesses. The provisions are set forth in Section III Article XXVIII thereof.

If the Bidder intends to utilize subcontractor(s), the Subcontractor Utilization Plan (Section V, paragraph N) must also be completed and submitted with the bid indicating the subcontractor(s) participating, the subcontractor(s) small business category, and the type and estimated value of the subcontract. Note that a Bidder's failure to satisfy the small business subcontracting targets or provide sufficient documentation of its good faith efforts to meet the targets with the bid or within ten (10) days upon request shall preclude award of a contract to the Bidder.

#### **AC. Tax Exemptions**

With respect to goods sold and/or the performance of work in the State of New Jersey, the Bidder is directed to the New Jersey State Sales and Use Tax Act. The Authority is an exempt organization of the type described in subsection (a) of Section 9 of the Act, therefore, the Bidder shall not include in the bid price any amounts for New Jersey State Sales and Use taxes on the goods and/or services requested under this bid. A copy of the exemption certificate is available upon request.

**AD. Set-off for State Tax**

All Bidders are advised that pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deductions which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c. 184 (c. 52:32-32 et seq.) to the taxpayer shall be stayed.

**AE. Safety**

The Authority has determined that the worksite conditions of this project constitute a potential for serious injury if appropriate safety measures are not followed by all personnel involved. When working on the project, the successful Contractor will be required to comply with all applicable Federal, State and local laws, ordinances, rules and regulations and lawful orders of all authorities having jurisdiction for the safety of persons and protection of property, as well as all safety requirements established in Part IV-Technical Specifications. These provisions are set forth in Section III Article XXXI thereof.

**AF. Security**

Throughout the duration of the contract, contractors, their agents, subcontractors, and representatives must maintain security protocols established by the Authority while working in and around secured areas. Contractors will coordinate job site access on a daily basis with the Authority assigned project manager. Buildings; pumping stations, vaults, chambers, towers or fenced and gated areas that are normally locked, must not be left open and unattended.

Contractor shall adequately secure and protect its own tools, equipment, materials and supplies. The Authority assumes no liability for any damage, theft or negligent injury to contractor's property.

**AG. Contract Provisions Ensuring Security of Authority Structures and Processes**

Pursuant to N.J.S.A. 47:1A-1.1, the Authority has the authority to exempt certain records from disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., upon reasonable grounds to believe disclosure may result in a security risk. It is the Authority's belief that certain records received, maintained, or created by the Contractor in fulfilling its contractual obligations may be subject to this exemption. These provisions are set forth in Section III Article XXXIII thereof.

**AH. Access to Site and Project Records**

The Authority, the Contractor and its subcontractors shall provide access to all facilities, premises and records related to the project to personnel and authorized representatives of the New Jersey Department of Environmental Protection (NJDEP), and shall submit such documents and information as the Department may request.

Pursuant to N.J.A.C. 17:44-2.2, the Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

**AI. Water Supply Project Inspection and Testing**

N/A

**AJ. The Worker and Community Right to Know**

The provision of N.J.S.A. 34:5A-1, et. seq., which require the labeling of all containers of hazardous substances are applicable to the contract. Therefore, all goods offered for purchase, or utilized by the Contractor(s) in the performance of services must be labeled in compliance with the provision of the Act.

**AK. Standards Prohibiting Conflicts of Interest**

Bidders are advised that the following prohibitions on Contractor activities shall apply to all contracts made with the Authority, pursuant to Executive Order No. 189 (1988), as set forth in Section III at Article XXXV thereof.

### **SECTION III - CONTRACT INFORMATION**

The Bidder to whom the award is made will be required to execute a contract such as the one attached and will also be required to furnish the necessary Performance and Payment Bonds, and Certificate(s) of Insurance within ten (10) calendar days after the contract is presented to Bidder for signature. At the time of bid submission, the Bidder is not required to complete the contract section nor submit this as part of the bid.

The Contract will consist of the Invitation for Bid including these Terms and Conditions, the General Requirements and Technical Specifications, Drawings, the Contractor's Bid Price, any Amendments or Modifications, and any Attachments, Addenda or Other Supporting Documents of the foregoing. In case of conflict among the provisions of the Contract, Technical Specifications, and Drawings, the order of priority shall be: (1) Contract, (2) Drawings, (3) Technical Specifications.

The successful Bidder will be issued a Notification of Intent to Award upon being selected as the Contractor to perform the services stated in Section IV of this solicitation, followed by required contract documents. The successful Bidder will be required to furnish the necessary performance and payment bonds, and Insurance Certificate(s) before any work can be authorized.

Prior to the Authority's acceptance of the work as complete, pursuant to Contract Article XI, the Contractor shall furnish an Environmental Maintenance Bond consistent with the terms herein.

**CONTRACT NO. WSA B19024**

**NEW JERSEY WATER SUPPLY AUTHORITY**

**AND**

**FOR**

This Contract, entered into and dated this \_\_\_\_ day  
of \_\_\_\_\_, 2019, by and between the New Jersey Water Supply Authority, (hereinafter called the  
"Authority"), a public body corporate and politic of the State of New Jersey, in but not of the  
Department of Environmental Protection, with an address of 1851 State Highway 31, Post Office  
Box 5196, Clinton, New Jersey 08809 and \_\_\_\_\_  
\_\_\_\_\_ (hereinafter called the "Contractor") \_\_\_\_\_  
\_\_\_\_\_.

The Authority and the Contractor, in consideration of the mutual covenants hereinafter  
set forth, agree as follows:

**ARTICLE I - SCOPE OF WORK**

The Contractor shall complete all work as specified or indicated in the contract documents. The  
work is generally described as follows:

The project for which the work under these contract documents may be described in whole or  
part as:

## **ARTICLE II - CONTRACT DOCUMENTS**

The contract documents that comprise the entire Contract between the Authority and the Contractor concerning the work consist of the following:

- 2.1 This Contract (pages 1 to \_\_, inclusive).
- 2.2 Exhibits to this Contract (pages \_\_to \_\_, inclusive).
- 2.3 Performance and other Bonds, identified as exhibits \_\_\_\_and consisting of \_\_\_\_ pages.
- 2.4 Notice of Award (pages \_\_to \_\_inclusive)..
- 2.5 General Conditions (pages \_\_to \_\_inclusive).
- 2.6 Supplementary Conditions (pages \_\_to \_\_, inclusive).
- 2.7 Specifications bearing the title \_\_\_\_\_  
\_\_\_\_\_ and consisting of \_\_divisions and \_\_ pages.
- 2.8 Drawings, consisting of a cover sheet and sheets numbered \_\_\_\_\_ through \_\_\_\_, inclusive with each sheet bearing the following general title:
- 2.9 Invitation for Bid and Addenda numbers \_\_to \_\_, inclusive.
- 2.10 Contractor's bid (pages\_\_to \_\_, inclusive) marked exhibit \_\_\_\_\_.
- 2.11 Documentation submitted by the Contractor prior to the Notice of Award (pages \_ \_\_to \_\_, inclusive).
- 2.12 The following which may be delivered or issued after the Effective Date of the Contract and are not attached hereto: All written Amendments and other documents amending, modifying or supplementing the contract documents.

