



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy Sullivan  
Chief Executive Officer

**DATE:** September 9, 2020

**SUBJECT:** Agenda for Board Meeting of the Authority September 9, 2020

**Notice of Public Meeting**

**Roll Call**

**Approval of Previous Month's Minutes**

**CEO's Report to the Board**

**Authority Matters**

**Office of Economic Transformation**

**Incentives**

**Loans/Grants/Guarantees**

**Real Estate**

**Board Memoranda**

**Public Comment**

**Executive Session**

**Adjournment**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**August 11, 2020**

**MINUTES OF THE MEETING**

*The Meeting was held by teleconference call.*

Members of the Authority present via conference call: Chairman Kevin Quinn; Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; Richard Mumford representing Commissioner Marlene Caride of the Department of Banking and Insurance; Catherine Brennan representing State Treasurer Elizabeth Muoio of the Department of Treasury; Jane Rosenblatt representing Commissioner Catherine McCabe of the Department of Environmental Protection; Public Members: Charles Sarlo, Vice Chairman; Philip Alagia, Virginia Bauer, Fred Dumont, Massiel Medina Ferrara, Aisha Glover, Marcia Marley, Robert Shimko, First Alternate Public Member; and Rosemari Hicks, Second Alternate Public Member.

Also present via conference call: Timothy Sullivan, Chief Executive Officer of the Authority; Assistant Attorney General Gabriel Chacon; Stephanie Brown, Governor's Authorities Unit; and staff.

Mr. Quinn called the meeting to order at 10:03 am.

In accordance with the Open Public Meetings Act, Mr. Sullivan announced that notice of this meeting has been sent to the *Star Ledger* and the *Trenton Times* at least 48 hours prior to the meeting, and that a meeting notice has been duly posted on the Secretary of State's bulletin board.

**MINUTES OF AUTHORITY MEETING**

The next item of business was the approval of the July 14, 2020 meeting minutes. A motion was made to approve the minutes by Ms. Bauer, and seconded by Mr. Dumont, and was approved by the 13 voting members and one additional alternate member present.

Mr. Mumford abstained because he was not present for the meeting.

The next item of business was the approval of the July 14, 2020 Executive Session meeting minutes. A motion was made to approve the minutes by Mr. Shimko, and seconded by Ms. Bauer, and was approved by the 13 voting members and one additional alternate member present.

Mr. Mumford abstained because he was not present for the meeting.

**FOR INFORMATION ONLY:** The next item was the presentation of the Chairman's Remarks to the Board. Chairman Quinn also thanked Teresa Wells, retiring Senior Bond and Compliance Officer, for her 35 years of service to the EDA.

Ms. Lori Matheus, Senior Vice President, Finance & Development, read a proclamation honoring Ms. Wells for her dedication.

Ms. Wells stated that she was overwhelmed and very appreciative for the recognition.

CEO Tim Sullivan echoed the previous sentiments and also thanked Ms. Wells for her service.

Ms. Ferrara left the call at this time.

**FOR INFORMATION ONLY:** The next item was the presentation of the Chief Executive Officer's Monthly Report to the Board.

**COVID-19 RESPONSE**

**ITEM:** New Jersey Small and Micro Business PPE Access Program – Phase 1

**REQUEST:** To approve the creation of the New Jersey Small and Micro Business PPE Access Program – Phase 1, a \$4 Million pilot program; entering into a Memorandum of Understanding between the NJ Department of the Treasury and the Authority to utilize CARES Act funding for the funding of Phase 1 of this program; and granting delegated authority to staff to administer the program.

**MOTION TO APPROVE:** Ms. Brennan   **SECOND:** Ms. Glover                   **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 1**

**ITEM:** Small Business Emergency Assistance Loan Program (Phase 1) – Program Modifications

**REQUEST:** To approve modifications to the Small Business Emergency Assistance Loan (Phase 1) to provide delegation of authority to specified staff, based solely on non-discretionary reasons, to decline loan requests and to and to approve a hearing officer's decision for final administrative decision on appeal.

