CONTRACT NO. WSA C27013

NEW JERSEY WATER SUPPLY AUTHORITY

for

WASTEGATE CONTROLS IMPROVEMENT PROJECT:
STANDBY GENERATOR AND SCADA REPLACEMENT
ALONG THE DELAWARE AND RARITAN CANAL AT
WASHINGTON CROSSING, SCUDDERS FALLS, PERDICARIS, AND TEN-MILE WASTE GATES
MERCER COUNTY, SOMERSET COUNTY
NEW JERSEY

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This Contract, made and entered into on _____, by and between the New Jersey Water Supply Authority, with its offices at 1851 Route 31, Post Office Box 5196, Clinton, New Jersey 08809 (hereinafter referred to as the "Authority") and xxx its office at XXX (hereinafter referred to as the "Consultant").

WITNESSETH: That the parties hereto, each in consideration of the undertakings, promises and agreements on the part of the other herein contained, do hereby undertake, promise and agree, for themselves, their successors and assigns, as follows:

ARTICLE I - ENGAGEMENT OF THE CONSULTANT

The Authority hereby engages the services of the Consultant and the Consultant agrees to perform in a good and skillful manner and in accordance with the directions and subject to the approval of the Executive Director of the Authority, (hereinafter referred to as the "Executive Director") Wastegate Controls Improvement Project: Standby Generator And Scada Replacement Along The Delaware And Raritan Canal At Washington Crossing, Scudders Falls, Perdicaris, And Ten-Mile Waste Gates Mercer County, Somerset County, New Jersey (hereinafter known as the "Project") as further set forth in ARTICLE III - SERVICES OF THE CONSULTANT of this Contract.

ARTICLE II - AUTHORITY OF EXECUTIVE DIRECTOR

All work to be performed by the Consultant hereunder shall be subject to the approval of the Executive Director of the Authority, or his 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 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 III - SERVICES OF THE CONSULTANT

The Consultant shall provide services for the Project in accordance with the following documents, which are incorporated herein and attached hereto:

1. Request for Fee Proposal dated XXX, attached as Exhibit A;

2. Consultant's Fee Proposal dated XXX, attached as Exhibit B;

3. Other documents as necessary.

The Consultant shall provide additional services during the contract term as agreed upon by the parties.

ARTICLE IV - PREVAILING WAGE

Prevailing wage does not apply.

ARTICLE V - PERIOD OF SERVICE

The Period of Service shall be one (1) year from Notice to Proceed.

ARTICLE VI - ADMINISTRATIVE SERVICES TO BE PERFORMED BY THE CONSULTANT

The Consultant shall perform all customary professional services and shall attend conferences with the Executive Director and the Authority, which may be required in connection with the services to be rendered under this Contract.

ARTICLE VII - DATA TO BE FURNISHED BY THE AUTHORITY

The Authority will furnish to the Consultant all available information and documents pertinent to the scope of professional Consulting services to be performed under this Agreement. The Consultant shall comply with special provisions for the treatment of confidential information as detailed in Article XXX.

ARTICLE VIII - EXTRA WORK

The Contract may be modified to include extra work not included under ARTICLE III - SERVICES OF THE CONSULTANT of this Agreement. No extra work is to proceed until such time as the proper contract modification has been negotiated and approved in writing by the Executive Director of the Authority and the Consultant pursuant to ARTICLE XXI hereof.

ARTICLE IX - COMPENSATION FOR SERVICES

The total cost to the Authority for satisfactory performance of the Services under this Contract shall be a lump sum and reimbursable cost not-to-exceed amount of XXX ($XXX) dollars.

ARTICLE X -PAYMENT PROCEDURES

The Consultant shall submit to the Authority monthly progress invoices on a form acceptable to the Authority, showing in detail the services performed during the invoice period and the charges therefor. Details of services performed shall include an accounting of 1) the percentage of work completed on each contractual task, consistent with Consultant's fee proposal, and 2) staff, fees, and reimbursables for lump sum and reimbursable cost not to exceed items. At the end of each month the

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Consultant did not progress any of the contractual tasks and does not intend to submit an invoice, they shall notify the Authority project manager in writing. Invoices for the last month of the fiscal year (June), shall be received within 10 calendar days of the end of the billing period.