There are no contract documents other than those listed above in this Article. The contract documents may only be amended, modified or supplemented as contained herein.

## **ARTICLE III - AUTHORITY OF EXECUTIVE DIRECTOR**

All work to be performed by the Contractor hereunder shall be subject to the approval of the Executive Director of the Authority (hereinafter referred to as the "Executive Director"), or her duly authorized representative, and all decisions pertaining to said work shall be made in the name of the Executive Director. Any dispute involving matters of fact pertaining to the scope of work or details of work to be performed or completed under the terms of the Contract shall be decided by the Executive Director, which decision shall be final in regard to the Authority's position.

#### **ARTICLE IV - COMPLETION DATE**

The Contractor shall substantially complete all work under the contract within one hundred eighty (180) calendar days from notice to proceed, with no work conditions during interim periods as prescribed in the permit documents and Technical Specifications, and offer for Final Acceptance, pursuant to Article XI, the entire project within two hundred ten (210) calendar days from notice to proceed with no work conditions during interim periods as prescribed in the permit documents and Technical Specifications.

Should the Contractor submit a completion schedule indicating project completion earlier than the specified completion dates, the Authority is not obligated to accept same. Further acceptance or acquiescence by the Authority of such early completion dates shall not expose the Authority to any liability or penalty for damages incurred by the Contractor should the project not be completed prior to the contract completion date due to any delay, whether or not said delay is caused by the Authority's actions.

Substantial completion is defined as when the work has progressed to a point where, in the sole opinion of the Authority, it is substantially complete, in accordance with the contract specifications, so that the work can be utilized for the purpose(s) for which it is intended.

#### **ARTICLE V - CONTRACT PRICE**

For services rendered and expenses incurred in the complete performance of this work in accordance with the contract documents the Authority shall pay the Contractor a lump sum and unit price cost amount of \_\_\_\_\_ dollars. All duties, responsibilities and obligations assigned to or undertaken by the Contractor pursuant to this Contract shall be at the Contractor's own expense without change in the contract price.

#### **ARTICLE VI - PAYMENT PROCEDURES**

The Authority shall make progress payments based on the Contractor's application for payment during the performance of work as provided herein. At the end of each period during which services are performed, the Contractor shall submit a voucher on standard Authority form itemizing charges for the period. Subject to such analysis of each invoice and supporting documentation as the Authority may deem essential, the voucher on standard Authority form will be approved for payment by the Authority. Vouchers may not be submitted more often than once every thirty (30) calendar days. Vouchers will be payable within thirty (30) calendar days after receipt by the Authority. Payment by the Authority shall not constitute acceptance for work completed by the Contractor, nor shall it relieve the Contractor of his obligation and responsibility to correct the work determined by the Authority to be deficient. The Contractor should indicate on the last voucher to be submitted that "FINAL PAYMENT" is being requested.

Ten percent (10%) of the amount of each invoice will be withheld pending completion and acceptance of the services to be performed under this Contract. If work hereunder has been fifty percent (50%) completed as determined by the Authority, and if the character and progress of the work has been satisfactory to the Authority, in its sole opinion, the Authority may determine that as long as the character and progress of the work remains satisfactory, there will be no additional retainage on account of work completed in which case the remaining monthly payments shall be in an amount equal to one hundred percent (100%) of the work completed.

Acceptance by the Contractor of said payments shall operate as, and shall be, a release to the Authority from all claims and liability to the Contractor for anything done or furnished for, or relating to, the work called for or to be done under and pursuant to the provisions of this Contract. The Authority reserves the right to make such audits of directly relevant records of the Contractor, as it may deem advisable, during the performance of this Contract and for three (3) years from the date of final payment.

Pursuant to N.J.A.C. 17:44-2.2, the Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of State Comptroller, upon request.

#### **ARTICLE VII - DEFAULT**

The Authority, by written notice of default to the Contractor, may terminate the whole or any part of this contract in any one of the following circumstances:

- (a) If the Contractor fails to make delivery of supplies or to perform the services within the time specified herein or any extension thereof, except for delays due to causes listed in Article IX entitled "Delays";
- (b) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of seven (7) days (or such longer period as the Authority may authorize in writing) after receipt of notice from the Authority specifying such failure; or
- (c) If the Contractor becomes insolvent or goes into liquidation or receivership or admits to the benefits of any procedure for the settlement of debts or be declared bankrupt.



In each and every instance stated above, the performance bond shall become payable to the Authority and the Authority may procure, upon such terms and in such a manner as the Authority may deem appropriate, supplies or services the same as or similar to those so terminated, and the Authority may proceed to avail itself of any and all appropriate remedies. If, after notice of termination of the contract under this provision, it is determined for any reason that the Contractor was not in default, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly. The rights provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

### **ARTICLE VIII - TERMINATION OF CONTRACT FOR CONVENIENCE**

The Authority may, at any time and without cause, terminate this contract in whole or in part, specifying the extent to which performance of work under the contract is terminated and the date on which such termination becomes effective, provided written notice has been issued to the Contractor five (5) days prior to such proposed termination date.

Promptly after the effective date of termination, the Contractor shall submit its claims and be paid for all costs incurred prior to the termination that are approved by the Authority. In the event of termination and subject to the terms as set forth herein, any monies paid by the Authority that exceed the value of the Contractor's claim as set out above shall be refunded to the Authority within thirty (30) days after conclusion of the termination settlement.