**MOTION TO APPROVE:** Ms. Bauer       **SECOND:** Ms. Brennan                   **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 2**

**ITEM:** Amendment to Memorandum of Understanding (MOU) with the NJ Department of Treasury for Additional Funding to Extend Support under the Small Business Emergency Assistance Grant Program (Phase 2)

**REQUEST:** To approve an amendment to the MOU between the NJEDA and the NJ Department of Treasury whereby the NJEDA will accept an additional \$15.3 Million from the Coronavirus Relief Fund to further capitalize the Small Business Emergency Assistance Grant Program (Phase 2) and cover associated administrative costs, and be administered as grant funding to eligible entities in specific NJ counties; and to provide delegated authority to the CEO to direct any governmental funding and/or unrestricted gifts or grants that the Authority may accept for the Small Business Emergency Assistance Grant Program (Phase 2) to be administered as grants to eligible entities in specific NJ counties. 3

**MOTION TO APPROVE:** Ms. Bauer       **SECOND:** Ms. Marley                   **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 3**

**ITEM:** Memorandum of Understanding (MOU) for Information Sharing Related to COVID-19 Programs

**FYI ONLY:** The Authority intends to execute a Memorandum of Understanding with the NJ Department of Community Affairs, NJ Department of Environmental Protection, New Jersey Housing and Mortgage Finance Agency, and the New Jersey Redevelopment Authority, whereby the parties will share information regarding applicants for their respective programs to help determine eligibility and to comply with the federal duplication of benefits requirements in connection with administration of funding received through the federal CARES Act.

**ITEM:** Appointment of COVID-19 Accountability Officer

**FYI ONLY:** Appointment of the Authority's COVID-19 Accountability Officer pursuant to the requirements of Executive Order 166 (Murphy 2020).

**AUTHORITY MATTERS**

**ITEM:** Consulting Services for Zero Emission Medium and Heavy-Duty Vehicle (ZE-MHDV) Market Analysis and Program Design

**REQUEST:** To approve entering into a contract to undertake a commercial vehicle electrification market and supply chain analysis and to advise the authority on incentive and program related design.

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Commissioner Angelo      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 4**

**ITEM:** Disparity Study Partnership with Rutgers University for NJ Wind Port Contracting

**FYI ONLY:** The NJEDA will be contracting with Rutgers University to conduct a disparity study to inform the Authority's award of contracts for the New Jersey Wind Port in Salem County.

**INCENTIVES**

**FILM TAX CREDIT**

**ITEM:** South Cape Film, LLC

PROD. #00188027

**MAX AMOUNT OF TAX CREDITS:** \$191,050

**MOTION TO APPROVE:** Mr. Alagia      **SECOND:** Ms. Bauer      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 5**

**LOANS, GRANTS, GUARANTEES**

**Hazardous Discharge Site Remediation Fund (HDSRF)**

**ITEM:** Summary of NJDEP Hazardous Discharge Site Remediation Fund Program projects approved by the Department of Environmental Protection

**MOTION TO APPROVE:** Ms. Rosenblatt      **SECOND:** Ms. Marley      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 6**

**PROJECT:** Camden Redevelopment Agency - Trailways Plus      PROD.#00188328

**LOCATION:** Camden City, Camden County

**PROCEEDS FOR:** Preliminary Assessment, Site Investigation and Remedial Action

**FINANCING:** \$110,345.00

**PROJECT:** Cumberland County Improvement Authority      PROD.#00188266

**LOCATION:** Bridgeton City, Cumberland County

**PROCEEDS FOR:** Remedial Action

**FINANCING:** \$125,005.00

**Petroleum Underground Storage Tank (PUST)**

**ITEM:** Summary of NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program project approved by the Department of Environmental Protection.

**MOTION TO APPROVE:** Ms. Rosenblatt      **SECOND:** Ms. Brennan      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 7**

**PROJECT:** Tomasello Auto Center  
**LOCATION:** Atlantic City, Atlantic County  
**PROCEEDS FOR:** Upgrade, Closure, Remedial Action  
**FINANCING:** \$313,298.54

PROD.#00188264

**BOARD MEMORANDA:**

**FYI ONLY:** Credit Underwriting Delegated Authority Approvals, July 2020  
**FYI ONLY:** Post-Closing Bond Delegated Authority Approval - 2<sup>nd</sup> Quarter, 2020  
**FYI ONLY:** Post-Closing Incentives Delegated Authority Approvals – 2<sup>nd</sup> Quarter, 2020  
**FYI ONLY:** Post-Closing Credit Delegated Authority Approvals – 2<sup>nd</sup> Quarter, 2020

**PUBLIC COMMENT**

There was no public comment.

