

APPENDIX E

Confidentiality / Non-Disclosure Agreement

NJWSA CONFIDENTIALITY / NON-DISCLOSURE AGREEMENT

The New Jersey Water Supply Authority (Authority), in connection with the Request for Proposals for the Spruce Run Reservoir Resource Preservation –Foundation Grouting Project (WSA-R22024), intends to disclose confidential information to the Receiving Party who agrees to the terms of this Confidentiality/Non-Disclosure Agreement (“Agreement”). Any person who will require access to Confidential Information, as defined below, must agree to the terms set forth in this Agreement and evidence such agreement by signing and returning an original copy of the signature page (Exhibit A) of this Agreement to the Authority. This Agreement sets forth the terms under which such information shall be kept confidential.

1. Confidential Information

a. "Confidential Information" shall mean any information or data of a confidential nature, which is not considered public record, including but not limited to: (a) the content of and all addenda to the RFP; (b) all existing construction drawings, specifications, reports, photos, construction documents related to the RFP as provided by the Authority, and all information contained therein; (c) all new construction drawings, specifications, reports, photos, and construction reports created in connection with the RFP, and all information contained therein; (d) all communications in any form and all information in such communications, in any form or medium, between the Authority and any party regarding the RFP; and (e) all record-bearing media containing or disclosing such information.

b. Confidential Information shall not include information that (a) is or becomes available to the public other than by disclosure by the Receiving Party in violation of this Agreement; (b) was demonstrably known to the Receiving Party previously with no obligation to hold it in confidence; (c) is independently developed by either party without recourse to the Confidential Information; (d) was rightfully obtained by either party from a third party without an obligation of confidentiality; or (e) is required by court order or regulatory authority to be disclosed.

2. Disclosure to Persons within the Receiving Party

Prior to disclosing any Confidential Information to any person within the firm deemed to be the Receiving Party, the person shall be provided with a copy of this Agreement and agree to be bound thereto, as evidenced by executing the acknowledgement form attached as Exhibit A. The acknowledgement form shall be returned to the Authority prior to disclosure of any Confidential Information.

3. Disclosure to Third Parties

The Receiving Party shall not disclose Confidential Information to any third party (including the Receiving Party's agents, representatives, independent consultants/contractors, subcontractors, as well as any third party's agents, representatives, independent consultants/contractors and subcontractors) unless, prior to any disclosure, the third party has executed and returned to the Authority an original signed copy of this nondisclosure agreement, which requires the recipient to consent to abide by the terms of this Agreement and designates it as a Receiving Party. The

Receiving Party shall not allow the Confidential Information to be accessed through an unprotected computer network, unsecured email or unsecured paper files, or other electronic or hard copy distribution process.

4. Use of Confidential Information

The Receiving Party shall use the Confidential Information solely and exclusively in accordance with the terms of this Agreement in order for the Receiving Party to prepare and submit a proposal to the Authority in response to the RFP. The Receiving Party shall not use or disclose the Confidential Information for any purpose other than to prepare and submit a proposal to the Authority in response to the RFP.

5. Protection of Confidential Information

The Confidential Information, including permitted copies, shall be deemed to be the exclusive property of the Authority. The Receiving Party shall (a) only use Confidential Information as provided by this Agreement; (b) only disclose the Confidential Information to its employees or legal representatives who have executed and returned to the Authority an original signed copy of this nondisclosure agreement and have a need to know; (c) treat the Confidential Information with the same degree of care that it would afford to its own confidential information of a similar nature, but no less than reasonable care; (d) have no right, title, or interest in the Confidential Information except as provided for in this Agreement; (e) notify the Authority within one (1) calendar day of any loss or unauthorized disclosure or use of the Confidential Information; (f) not remove, modify or obliterate any copyright, trademark, or other proprietary rights notice from the Confidential Information; and (g) return any and all Confidential Information to the Authority which may be in the Receiving Party's possession immediately upon termination of this Agreement.

6. Relief/Remedy

The Receiving Party acknowledges that any disclosure or use of any Confidential Information in violation of this Agreement may cause the Authority irreparable harm, the amount of which is difficult to estimate, making any remedy at law or in damage inadequate. Therefore, the Receiving Party agrees that the Authority shall have the right to obtain from any court of competent jurisdiction specific performance or other temporary or permanent injunctive relief for any breach or threatened breach of this Agreement. This right shall be in addition to any other remedies available to the Authority in law or in equity.

7. Termination

Upon termination of the purpose for which the Confidential Information was disclosed (or earlier upon the request of the Authority), the Receiving Party shall promptly return to the Authority or destroy all Confidential Information and any copies of documents, papers or other material which may contain or be derived from the Confidential Information which is in its possession. At the Authority's request, the Receiving Party shall provide a certificate certifying that it has satisfied its obligations under this paragraph. The Confidential Information which is not in

document or material form shall continue to be protected under this Agreement until such time the Confidential Information becomes publicly known, if ever.

8. Miscellaneous

a. Any notice required or permitted to be given under this Agreement shall be given in writing and shall be effective from the date sent by registered or certified mail, by hand, or overnight courier to the addresses set forth on the first page of this Agreement.

b. This Agreement shall not be changed, modified or amended except by a writing signed by the parties. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. The Receiving Party shall not assign this Agreement.

c. This Agreement, along with the RFP and associated prequalification documents, sets forth the entire agreement and understanding between the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and understandings of any kind and every nature between them.

d. The obligations with respect to Confidential Information created by this Agreement will survive until such time as the Confidential Information becomes publicly known, if ever.

e. If any provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision.

f. This Agreement shall be governed in all respects by the laws of the State of New Jersey without giving effect to conflicts of laws principles. Any litigation arising out of or in connection with this Agreement shall take place in State Court in the State of New Jersey.

g. The Receiving Party agrees that it will keep all Confidential Information obtained from the Authority confidential and thus will not share any such information with any third party, including any current or future clients or other party. In agreeing to this provision, the Receiving Party acknowledges that information it receives in the course of this engagement could be used to give an advantage to entities that respond to RFPs or seek to respond to RFPs issued by the Authority and it pledges that it will not provide any such Confidential Information to any party that could use such information in that context.

h. The individual executing this Agreement as the officer of the Receiving Party hereby represents and warrants that he or she is duly authorized to execute this Agreement on behalf of the Receiving Party in such capacity.

i. The parties hereto agree that this Agreement may be executed in counterpart, each original signed page to become part of the original document.

[SIGNATURE ON FOLLOWING PAGE LABELED EXHIBIT A]

NJWSA CONFIDENTIALITY / NON-DISCLOSURE AGREEMENT

EXHIBIT A

I, _____, hereby acknowledge receipt of the
(name of Receiving Party)
NJWSA Confidentiality/Non-Disclosure Agreement and agree to be bound by its terms.

Signature of Receiving Party

Date

Print Name & Title

Firm Name