### **ARTICLE IX - DELAYS**

The Contractor shall not be liable for delays in performance of its obligations, and the date on which the Contractor's obligations are to be fulfilled shall be extended, without penalty or liquidated damages, for a period of time caused by the delay when the delay was due to causes beyond the Contractor's control and not due to its fault or negligence, which include, but are not limited to, the following:

- (a) Acts of God, unforeseeable circumstances, sustained inclement weather conditions, acts (including delay or failure to act) of any governmental authority, fires, strikes, labor stoppages, sabotage and interruptions of essential services and supplies such as electricity, natural gas, fuels, and water.
- (b) Inability due to causes beyond the Contractor's reasonable control to timely obtain necessary and proper labor, materials, components, facilities or transportation when such items cannot reasonably be obtained from another source.

Partial failure of performance due to any of the aforementioned causes shall not in itself terminate the Contract or excuse any failure by the Contractor to resume all obligations once the cause for the delay is no longer valid pursuant to this clause. Typical weather related downtime for marine construction projects in, and around, the State of New Jersey shall not be grounds for a delay.

In the event the Contractor is affected in the performance of its obligations by any of the aforementioned causes the Contractor shall give the Authority prompt written notice within five (5) days of that fact, together with satisfactory evidence substantiating that said cause prevents performance, as well as a declaration specifying the steps being taken by the Contractor to remove such cause(s) of non-performance and to minimize its affects and the Contractor shall continue the performance of its other obligations under this Contract. In the event the delay extends for a period exceeding (2) weeks, the Contractor and the Authority shall negotiate a postponement or termination of this Contract.

The Authority shall have the right to defer the beginning or to suspend the whole or any part of the work herein contracted to be done whenever, in the opinion of the Executive Director, it may be necessary or expedient for the Authority, so to do, and if the Contractor is delayed in the completion of the work by act, neglect, or default of the Authority, of the Engineer, as defined in Article XXX or any other Contractor employed by the Authority, upon the work, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, or any case beyond the Contractor's control, or by any cause which the Executive Director shall decide to justify the delay, then for all such delays and suspensions the Contractor shall be allowed one day addition to the time herein stated for each and every day of such delay so caused in the completion of the work specified in Article I, the same to be determined by the Executive Director, and a similar allowance of extra time will be made for such other delays as the Executive Director may find to have been caused by the Authority. No such extension shall be made for any one or more of such delays unless within ten (10) days after the beginning of such delay a written request for additional time shall be filed with the Executive Director. Apart from extension of time, no payment or allowance of any kind shall be made to the Contractor as compensation for damages on account of hindrance or delay from any cause in the progress of the work, whether such delay be avoidable or unavoidable.

The Contractor shall not be entitled to any damages or extra compensation from the Authority on account of any work performed by the Authority or any other Contractor or the Engineer, as defined in Article XXX or any other party, or by reason of any delays whatsoever, whether caused by the Authority or any other party, including but not limited to delays mentioned in this Contract.

### **ARTICLE X - LIQUIDATED DAMAGES**

The Authority and the Contractor recognize that time is of the essence under this contract and that the Authority will suffer financial loss if the work is not completed within the time specified in Article IV hereof, plus any extensions thereof allowed in accordance with Article IX. The parties also recognize the delays, expense and difficulties involved in proving in a legal proceeding, the actual loss suffered by the Authority if the work is not completed on time.

Furthermore, instead of requiring any such proof, the Authority and the Contractor agree that as liquidated damages for delay, but not as a penalty, the Contractor shall pay the Authority eight hundred (\$800.00) for each calendar day that expires after the time specified in Article IV or approved extension thereof for substantial completion, until the work is substantially complete. After substantial completion, if the Contractor shall neglect, refuse, or fail to complete the

remaining work within the contract time, or any proper extension thereof granted by the Authority, the Contractor shall pay the Authority four hundred dollars (\$400.00) for each calendar day that expires after the time specified in Article IV for final completion and readiness for final acceptance.

### **ARTICLE XI - FINAL ACCEPTANCE**

Acceptance of the work as complete will be based upon a thorough inspection by Authority personnel and their designated representatives. Any deficiencies found shall be noted by the Contractor and corrected at the earliest possible time. Processing of the Contractor's invoice for payment shall be delayed until all deficiencies, if any, are corrected.

### **ARTICLE XII - GUARANTEE**

The Contractor warrants that work performed under this Contract conforms to the Contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of his Subcontractors or suppliers at any time. Such Guarantee shall continue for a period of one (1) year from the date of acceptance of the work. Under this Guarantee, the Contractor shall remedy at his own expense any such failure to conform and/or any defect. In addition, the Contractor shall remedy at his own expense any damage to Authority owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to Contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged in fulfilling the terms of this Article. The Contractor's guarantee with respect to work repaired or replaced hereunder will run for one (1) year from the date of such repair or replacement.

The Authority shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.

Should the Contractor fail to remedy any failure, defect or damage described above within a reasonable time after receipt of notice thereof, the Authority shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

### **ARTICLE XIII - NONDISCRIMINATION/AFFIRMATIVE ACTION PROVISIONS**

Pursuant to N.J.S.A. 10:2-1 Every contract for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency of or authority created by any of the foregoing, for the construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services shall contain provisions by which the contractor agrees that: a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this

contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates; b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex; c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$ 50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

During the performance of this contract, the contractor agrees as follows:

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 ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, 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 equal employment opportunity 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 Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

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 identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the

labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Department of Labor and Workforce Development (LWD), Construction Equal Employment Opportunity (EEO) Monitoring Program, may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A). If the contractor or subcontractor has a referral Contract or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral arrangement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division of Purchase and Property established in the State of New Jersey Department of the Treasury pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or

subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request for the Dept. of LWD, Construction EEO Monitoring Program, the contractor's or subcontractor's shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program Division upon request.

( C ) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA 201) electronically provided to the public agency by the the Dept. of LWD, Construction EEO Monitoring Program, through

its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program, and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

**ADDITIONAL NONDISCRIMINATION/AFFIRMATIVE  
ACTION PROVISIONS FOR CONSTRUCTION CONTRACTS**

Executive Order 51 (Corzine, August 28, 2009) and P.L. 2009, c. 335 include a provision which require all state agencies, independent authorities and colleges and universities to include additional mandatory equal employment and affirmative action language in its construction contracts. The additional mandatory equal employment and affirmative action language is as follows:

It is the policy of the New Jersey Water Supply Authority that its contracts should create a work-force that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the New Jersey Water Supply Authority to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the New Jersey Water Supply Authority satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the New Jersey Water Supply Authority's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <http://NJ.gov/JobCentralNJ>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the New Jersey Water Supply



Authority with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media;

4. The Contractor shall provide evidence of efforts described at 2 above to the New Jersey Water Supply Authority no less than once every 12 months.
5. The Contractor shall comply with the requirements set forth in N.J.A.C. 17:27-1.1 et seq.