**EXECUTIVE SESSION**

The next item was to adjourn the public session of the meeting and enter into Executive Session to discuss and receive attorney-client advice regarding a real estate financial project under negotiations where disclosure could adversely impact the public interest.

**MOTION TO APPROVE:** Mr. Quinn      **SECOND:** Ms. Brennan      **AYES: 13**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 8**

Ms. Glover left the meeting at 11:30 am.

The Board returned to Public Session.

**REAL ESTATE:**

**ITEM:** Rents for Tenants in Relation to a Real Estate Project  
**REQUEST:** Approval of rent thresholds for tenants in relation to a real estate project as discussed in Executive Session.  
**MOTION TO APPROVE:** Ms. Marley      **SECOND:** Commissioner Angelo      **AYES: 11**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 9**

Ms. Rosenblatt abstained because the Department of Environmental Protection has pending applications for the New Jersey Offshore Wind Port for review.

**ITEM:** Request for Budget Increase for a Real Estate Project  
**REQUEST:** Approval of a budget increase for a real estate project.  
**MOTION TO APPROVE:** Mr. Dumont      **SECOND:** Mr. Shimko      **AYES: 11**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 10**

Ms. Rosenblatt abstained because the Department of Environmental Protection has pending applications for the New Jersey Offshore Wind Port for review.

There being no further business, on a motion by Mr. Quinn, and seconded by Ms. Bauer, the meeting was adjourned at 11:40am.

Certification:           The foregoing and attachments represent a true and complete summary of the actions taken by the New Jersey Economic Development Authority at its meeting.

  
\_\_\_\_\_  
Danielle Esser, Director  
Governance & Strategic Initiatives



## MEMORANDUM

**To:** Members of the Authority

**From:** Tim Sullivan

**Date:** September 9, 2020

**Re:** September 2020 Board Meeting

As we continue to face the health and economic challenges posed by the coronavirus pandemic, it is important that we make plans to provide long-term support for businesses and workers throughout New Jersey with an emphasis on supporting historically underserved communities. Governor Phil Murphy's proposed budget is a roadmap to a strong, fair recovery that will set New Jersey on the path to not only withstand the COVID-19 pandemic, but also to thrive as we move beyond this tragic episode in our country's history.

As we prepare for the future, the New Jersey Economic Development Authority's (NJEDA) COVID-19 relief efforts continue to provide vital support for businesses impacted by the coronavirus pandemic. Since March, our programs have provided more than \$50 million in relief funding to more than 15,000 businesses across our state, but the need for assistance remains staggering. We saw this recently when we launched our expanded Micro Business Loan Program, which was oversubscribed within 48 hours and received more than 700 applications in just a week.

To meet this need, we recently announced that we will use an additional \$15.3 million in CARES Act funding to provide Small Business Emergency Assistance Grants to businesses in the twelve counties that did not receive direct allocations of federal funds earlier in the pandemic. We will also use a \$10 million CARES Act grant from the US Economic Development Authority (USEDA), to capitalize Phase 2 of our Small Business Emergency Assistance Loan Program. This phase of the program will be structured as a revolving loan fund, which will allow us to reuse this initial grant funding to support increasing numbers of businesses over time.

As more businesses reopen, the need for equitable and reliable access to low-cost personal protective equipment (PPE) for employees will also increase. To help head off PPE shortages and prevent price gouging, we recently launched Phase 1 of the New Jersey Small and Micro Business PPE Access Program. In this phase, the NJEDA will partner with PPE suppliers to provide an online resource where small businesses will be able to learn what equipment they need for their employees and purchase discounted PPE. Going forward, we plan to expand this program to provide incentives for PPE purchases from businesses in historically disadvantaged communities and to provide support for small businesses struggling to afford the PPE they need.

We continue to make progress toward a complete and safe reopening and recovery from the COVID-19 pandemic. Yet despite our progress, there is still much more work to be done to address the economic fallout the virus has caused and to prepare for a robust and equitable recovery. We have succeeded so far because we have been intentional, targeted, and fair in our distribution of



resources and support. As we move into the fall, we remain committed to this approach, and will continue to take the steps necessary to support New Jersey businesses, workers, and communities as they face and overcome the challenges this pandemic has created.

A handwritten signature in black ink, appearing to be "T. A.", is positioned above a solid black horizontal line that serves as a signature line.