Within thirty (30) calendar days after receipt of an administratively complete invoice, the Authority shall pay the full amount of the invoice. However, if the Authority disputes all or any portion of an invoice, or if there is missing or incomplete information, it shall notify the Consultant of the same within fifteen (15) calendar days from the date of receipt of that invoice. The Authority shall pay any portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion of the invoice, such that payment is not delayed beyond sixty (60) calendar days.

Acceptance by the Consultant of said payment shall operate as and shall be a release to the Authority from all claims and liability to the Consultant 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.

ARTICLE XI – AVAILABILITY OF RECORDS

The Consultant shall maintain and retain weekly payroll, overhead, cost and accounting records and all other records related to the services performed on the Project, including expenses pertaining to all services on the Project. Such records shall be maintained and available for the State and/or the Authority's inspection as to all aspects of the work, whether performed by the Consultant or any independent firms. These records shall be kept in accordance with generally accepted accounting principles and practices for a period of three (3) years after the expiration of the State's fiscal year (June 30) in which the Contract expires or in which final payment is received by the Consultant under Contract, whichever occurs later.

The Consultant further agrees to maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Controller upon request, per N.J.A.C. 17:44-2.2.

ARTICLE XII – OWNERSHIP OF MATERIAL

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the Authority and shall be delivered to the Authority upon 30 days' notice by the Authority. With regard to software computer programs and/or source codes developed for the Authority, the work shall be considered "work for hire", i.e. the Authority not the Consultant nor subcontractor, shall have full and complete ownership of all software computer programs and/or source code developed.

ARTICLE XIII - INSURANCE REQUIREMENTS

The Consultant 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

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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 proposal in response to the Authority RFP, the Consultant expressly agrees that any insurance protection required herein or by the Contract shall in no way limit the Consultant's obligations assumed in the Contract and shall not be construed to relieve the Consultant 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. Amendments to the Insurance Requirements may be made at the discretion of the Authority.

The Contractor shall not proceed on any work under this Contract until all required insurance coverage is obtained and bound and the appropriate Certificate(s) of Insurance have been approved by the Authority.

A. Workers' Compensation
   1. Full benefits under New Jersey Statute.
   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.

B. Employers' Liability
   1. $1,000,000 - Each Accident
   2. $1,000,000 Disease – Each Employee
   3. $1,000,000 Disease – Policy Limit

C. 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.
   3. If hauling contaminants/pollutants, Contractor must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980 and shall include coverage Form MCS-90 and broadened pollution coverage under ISO Form CA 99 48 or equivalent. Alternatively, the broadened pollution coverage requirement may be satisfied through the Contractor's Pollution Insurance if it clearly covers transit risk.

D. Commercial General Liability
   1. The policy shall cover all claims for damages for bodily injury, 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.

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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). No exclusions or limitations shall exist for work 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:
    1. Bodily Injury and Property Damage Liability, Per Occurrence: $1,000,000, Annual Aggregate Per Project/Location: $2,000,000.
    2. Personal and Advertising Injury: $1,000,000.
    3. Products and Completed Operations Aggregate: $2,000,000.

E. Professional Liability Insurance
1. Consultant shall procure, maintain and keep in force at all times during the term of the Contract (or as otherwise agreed to by the Authority), at the Consultant's sole expense, Professional Liability Insurance which covers the Consultant's services rendered under this contract and those rendered by its subcontractors.
2. Whether as an exposure covered by this policy, or as part of a separate policy (with identical terms outlined herein), the policy shall cover loss arising out of environmental liabilities and the disclosure or unauthorized access to confidential information.
3. If the policy is claims-made, coverage retroactive dates shall be no later than the date services were first rendered to the Authority and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of five (5) years following the completion of all services described in this contract.
4. Limits of Liability shall not be less than $2,000,000 per Claim and Annual Aggregate. Consultant may fulfill this requirement by requiring Subconsultant(s) to obtain and maintain this coverage provided that all specified parties are insured under such policy. Consultant is obligated to advise the Authority in writing of any claims filed against this policy which may impair the Annual Aggregate and cause its Subconsultant to fulfill this requirement if coverage is provided by Subconsultant.