To ensure successful implementation of the Executive Order and Law, state agencies, independent authorities and colleges and universities must forward an Initial Project Workforce Report (AA201) for any projects funded with ARRA money to the Dept. of LWD, Construction EEO Monitoring Program immediately upon notification of award but prior to execution of the contract.

#### **ARTICLE XIV – DIANE B. ALLEN EQUAL PAY ACT**

On April 24, 2018 Governor Phil Murphy signed into law New Jersey’s Diane B. Allen Equal Pay Act (P.L. 2018 c.9). The law provides in pertinent part that as of July 1, 2018 any employer entering into contract a contract with the State of New Jersey or any Instrumentality of the State for “qualifying services” or “public works” must provide to the Department of Labor and Workforce Development-upon commencement of the contract-wage and demographic data for employees who are employed in connection with the contract for “public works” and for all employees relative to “qualifying services”. The report must contain gender, race, ethnicity, job category, compensation, and number of hours worked for each employee.

The Department of Labor and Workforce Development is required by the Act to retain these records, and to make the information available to the Division of Civil rights, and, upon request, to employees and their authorized representatives. Two forms, as required by the law, are to be completed by employers. These forms should be used to report the employee’s wage and demographic data and can be found on the LWD website (<http://www.nj.gov/labor/equalpayact>).

#### **ARTICLE XV – AMERICANS WITH DISABILITIES ACT (EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES)**

The Contractor and the Authority do hereby agree that the provision of Title II of the Americans With Disabilities Act of 1990 (the “Act”) (42 U.S.C. 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 pursuant thereunto, are made a part of this Contract. In providing any aid, benefit, or service on behalf of the Authority pursuant to this Contract, the Contractor agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this Contract, the Contractor shall defend the Authority in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless the Owner, its agents, servants and employees from and against any and all suits, claims, losses, demands or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Contractor 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 therewith. In any and all complaints brought pursuant to the Authority's grievance procedure, the Contractor agrees to abide by any decision of the Authority which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the Authority or if the Authority incurs any expenses to cure a violation of the Act which has been brought pursuant to its grievance procedure, the Contractor 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 the Contractor 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 or have forwarded to the Contractor every demand, complaint, notice, summons, pleading or other process received by the Authority or its representatives.

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

It is further agreed and understood that the Authority assumes no obligation to indemnify or save harmless the Contractor, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Contract. Furthermore, the Contractor expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Contract, nor shall in no way limit the Contractor's obligations assumed in this Contract, nor shall they be construed to relieve the Contractor from any liability, nor preclude the Authority from taking any other actions available to it under any other provisions of this Contract or otherwise at law.

#### **ARTICLE XVI - BUSINESS CERTIFICATION**

The Authority requires the Contractor to provide valid proof of business certification with the State of New Jersey Division of Revenue (Business Certification) prior to contract execution (N.J.S.A. 52:32-44). The Contractor shall also forward to the Authority, Business Certifications for subcontractors utilized by the Contractor to perform any contract work. The Authority is prohibited from executing a contract for which a valid proof of Contractor's Business Certification has not been produced. The Authority shall withhold contract payments in the event a Contractor fails to provide subcontractor's Business Certification(s).

#### **ARTICLE XVII - CONTRACT REMAINING VALID**

If any provision of this contract is determined to be ineffective or invalid under the laws of the State of New Jersey, all other provisions shall remain effective and valid, provided the purpose of the remaining valid and effective provisions is not frustrated.

### **ARTICLE XVIII - WAIVER OF BREACH**

The failure of either party, at any time, to require performance by the other party, of any provision of this contract, shall in no way affect the full right to require such performance at any time thereafter. The waiver by either party of a breach of any provision of this contract does not constitute a waiver of any succeeding breach, of the same or any other such provision, nor shall it constitute a waiver of the provision itself.

### **ARTICLE XIX - ASSIGNMENT**

This contract shall not be transferred or assigned to any other individual, firm, partnership or corporation without the prior written consent of the Authority. Unless specifically stated in any written consent by the Authority, no assignment will release or discharge the assignor from any duty or responsibility under this contract. Money due or to become due the Contractor shall not be assigned, unless with the consent of the Authority, but nothing herein contained shall be construed to hinder, prevent or affect an assignment by the Contractor for the benefit of his creditors made pursuant to the statutes of the State of New Jersey.

### **ARTICLE XX - APPLICABLE LAW**

This contract shall be construed according to the laws of the State of New Jersey, insofar as existence of the contract as a binding Contract and matters concerning performance or breach thereof are concerned. Any legal action will be brought in the courts within the State of New Jersey.

### **ARTICLE XXI - AMENDMENTS**

This contract may be modified or amended only by a written instrument executed by the Authority and the Contractor.

### **ARTICLE XXII - NOTICES**

Notice, as may be required hereunder, shall be deemed to be duly served if delivery is made to an individual or member of the firm or entity or to an officer of the corporation for whom it was intended. This includes delivery by courier or registered or certified mail, or email to the business address cited in the contract documents.

### **ARTICLE XXIII- INDEMNIFICATION**

The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend and save harmless the New Jersey Water Supply Authority from and against, any and all claims, demands, suits, actions, recoveries, judgment and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, resulting from the performance of the Project or through the negligence of the Contractor or through any improper or defective machinery, implements or appliances used by the Contractor in the Project, or through any act or omission on the part of the Contractor or his agents, employees or servants, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this Contract.

In any and all claims against the Authority or its employees by any employees of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the Indemnification obligation under this Article shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workers' Compensation Acts, Disability Benefit Acts, or other Employee Benefit Acts.