**AUTHORITY MATTERS**



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Kevin A. Quinn  
Chairman

**DATE:** September 9, 2020

**RE:** Annual Organizational Meeting

**Summary**

The New Jersey Economic Development Authority's By-Laws provide that an annual reorganization meeting be held in September of each year.

The Members are asked to consider the following recommendations associated with the annual reorganization meeting:

**Officers**

Traditionally, the position of the Board Treasurer has been held by the New Jersey State Treasurer, who serves on the EDA Board in ex-officio capacity. To remain consistent with that practice, it is recommended that the Members approve the position of Board Treasurer to be held by State Treasurer Elizabeth Maher Muoio.

Charles Sarlo has been serving in the role of Vice Chairman, and it is recommended that the Members approve Charles Sarlo to continue to serve in the position of Vice Chairman.

As per the By-Laws, Tim Sullivan, in his role of CEO, will serve as Board Secretary. The By-Laws also authorize the appointment of Assistant Secretaries to the Board to act in place of the Secretary in the Secretary's absence or at the request of the Secretary. It is recommended that the Members approve Chris Baker, Bruce Ciallella, Fred Cole, Lori Matheus, Rich LoCascio, Patience Purdy and Danielle Esser serve as Assistant Secretaries.

**Committees**

Per the By-Laws, the Authority has five committees that meet throughout the year. Additionally, in the wake of the COVID-19 pandemic, the Board authorized the creation of an ad hoc committee known as the COVID-19 Response Committee. I am requesting that the Members approve the following Members or their ex-officio designees to participate in the following committees, with the appointment of individual Members to Chair each committee as indicated:

**NJEDA COMMITTEES AS OF SEPTEMBER 2020**

**AUDIT COMMITTEE**

**Chair:** *Kevin A. Quinn*

**Participants:** Charles Sarlo  
State Treasurer Elizabeth Maher Muoio (or designee)  
Virginia Bauer

**Charge:** The Audit Committee monitors the financial operations of the Authority including the review of the annual operating budget and those responsibilities outlined in the committee Charter. The committee will meet quarterly and at such other times as determined by the Chair.

**DIRECTOR'S LOAN REVIEW COMMITTEE**

**Chair:** *Marcia Marley*

**Participants:** Robert Asaro-Angelo (or designee), Commissioner of the Department of Labor and Workforce Development  
Fred Dumont  
Marlene Caride (or designee), Commissioner of the Department of Banking and Insurance  
State Treasurer Elizabeth Maher Muoio (or designee)  
Rosemari Hicks

**Charge:** The DLRC will meet monthly to review all non-real estate development Authority exposure requests, including, but not limited to, direct and loan guarantee requests.

**REAL ESTATE COMMITTEE**

**Chair:** *Charles Sarlo*

**Participants:** Fred Dumont  
Catherine McCabe (or designee), Commissioner of the Department of Environmental Protection  
State Treasurer Elizabeth Maher Muoio (or designee)  
Robert Shimko

**Charge:** The Real Estate Committee reviews all monthly real estate matters with Authority exposure prior to the Board meeting.

## **POLICY COMMITTEE**

**Chair:** *Kevin A. Quinn*

**Participants:** Charles Sarlo  
State Treasurer Elizabeth Maher Muoio (or designee)  
Marcia Marley  
Virginia Bauer  
Aisha Glover

**Charge:** The Policy Committee provides advice on policy matters, the formulation of the Authority's annual strategic business plan and marketing strategy. The committee will meet monthly and at such other times as determined by the Chief Executive Officer (CEO) in consultation with the Chair.

## **INCENTIVES COMMITTEE**

**Chair:** *Virginia Bauer*

**Participants:** Kevin A. Quinn  
State Treasurer Elizabeth Maher Muoio (or designee)  
Robert Asaro-Angelo (or designee), Commissioner of the Department of Labor and Workforce Development  
Rosemari Hicks

**Charge:** The Incentives Committee will meet monthly to review all significant non-direct exposure incentive requests, including but not limited to tax credits.