F. Drone Liability Insurance

If applicable to the Work, Contractor or any applicable subcontractors shall maintain unmanned aerial vehicle (i.e. drone) liability insurance with a limit no less than $1,000,000 each occurrence for bodily injury and property damage liability.

G. Watercraft/Marine Liability Insurance

If applicable to the Work, Contractor or any applicable subcontractors will maintain Watercraft/Marine Liability or Protection & Indemnity (liability) insurance that provides no less than $1,000,000 each occurrence for combined liability coverage for bodily injury and property damage. This limit may be met by any combination of primary and excess policies.

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H. Consultant Pollution Liability: Consultant shall maintain Pollution Liability insurance with a limit not less than $2,000,000 per claim or occurrence and in the aggregate, covering bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs, all arising out of the Work or services performed under this contract. Coverage shall be provided for work performed on-site, under-site, offsite, during transportation, and at any non-owned disposal sites, and shall include coverage for completed operations.

I. Cybersecurity

Contractor shall obtain and maintain, during and for three years post the term of the Agreement, a Privacy & Cybersecurity Insurance Policy with limits of not less than $1,000,000 per claim. Such Privacy & Cybersecurity Insurance Policy shall also include but not be limited to cover claims for (1) unauthorized access to or use of computer systems (including personal handheld devices and laptops); (2) loss or disclosure of confidential or Personal Data; (3) loss of digital assets or data; (4) security incidents including ransom or malware; (5) denial or loss of computer service; (6) cyber extortion; (7) unauthorized or wrongful collection of personal information; (8) invasion of privacy; (9) alleged violations of any privacy and data security laws, and (10) regulatory defense and penalties coverage with the insurability of penalties to be determined in accordance with the law that most favors coverage for such penalties and (11) any other claims resulting from unauthorized use or disclosure of Personal Data and related information unintended or otherwise. The Privacy & Cybersecurity Insurance Policy shall (i) be endorsed to name the Authority as additional insured; (ii) be primary and non-contributory with any insurance carried by the Authority; and (iii) be written by insurance companies with ratings of “A:VII” or better in the latest edition of A.M. Best Key Rating Guide. The Contractor shall provide at least thirty (30) days’ prior written notice to the Authority if any coverage required hereunder is to be materially changed, reduced or canceled.

Specific Provisions:

1. 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.
2. All insurance policies shall apply on a primary and noncontributory basis, and with the exceptions of A and B, shall name the following listed entities as additional insureds for both ongoing and completed operations: “The State of New Jersey (including the New Jersey Water Supply Authority and the Department of Environmental Protection) and its agencies, employees and officers”. The contract number, C27013, should also be listed on the certificate of insurance. There should be no cross suits exclusion on the policy.
3. 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.
4. The Contractor shall submit proof(s) of insurance to the Authority for all insurance required under this section in the form of Certificate(s) of Insurance and shall attach

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relevant endorsements evidencing the required terms. All 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.

5. 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.
6. Upon request, Contractor shall furnish the Authority with a complete copy of each policy, including all endorsements, required by the Contract.
7. 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.
8. 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. Subcontractors must maintain, at minimum, the following coverages:

   A. Workers' Compensation
      1. Full benefits under New Jersey Statute.
      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.

   B. Employers' Liability
      1. $1,000,000 Each Accident
      2. $1,000,000 Disease – Each Employee
      3. $1,000,000 Disease – Policy Limit

   C. Commercial Automobile Liability –
      1. Commercial Automobile Liability Insurance covering all owned and non-owned/hired vehicles used in performance of services under this contract. The Combined Single Limit for Bodily Injury and Property Damage shall not be less than $1,000,000 each accident.

   D. Commercial General Liability -
      1. Limits of Liability shall not be less than shown below and form shall be Occurrence basis via CG0001 or equivalent:

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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.