### **ARTICLE XXIV - CHANGES AND EXTRA WORK**

The Executive Director may, at any time, by written order, and without notice to sureties, issue additional instructions to clarify the scope of services prescribed under this Contract without additional cost to the Authority. If substantial changes are made in the scope of work defined under this contract, however, which changes result in substantial reworking of the material completed causing the Contractor extra expense, or if the Executive Director shall request additional work to be performed not included in the specifications hereto, the Contractor shall be entitled to just compensation for the reasonable cost of the added work and expense in the amount agreed to by the Executive Director, but not to exceed actual incurred expenses, exclusive of overhead and administrative costs, together with an allowance of ten percent (10%) for overhead and administrative costs and an allowance of ten percent (10%) for profit, not to be compounded. For added work and expenses incurred by the Contractor for added work performed by the Subcontractor(s), the amount subject to reimbursement shall not exceed actual incurred expenses, exclusive of overhead and administrative costs, plus an allowance of five percent (5%) for both overhead and administrative costs, and profit regardless of the number of tiers of subcontractors involved in the work. No additional percentage mark-up for any additional tiers of subcontractors beyond one will be allowed.

The Contractor shall carry on with all other undisputed work and adhere to the progress schedule during any negotiations required hereunder.

Notice in writing of any claim for adjustments under this Article must be given to the Executive Director promptly (within 5 days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Any notice given shall contain a written statement that the amount claimed covers all known amounts (direct, indirect and consequential) within 45 days of the written order to which the Contractor feels it is entitled as a result of the occurrence of said event.

The Contractor shall not be entitled to additional compensation for revisions that the Executive Director finds necessary or desirable because of neglect or mistakes in judgment for which the Contractor is responsible. It is specifically understood and agreed that no added or extra work of any type will be performed without prior certification in writing thereof from the Executive Director.

No claim by the Contractor pursuant to this Article will be allowed if asserted after final payment under this contract.

The Contractor shall promptly and before such conditions are disturbed, notify the Authority/Engineer in writing of differing site conditions: i.e. subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or unknown physical conditions at the site, differing materially from those ordinarily encountered and generally recognized. The Authority shall promptly investigate the conditions. If the Authority finds that conditions materially differ and will cause an increase or decrease in the Contractor's cost or the time required to perform, the Authority shall make an adjustment and modify the contract in accordance with the terms set forth within this section.

Where less than the entire Contract is performed as a result of the Authority's determination for a reduction in scope, then: (1) for each lump sum, or unit price bid item satisfactorily completed by the Contractor, the Contractor will be paid the lump sum, or unit price designated for that bid item; (2) for each lump sum, or unit price bid item which has been partially completed the Contractor will be paid a percentage of the lump sum, or unit price equal to the percentage of work satisfactorily completed.

Any claim by the Contractor for an extension in the Contract time shall be based on written notice delivered to the Authority and the Engineer within five (5) days of the occurrence of the event-giving rise to the claim. Notice of the extent of the claim with detailed supporting data shall be delivered within forty five (45) days of such occurrence. The Contract time will be extended in an amount equal to time lost due to any delay that both could not have anticipated by the Contractor and beyond the control of Contractor if a claim is made. No extension shall be made where the delay is caused by the fault or negligence of the Contractor, or the performance would have been so suspended, delayed or interrupted by any other cause, and therefore should have been anticipated. An extension of Contract time shall not entitle the Contractor to additional compensation. The form titled Contract Modification Proposal and Acceptance, attached in Appendix B shall be used for all change orders.

## ARTICLE XXV - INSURANCE

The Contractor shall procure and maintain at its own expense, for the full duration of the Contract unless noted otherwise, liability insurance for damages imposed by law and assumed under Contract, of the kinds and in the amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey. By submitting a bid in response to the Authority IFB, the Contractor expressly agreed that any insurance protection required herein or by the Contract shall in no way limit the Contractor's obligations assumed in the Contract and shall not be construed to relieve the Contractor from liability in excess of such coverage nor shall it preclude the Authority from taking such other actions as are available to it under other provisions of the Contract or otherwise in law or equity.

The insurance shall provide the minimum coverages and limits set forth below. All deductibles and self-insured retentions must be disclosed and are subject to approval by the Authority. The Contractor shall be responsible for the payment of any deductible or self-insured retention.

The Contractor shall not proceed on any work under this Contract until all required insurance coverage is obtained and bound.

### Workers' Compensation –

1. New Jersey Statutory Limits.
2. If there is any part of the Work which requires the Contractor or any of the Contractor's personnel or subcontractors or any of the subcontractor's personnel to comply with the U.S. Longshoremen's and Harbor Workers' Act, Jones Act, Admiralty Laws, or the Federal Employers' Liability Act, the Workers' Compensation policy will provide insurance coverage in a form and with limits which are adequate to comply with these requirements on an actual or 'if any' basis.

Employers' Liability - minimum limit of \$1,000,000 combined single limit.

### Commercial Automobile Liability-

1. Commercial Automobile Liability Insurance in comprehensive form that shall protect the Contractor and anyone who may incur vicarious liability for the conduct of the insured, against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles(s) and shall cover operations on and off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.
2. The Combined Single Limit for Bodily Injury and Property Damage Liability shall not be less than **\$1,000,000** each accident, or as otherwise required to satisfy the underlying limit requirements of the Contractor's umbrella liability insurance.

#### Commercial General Liability-

1. The policy shall cover all claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise out of operations performed in connection with the Contract.
2. The policy should be occurrence based and provide coverage at least as broad as the standard ISO form including coverage against Explosion (X), Subsidence or Collapse ('C) & Underground Damage (U) as related to work being performed, including liability arising from operations performed by subcontractors.
3. The policy should also include coverage for Contractual Liability related to this contract.
4. Contractor shall maintain liability coverage for Products and Completed Operations for a minimum of five (5) years beyond the duration of the Contract.
5. Limits of Liability shall not be less than:
  - a. Bodily Injury and Property Damage Liability, Per Occurrence: **\$1,000,000**, Annual Aggregate Per Project/Location: **\$2,000,000**.
  - b. Personal and Advertising Injury: **\$1,000,000**.
  - c. Products and Completed Operations Aggregate: **\$2,000,000**.

#### Umbrella Liability Insurance

1. The Umbrella Liability Policy should protect the Contractor and the Authority against all claims in excess of the limits provided under the Employer's Liability, Commercial General Liability and Commercial Automobile Liability policies.
2. At a minimum coverage provided by the Umbrella Liability policy should be following form with the scope of coverage provided by the underlying policies.
3. Limits of Liability shall not be less than **\$5,000,000** per Occurrence and Annual Aggregate and apply per project/location basis, as per the underlying General Liability policy. Contractor may fulfill this requirement by requiring Subcontractor(s) to provide evidence of this coverage provided that all specified parties are insured under such policy.