## **COVID-19 RESPONSE AD HOC COMMITTEE**

**Chair:** *Aisha Glover*

**Participants:** Kevin A. Quinn  
State Treasurer Elizabeth Maher Muoio (or designee)  
Robert Asaro-Angelo (or designee), Commissioner of the Department of Labor and Workforce Development  
Rosemari Hicks  
Marcia Marley

**Charge:** The COVID-19 Response Committee will meet on a monthly basis, or more frequently if needed, to review all COVID-19 related Authority programs and related board actions to ensure thorough and timely program development and response to support the needs of New Jersey's business community.

**Staff Appointments**

The Members are requested to reaffirm the appointment of Marcus Saldutti as the Authority's Records Custodian and the appointment of Fred Cole as Ethics Liaison Officer.

**Board Schedule**

The Members are requested to approve the attached Calendar of Board Meetings through September 2021.

**Recommendation:**

By resolution, we will be adopting this schedule for the next year's Board meeting dates.

The Members' approval is requested for the following actions: 1) Committee appointments as noted herein; 2) Appointment of the Assistant Secretaries; 3) Election of a Vice Chair and Treasurer; 4) Reaffirmation of the Authority's Records Custodian and Ethics Liaison Officer; and 5) Adoption of the Calendar of Meetings through September 2021.



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Kevin A. Quinn

Attachment

Prepared by: Danielle Esser



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
2020 – 2021**

**BOARD MEETING DATES**

**Wednesday, October 14, 2020**

**Friday, November 13, 2020**

**Tuesday, December 8, 2020**

**Tuesday, January 12, 2021**

**Tuesday, February 9, 2021**

**Tuesday, March 9, 2021**

**Tuesday, April 13, 2021**

**Tuesday, May 11, 2021**

**Tuesday, June 8, 2021**

**Tuesday, July 13, 2021**

**Tuesday, August 10, 2021**

**Tuesday, September 14, 2021\***

**All meetings are held from 10 – 12 Noon via teleconference,  
until further notice.**

**\*Annual Re-Organizational Meeting**

**SCHEDULE IS SUBJECT TO CHANGE**

**OFFICE OF ECONOMIC TRANSFORMATION**



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** September 9, 2020

**SUBJECT:** Offshore Wind Workforce Development Memorandum of Understanding (MOU) — New Jersey Economic Development Authority (NJEDA) and New Jersey Board of Public Utilities (NJBPU)

**REQUEST**

The Members are requested to approve a Memorandum of Understanding (MOU) between NJEDA and NJBPU. This MOU enables NJBPU to provide \$4.5 million in funding to NJEDA to support the development and delivery of workforce development programs that will empower New Jerseyans to participate in the offshore wind industry. There are critical workforce development needs in offshore wind, as outlined in a report released by the Governor’s WIND Council with the recommendation to establish a WIND Institute to coordinate workforce development in the State. These programs, as a precursor to any potential WIND Institute to be established by the legislature, will help New Jersey to achieve its offshore wind goals while also creating new opportunities for New Jersey workers.

**BACKGROUND**

In October 2018, Governor Murphy released the State’s comprehensive economic development plan: The State of Innovation: Building a Stronger and Fairer Economy in New Jersey. As part of this plan, offshore wind was designated as one of the State’s eight strategic focus sectors. In addition, the plan outlined the concept of a New Jersey “WIND Institute” to drive workforce development and research and development in the State.

On April 22, 2020, the Governor’s WIND Council (established through Executive Order No. 79) released its report on the steps necessary for the creation of the WIND Institute. This recommendation fully defined the WIND Institute’s mandate (coordinating and galvanizing workforce and innovation efforts to position New Jersey as a leader in offshore wind) and articulated priorities to support this objective.

To help achieve the goals outlined in the WIND Council Report, NJEDA and NJBPU are proposing a MOU that will provide \$4.5 million in funding from NJBPU to NJEDA. The programs and initiatives supported by this funding will empower New Jersey’s workforce to participate in and help build the State’s offshore wind industry.



**MOU DESCRIPTION**

The MOU will provide \$4.5 million in funding to support NJEDA in launching workforce development solutions that will enable New Jerseyans to participate in the offshore wind industry, as defined in the WIND Council’s report. Specific initiatives to be funded include:

- Execution of a challenge program to develop a Global Wind Organization (GWO) safety training program and facility in New Jersey, the first of its kind in the Mid-Atlantic region (*estimated budget is \$3 million*);
- Development of a best-in-class wind turbine technician training program that will leverage input from industry to shape a curriculum that is delivered by qualified instructors and enables students to build skills on relevant equipment (*estimated budget is \$1 million*);
- Creation of a plan to establish pathways into the offshore wind industry for New Jersey students and workers, driven by a cross-governmental working group to be coordinated by NJEDA (*estimated budget is \$50,000*); and
- Design and delivery of a workforce development seminar that will provide local stakeholder groups, including labor unions, comprehensive high schools, vocational technical schools, colleges, and universities, with insight into the industry’s workforce development needs to empower these stakeholder groups to build relevant workforce solutions (*estimated budget is \$200,000*).