The primary Contractor shall be 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 XIV - FINAL ACCEPTANCE

Acceptance of work as complete will be based upon a thorough inspection by Authority personnel. Any deficiencies found shall be noted by the Consultant and corrected at the earliest possible time. Processing of the Consultant's invoice for payment, in accordance with Article X, shall be delayed until all deficiencies, if any, are corrected to the Authority's satisfaction.

ARTICLE XV - INDEMNIFICATION

The Consultant, during the performance of work under this Contract, shall defend, indemnify and otherwise save harmless the Authority, from any and all third party claims or actions at law, for which the Authority shall not be reimbursed by insurance, including but not limited to reasonable attorney's fees and court costs, resulting from the negligent or willful misconduct, including errors and omissions, of the Consultant, its employees or agents, to exercise such care, skill and diligence as professionals ordinarily exercise under similar circumstances.

ARTICLE XVI - NON-SOLICITATION

The Consultant does hereby warrant and represent that this Contract has not been solicited or secured, directly or indirectly, in a manner that is contrary to the laws of the State of New Jersey and, in particular, the provisions of N.J.S.A. 52:34-15 and N.J.S.A. 52:34-19, and that the Consultant has not violated and shall not violate said laws of the State of New Jersey relating to the procurement of or the performance under this Agreement by any conduct, including the paying or giving of any fee, commission, compensation, gift or gratuity of any kind, directly or indirectly, to any Authority employee or officer.

ARTICLE XVII - NON-DISCRIMINATION

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

The consultant or subconsultant, 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 consultant 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

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apprenticeship. The consultant 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 consultant or subconsultant, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the consultant, 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 consultant or subconsultant 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 of the consultant's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The consultant or subconsultant, 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.

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

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

The consultant or subconsultant agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

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

The consultant shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;
Certificate of Employee Information Report; or
Employee Information Report Form AA-302 (electronically provided by the Division through the Division's website at: http://www.state.nj.us/treasury/contract_compliance.

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The consultant and its subconsultants shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office 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 Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

ARTICLE XVIII - 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 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 the 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. The 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 XIX - AMERICANS WITH DISABILITIES ACT

The Consultant 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 Consultant agrees that the performance shall be in strict compliance with the Act. In the event that the Consultant, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this Contract, the Consultant shall defend the Authority in any action or administrative proceeding commenced pursuant to this Act. The Consultant 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 Consultant shall, at its own expense, appear, defend and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the Authority's grievance procedure, the Consultant 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 Consultant shall satisfy and discharge the same at its own expense.

The Authority shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Consultant along with full and complete particulars of the claim. If any action or administrative proceeding is brought against the Authority or any of its agents, servants, and employees,

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the Authority shall expeditiously forward or have forwarded to the Consultant 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 Consultant pursuant to this Contract will not relieve the Consultant 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 Consultant, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Contract. Furthermore, the Consultant expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Consultant's obligations assumed in this Contract, nor shall they be construed to relieve the Consultant 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 XX - RESPONSIBILITY OF THE CONSULTANT

Notwithstanding any other provision in the Contract, the Consultant shall not be relieved of liability to the Authority for damages sustained by the Authority as a result of any defects, errors, or breach of this Contract by the Consultant. The Authority may withhold any payments due to the Consultant for the purpose of set-off until such time as the exact amount of damages is determined and such monies withheld by the Authority may be applied toward the satisfaction of such damages. The acceptance, approval or payment for any of the services performed by the Consultant hereunder shall not constitute a release or waiver of any claim the Authority has or may have for defects or errors or other breach of the Contract on the part of the Consultant and of any term or condition to be performed by the Consultant hereunder.

ARTICLE XXI - MODIFICATION OF AGREEMENT

The terms, conditions and provisions of this Agreement cannot be modified or varied except in writing, signed by a duly authorized representative of the Consultant, to be binding upon the Consultant, and by the Executive Director, to be binding on the Authority.

ARTICLE XXII - COMMUNICATION

Until changed by written notice, given by either party to the other, the following addresses for the representatives of the parties hereto shall be used for the mailings of all notices and reports required by this Contract.