#### Property Insurance:

1. Contractor shall procure, maintain, and keep in force at all times, an Equipment & Installation Floater covering all materials and equipment to be used on the project for the duration of the contract.
2. Policies shall include a waiver of subrogation against the Authority.

#### Contractors Pollution Liability:

1. Contractor shall maintain, or cause the subcontractor doing such work to maintain Pollution Liability Insurance covering bodily injury and property damage. Coverage shall be in the amount not less than **\$5,000,000** per occurrence, **\$5,000,000** in aggregate and provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants (including asbestos), including any loss, cost or expense incurred as a result of any cleanup of pollutants (including asbestos) or in the investigation, settlement or defense of any claim, action, or proceedings arising from the operations under this Contract. Such insurance shall be in the Contractor's name and list Additional Insured as

- specified below. Coverage shall include, without limitation, (a) loss of use of damaged property or of property that has not been physically injured, (b) transportation, and (c) non-owned disposal sites.
2. Contractor shall maintain coverage for a minimum of five (5) years beyond the duration of the Contract.

**Specific Provisions:**

All policies shall be issued by insurance carriers with an AM Best rating of at least (A) and financial size category of at least VIII, and are licensed and authorized to conduct business in the State of New Jersey.

1. All insurance policies with the exception of Property Insurance, Workers Compensation and Employers Liability, and Professional Liability shall name the following listed entities as additional insured(s):

The State of New Jersey (including the New Jersey Water Supply Authority, the Department of Environmental Protection, State Park Service) and its agencies, employees and officers.

2. To the fullest extent permitted by law Contractor hereby waives all rights of recovery against the Authority, its officers, agents, or employees for any loss, damage or injury self-insured, insured or required to be insured above including loss related to insufficient limits maintained by Contractor or loss due to deductibles or self-insured retentions maintained by Contractor. Contractor shall also require a waiver of subrogation on all of its insurance policies in favor of the parties specified in item 1 above.
3. The Contractor shall submit proof(s) of insurance to the Authority for all insurance required under this section. All of the policies of insurance so required to be purchased and maintained (and certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty (30) days prior written notice has been given to the Authority by mail, except for ten (10) days cancellation due to nonpayment of premiums).
4. All deductibles and self-insured retentions must be disclosed and are subject to approval by the Authority. The Contractor shall be responsible for the payment of any deductible or self-insured retention.
5. Upon request, Contractor shall furnish the Authority with a complete copy of each policy, including all endorsements, required by the Contract.
6. The Authority's approval or failure to disapprove insurance furnished by Contractor shall not release or limit Contractor from full responsibility for liability for damage and accidents.



7. Contractor's failure to procure or maintain the insurance required by this Section during the entire term of the Contract shall constitute a material breach of this Contract under which the Authority may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the Authority's interest and pay any and all premiums in connection herewith, and withhold or recover all monies so paid from the Contractor.

#### Subcontractors

1. The primary Contractor shall be also responsible for verification and written certification of all subcontractors' insurance coverage required for the Contract. The Authority reserves the right to request that the primary contractor provide copies of insurance certificates for all contractors and subcontractors

### **ARTICLE XXVI - WORKING HOURS**

Hours of Operation: the normal working hours for the project are between the hours of 7:30 a.m. through 4:00 p.m., Monday through Friday. The Contractor must receive the Owner's approval to perform work outside of normal working hours. It is the contractor's responsibility to adhere to any local laws or ordinances that may govern or restrict the performance of such work.

### **ARTICLE XXVII - PREVAILING WAGE**

The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., P.L. 1963, Chapter 150 is hereby made a part of every contract entered into on behalf of the New Jersey Water Supply Authority, except those contracts which are not within the contemplation of the Act. The Contractor's signature on this Contract is its guarantee that neither it nor any Subcontractors it might employ to perform the work covered by this proposal are listed or are on record in the Office of the Commissioner, Department of Labor and Industry, as one who has failed to pay prevailing wages in accordance with the provisions of this Act.

1. Public Works Contractor Registration Act- The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractors who bid on or engage in any contract for public work defined in N.J.S.A. 34:11-56.-26 be first registered with the New Jersey Department Of Labor and Workforce Development.
2. Payroll Certification for Public Works Projects (for Contractor and Sub-Contractors Use for Weekly and Final Certification)-defined in N.J.A.C. 12:60-2.1 and 6.1 of the Prevailing Wage Act requires that certified payroll records must be submitted to the Authority, by all contractors and sub-contractors, for each employee on the project within ten (10) days of the payment of wages.

The Contractor agrees that all workers employed in the performance of this Contract shall be paid wages not less than the prevailing wage rate of the NJ Prevailing Wage for Hunterdon County, see web determination's online website at <https://lwd.state.nj.us/labor/wagehour/content/pwage.html>, (**Confirmation No.:** ) In the event the Authority finds that any worker employed by the Contractor or any subcontractor covered by this Contract has been paid a rate of wages less than the prevailing wage set forth above, the Authority may terminate the Contractor's or subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The Contractor and his sureties shall be liable to the Authority for any excess costs occasioned hereby.

### **ARTICLE XXVIII – SUBCONTRACTING**

N.J.A.C. 17:13-4 et seq. and Executive Order 71, mandate that if a Contractor proposes to utilize a subcontractor(s), the Contractor must make a good faith effort to award a goal of 25 percent of the dollar value of its contract to eligible small businesses, as follows: with regard to goods and services contracts at least 10 percent shall be awarded to small businesses whose gross revenues do not exceed \$500,000; at least an additional 15 percent shall be awarded to the additional categories of small businesses whose revenues do not exceed \$12 million or the applicable Federal revenue standards established at 13 CFR 121.201, incorporated herein by reference, whichever is higher. In regard to design and construction contracts, a goal of 25 percent of the total dollar value of its contract to either prime contractors or subcontractors that qualify as small businesses with revenues that do not exceed the annual revenue standards established at 13 CFR 121.201.

Should the Contractor propose to utilize a subcontractor(s) to fulfill any of its obligations, the Contractor shall be responsible for the subcontractor's(s): (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.

The Contractor must provide a detailed description of services to be provided by each subcontractor, referencing the applicable Section or Subsection of the IFB.

The Contractor should provide detailed resumes for each subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work, which the subcontractor is designated to perform.

The Contractor should provide documented experience to demonstrate that each subcontractor has successfully performed work on contracts of a similar size and scope to the work that the subcontractor is designated to perform in the Contractor's proposal.

Invoices presented to the Authority for payment must include verifiable information as to the payments made to each of the eligible subcontractor(s) during the period covered by the prime contractor's invoice. The reported payments shall be exclusive of any mark-up, fees, overhead and profit to the prime contractor.

## **ARTICLE XXIX – RESTRICTIONS ON POLITICAL CONTRIBUTIONS**

Pursuant to P.L. 2005, c. 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. P.L. 2005, c. 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 your firm fails to fully comply with P.L. 2005, c. 51 upon Contract execution, this Contract is void ab initio, as a material defect that invalidates this Contract. If your firm solicits or makes any P.L. 2005, c. 51 political contributions prior to the completion of this Contract, such act shall constitute a material breach of this Contract.

Pursuant to P.L. 2005, c. 271 your firm is required to disclose its (and its principals') political contributions within the immediately preceding twelve (12) month period as set forth in the attached P.L. 2005, c. 271 disclosure statement. If your firm has not already done so, your firm is required to submit P.L. 2005, c. 271 disclosures to the Authority upon contract execution. Your firm also has a continuing duty to immediately report any P.L. 2005, c. 271 political contributions it makes during the term of this Contract to the Authority. Your firm will not be precluded to from entering a contract with the Authority by virtue of the information provided in the P.L. 2005, c. 271 disclosure provided the form is fully and accurately completed. If your firm fails to complete the P.L. 2005, c. 271 disclosure or the disclosure is incomplete, or untimely submitted, this Contract is void *ab initio*, as a material defect that invalidates this Contract.

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-20.13 (P.L. 2005, c. 271 section 3) if your firm receives contracts in excess of \$50,000 from a public entity during a calendar year. It is your firm's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties be elec. Additional information about this requirement is available from ELEC at 888-313-3532 or [www.elec.state.nj.us](http://www.elec.state.nj.us).

## **ARTICLE XXX - ENGINEER**

The Project has been designed by Matrix New World Engineering, Land Surveying and Landscape Architecture, PC, 26 Columbia Turnpike, Florham Park, NJ 07932 who is herein called Engineer and who is to act as the Authority's representative, assume all duties and responsibilities not otherwise limited by this Contract and have the rights and authority assigned to the Engineer in the Contract Documents in connection with completion of the work in accordance with Contract Documents.

### **ARTICLE XXXI - SAFETY**

The Contractor shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. The Contractor shall provide protection for all persons including but not limited to his employees and employees of other contractors or subcontractors; members of the public; and employees, agents and representatives of the Authority, and regulatory agencies that may be on or about the Worksite. The Contractor shall provide protection for all public and private property including but not limited to structures, pipes, and utilities, above and below ground.

The Contractor shall provide and maintain all necessary safety equipment such as fences, barriers, signs, lights, walkways, guards and fire prevention and firefighting equipment and shall take such other action as is required to fulfill his obligations under this subsection. Contractor shall also comply with all safety-related requirements included in the Technical Specifications.

The Contractor shall comply with all applicable Federal, State and local laws, ordinances, rules and regulations and lawful orders of all authorities having jurisdiction for the safety of persons and protection of property.

The Contractor shall designate a responsible member of his organization at the worksite whose primary duty shall be the prevention of accidents. All Contractor personnel, and Authority personnel, shall have the authority to take immediate action to temporarily suspend operations deemed unsafe or if hazardous conditions present, and to enforce safety precautions and programs.

### **ARTICLE XXXII - SECURITY**

Throughout the duration of the contract, contractors, their agents, subcontractors and representatives must maintain security protocols established by the Authority while working in and around secured areas. Contractors will coordinate job site access on a daily basis with the Authority assigned project manager. Buildings; pumping stations, vaults, chambers, towers or fenced and gated areas that are normally locked, must not be left open and unattended.

Contractor shall adequately secure and protect its own tools equipment, materials and supplies. The Authority assumes no liability for any damage, theft or negligent injury to contractor's property.

The Contractor shall comply with all Authority field controls at the site prior to the start of service/construction. If the Contractor detects or suspects an error in the field controls, the Contractor shall immediately notify the Authority and shall suspend any related work until any discrepancy is resolved.

**ARTICLE XXXIII - CONTRACT PROVISIONS ENSURING SECURITY OF  
AUTHORITY STRUCTURES AND PROCESSES**

Pursuant to N.J.S.A. 47:1A-1.1, the Authority may exempt certain records from disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., upon a reasonable ground to believe disclosure may result in a security risk. Certain information received, maintained, or created by the Contractor in fulfilling its contractual obligations may be subject to this exemption.

The Authority's resources are considered a Critical Infrastructure and Key Resource as defined by the national Infrastructure Protection plan under Homeland Security. The Authority deems CONTRACT DRAWINGS, CONTRACT SHOP DRAWINGS & PHOTOGRAPHS, AND CONTRACT SPECIFICATIONS pertaining to a critical infrastructure as **Confidential Information** under the Open Public Records Act. Therefore:

1. The Contractor agrees on behalf of the Contractor and the Contractor's principals, employees, agents, heirs, successors, and assigns including all subcontractors that they may only utilize and/or share such Confidential Information, electronically or otherwise as is necessary for the performance of the Contractor's duties under this contract.
2. The Contractor will keep confidential any records designated as such by the Authority.
3. The Contractor agrees to compile and maintain a list of those firms or individuals to whom it has disclosed Confidential Information.
4. The Contractor agrees that it shall not post Confidential Information on its web site.
5. The Contractor agrees that it shall not include Confidential Information in publicly distributed documents without permission from the Executive Director.
6. The Contractor agrees to store Confidential Information in a secure manner. This provision includes, but is not limited to, storing electronic information. The information should be stored on secure digital networks which can only be accessed by specific employees who are authorized to work on the project.
7. The Contractor agrees to dispose of Confidential Information in a manner consistent with the need to prevent disclosure of Confidential Information.
8. The Contractor shall take such other reasonable actions as are necessary to protect the confidentiality of Confidential Information including, at a minimum, instructing each person assigned to work under this contract on the Contractor's behalf of the prohibition on disclosing Confidential Information except as provided in this article.
9. The Contractor agrees to notify the Authority's Project Manager in writing of any request it may receive for disclosure of any Confidential Information received, maintained or created

by the Contractor in fulfilling its contractual obligations, prior to responding to such request.