Executive Director
New Jersey Water Supply Authority
1851 Route 31
Post Office Box 5196
Clinton, New Jersey 08809
Telephone No.: (908) 638-6121

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ARTICLE XXIII - CONTRACT REMAINING VALID

If any provision of the 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 XXIV - TERMINATION

The Authority may, at any time, direct the termination of this Contract, effective upon receipt by the Consultant of written notice of such termination. Costs and disbursements incurred by the Consultant up to the time of termination shall be reimbursable in accordance with the provisions set forth in ARTICLES IX and X of this Agreement.

ARTICLE XXV - 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.

ARTICLE XXVI – REMOVAL OF CONSULTANT PERSONNEL

The Consultant shall not make any significant changes to the project team without the Authority's prior approval. Significant changes shall include the project manager, sub-consultants and other key technical personnel.

ARTICLE XXVII - APPLICABLE LAW

This Contract shall be construed according to the laws of the State of New Jersey, insofar as existence of a contract as a binding agreement 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 XXVIII - NEW JERSEY BUSINESS CERTIFICATION

Pursuant to N.J.S.A. 52:32-44, the Consultant and Subconsultant(s) shall provide to the Authority a valid Business Registration Certificate (BRC) from the Division of Revenue in the Department of the Treasury. No contract shall be entered into unless the Consultant and Subconsultant(s) first provides proof of valid business registration.

A Subconsultant under contract shall provide and the Consultant shall forward proof of valid business registration within the Division of Revenue to the Authority. No Subcontract shall be entered into by the Consultant under contract with the Authority unless the Subcontractor first provides proof of valid business registration.

ARTICLE XXIX – RESTRICTIONS ON POLITICAL CONTRIBUTIONS

Pay to Play Prohibitions, pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:

A. Make or solicit a contribution in violation of the statute;

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B. Knowingly conceal or misrepresent a contribution given or received;
C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the legislation.

The Consultant is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, 3 as amended) if in a calendar year the Consultant receives one (1) or more contracts valued at $50,000 or more. It is the Consultant's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1 (888) 313-3532 or on the internet at http://www.elec.state.nj.us/.

ARTICLE XXX - CONTRACT PROVISIONS ENSURING SECURITY OF AUTHORITY STRUCTURES AND PROCESSES

Pursuant to N.J.S.A. 47:1A-1.1, the New Jersey Water Supply Authority may exempt information from disclosure under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., if disclosure could result in a security risk. Certain records received, maintained, or created by the Consultant in fulfilling its contractual obligations may be subject to this exemption.

ARTICLE XXXI - SUBCONTRACTING REQUIREMENTS

Should the Consultant propose to utilize a subconsultant(s) to fulfill any of its obligations, the Consultant shall be responsible for the subconsultant'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 Consultant must provide a detailed description of services to be provided by each subcontractor, referencing the applicable Section or Subsection of the RFP.

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

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

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

ARTICLE XXXII - SECURITY

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

ARTICLE XXXIII – SAFETY

All work shall be performed in accordance with all applicable safety standards, including but not necessarily limited to, OSHA (Occupational Safety and Health Administration) standards as outlined in Title 29 CFR Part 1910.

ARTICLE XXXIV – STANDARDS PROHIBITING CONFLICT OF INTEREST

The following prohibitions on Consultant 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 State officer or employee or Special State 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 State Ethics Commission (formerly 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 State Ethics Commission, 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 judgment of said officer or employee;

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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 subject to any guidelines the State Ethics Commission may promulgate under paragraph c.

ARTICLE XXXV – SET OFF FOR STATE TAX

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 XXXVI - ENTIRE CONTRACT

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

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Contract No. WSA C27013

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

NEW JERSEY WATER SUPPLY AUTHORITY

By: _____
Marc Brooks, Executive Director
Dated: _____

XXX

By: _____

Name Typed: _____

Title: _____

Dated: _____

Reviewed and Approved As to Form:

Jennifer Davenport

Attorney General for the State of New Jersey

By: _____
Jonathan Allen
Deputy Attorney General

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