10. The Contractor agrees to assert any exemption from disclosure available under the New Jersey Open Public Records Act or other laws including, but not limited, to an exemption that may be authorized by the Executive Director.
11. Upon receipt of such request, the Contractor shall refer all requests for confidential information to the Authority. The Contractor agrees to abide by the determination of the Executive Director as to the disclosure of such confidential information.
12. The Contractor agrees to include these provisions in its Contracts with vendors, sub-consultants, subcontractors and any others who will work on this project inclusive of electronic storage of digital information on secure networks.
13. The Contractor acknowledges that the duty not to disclose Confidential Information unless authorized to do so is part of the Contractor's services.
14. The unauthorized disclosure of Confidential Information by the Contractor shall constitute a breach of contract and subject the Contractor to any and all rights and remedies available to the State pursuant to this contract and law.
15. The Contractor shall indemnify, defend and hold harmless the State of new Jersey (including the New Jersey Water Supply Authority, and the Department of Environmental Protection, State Park Service) and its officers, agents and employees from and against all claims, causes of action, legal proceedings, suits, losses, damages, and expenses initiated, suffered, or claimed to have been suffered by third parties not involved by contract in the project to the extent that they arise out of, or result from, the unauthorized disclosure of Confidential Information by the Contractor.

#### **ARTICLE XXXIV – THE WORKER & COMMUNITY RIGHT TO KNOW ACT**

The provision of N.J.S.A. 34:5A-1 et. seq., which requires the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase, or utilized by the Contractor in its performance of services must be labeled in compliance with the provisions of the Act.

#### **ARTICLE XXXV - STANDARDS PROHIBITING CONFLICTS OF INTEREST**

The following prohibitions on Contractor activities shall apply to all contracts or purchase agreements made with the Authority, pursuant to Executive Order No. 189 (1988):

- 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 Authority

officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Authority 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 Authority officer or employee from any Authority 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 Authority officer or employee having any duties or responsibilities in connection with the purchase , acquisition or sale of any property or service by or to the Authority 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. 52:13D-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 Authority 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 Authority officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgement of said officer or employee;

e) No vendor shall cause or influence, or attempt to cause or influence, any Authority officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person; and

f) the provisions cited above in a through e shall not be construed to prohibit an Authority 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 promulgate under paragraph c.

### **ARTICLE XXXVI - SET-OFF FOR STATE TAX**

The Contractor is advised that pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deductions which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c. 184 (c. 52:32-32 et seq.) to the taxpayer shall be stayed.

### **ARTICLE XXXVII - DEBARMENT**

The Contractor may be debarred, suspended or disqualified from this Contract if the Contractor commits any of the acts listed in N.J.A.C. 7:1D-2.

### **ARTICLE XXXVIII – DISPUTES**

Contractor shall carry on the work and maintain the progress schedule during all disputes or disagreements with the Authority. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Authority may otherwise agree in writing or except as pursuant to Article IX entitled ‘Delays’.

Unless otherwise provided in the Contract, all claims, disputes and other matters in question between the Authority and the Contractor arising out of, or relating to, this Contract or the breach of it will proceed as follows:

- A) The Contractor must submit all requests for extra time and compensation, claims, and disputes to the Executive Director of the Authority within a reasonable timeframe pursuant to Article XXIV entitled ‘Changes and Extra Work’.
- B) The Contractor shall initially submit any questions, concerns, disputes, claims and requests to the Project Engineer or Chief Engineer of the Authority.



C) Failing informal resolution through the Project Engineer and Chief Engineer, the Contractor shall submit the matter to the Executive Director for informal administrative proceedings.

D) The conduct of any informal resolution or administrative proceeding shall not stay the operation of the statute of limitation for claims contained in the Contractual Liability Act N.J.S.A. 59:13-5.

E) In the event that any claim or dispute arises during the performance of the Contract, the Contractor shall, unless otherwise ordered by the Authority, continue to perform the Contract and any Change Orders pending final resolution of the claim or dispute.

Decisions on disagreement shall proceed as follows:

A) The Chief Engineer will be the initial interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder. Claims and disputes between the Contractor and the Authority relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work shall be referred initially to the Chief Engineer in writing with a request for a formal decision in accordance with this paragraph, which the Executive Director will render in writing within a reasonable time. Written notice of each such claim or dispute shall be delivered by the claimant to the Chief Engineer within a reasonable time of the occurrence of the event giving rise thereto, and written supporting data will be submitted to the Chief Engineer within further reasonable time of such occurrence unless the Chief Engineer allows additional time to ascertain more accurate data. In their capacity as interpreter and judge, the Chief Engineer and Executive Director will not show partiality and will exercise good faith when acting in such capacity.

#### **ARTICLE XXIX - EFFECTIVE DATE OF CONTRACT**

The contract time will commence to run on the thirtieth (30th) calendar day after the contract has been signed by both the Authority and the Contractor or, if a Notice to Proceed is given, on the date indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty (30) calendar days after both parties have signed the Contract.

#### **ARTICLE XL - ENTIRE CONTRACT**

Provisions contained herein or incorporated herein by reference constitute the entire contract and supersede all previous written communications between the parties hereto with respect to the subject matter hereof.

It is the intent of the Specifications and Drawings to describe a complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any work that may reasonably be inferred from the Specifications or Drawings as being required to produce the intended result shall be supplied whether or not it is specifically called for, at no additional cost to the Authority.

**IN WITNESS WHEREOF**, the Authority and the Contractor have caused this contract to be executed by their duly authorized officers or representatives as of the day and year first written above.

WITNESS: **NEW JERSEY WATER SUPPLY AUTHORITY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Beth Gates  
Executive Director

WITNESS:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name Typed: \_\_\_\_\_

Title: \_\_\_\_\_

Reviewed and Approved As to Form:

**Gurbir S. Grewal**  
**Attorney General for the State of New Jersey**

By: \_\_\_\_\_

Kathrine Hunt  
Deputy Attorney General

## **SECTION IV – TECHNICAL SPECIFICATIONS**

*(Under Separate Cover)*

## **SECTION V – BID FORMAT AND CONTENT REQUIREMENTS**

*(Under Separate Cover)*