These programs are subject to NJEDA Board approval.

NJEDA staff intends to utilize the funding provided through the MOU as quickly as possible, with the objective of having the monies fully committed via established programs no later than June 30, 2021.

The MOU includes requirements for NJEDA staff to regularly engage and update NJBPU staff on the status of these programs and initiatives.

The MOU also contemplates the NJEDA hiring staff to lead the programs identified in the MOU.

**Recommendation**

It is the recommendation of Authority staff that the Members approve the MOU between NJEDA and NJBPU, attached as Exhibit A, to provide \$4.5 million in funding to NJEDA to support efforts to prepare New Jersey’s workforce to support and participate in the offshore wind industry.



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Tim Sullivan, CEO

Prepared by: Kelli Brown

Attachment: Exhibit A – Proposed MOU for Offshore Wind Workforce Development

Exhibit A

OFFSHORE WIND SECTOR INITIATIVES  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY AND  
THE NEW JERSEY BOARD OF PUBLIC UTILITIES

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this \_\_\_\_\_ day of September 2020 by and between the New Jersey Economic Development Authority (“NJEDA”) and the New Jersey Board of Public Utilities (“NJBPU”). The NJEDA and the NJBPU are collectively referred to herein as the “Parties.”

WHEREAS, the NJEDA is an independent state agency, in but not of the Department of Treasury, that serves as the state’s principal agency for driving economic growth and is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy; and

WHEREAS, the NJBPU general supervision, regulation, jurisdiction, and control over all public utilities in the State, including electric utilities and their rates and service. The law requires the NJBPU to ensure safe, adequate, and proper utility services at reasonable rates for customers in New Jersey; and through the NJBPU Division of Clean Energy (“DCE”), promotes energy efficiency programs and the development of clean, renewable sources of energy including solar, wind, geothermal, combined heat and power (“CHP”) and sustainable biomass. The goal of the DCE is to lower energy costs, reduce demand for electricity, emit fewer pollutants into the air and create jobs. Through its programs, the DCE offers education, outreach and financial incentives to residential, commercial businesses and industry, schools and governmental customers; and

WHEREAS, Governor Murphy released the State’s 2019 Energy Master Plan on January 27, 2020, which set a goal of 100 percent clean energy by 2050 and outlined a strategy to expand the Clean Energy Innovation Economy in New Jersey through workforce training, investments in developing clean energy knowledge, and the growth of world-class research and development; and

WHEREAS, the 2019 Energy Master Plan identifies the offshore wind sector to be critical for accelerating the development of renewable energy and reinforces New Jersey’s commitment to building 7,500 MW of offshore wind by 2035 as defined in Executive Order No. 92; and

WHEREAS, Governor Murphy signed Executive Order No. 79 to establish a Wind Innovation and New Development (“WIND”) Council to develop a plan to create the WIND Institute and, on April 22, 2020, the WIND Council released its report and recommendation for the creation of the WIND Institute to coordinate and galvanize cross-organizational workforce and innovation efforts to position New Jersey as a leader in offshore wind and articulated priorities to support this goal; and

WHEREAS, the NJEDA and NJBPU have a history of partnering with each other in the furtherance of offshore wind economic development and the Parties agree that this MOU will advance implementation of the statewide 2019 Energy Master Plan by progressing against the priorities outlined in the WIND Council’s report; and

WHEREAS, the NJBPU has agreed to provide the NJEDA with \$4.5 million to support NJEDA efforts to develop and deliver programs that will empower New Jerseyans to participate in the offshore wind industry; and

WHEREAS, N.J.S.A. 52:14-1 et seq. authorizes state agencies to enter agreements to provide assistance to each other.

NOW, THEREFORE, it is agreed between NJEDA and NJBPU:

1. DUTIES OF THE PARTIES: To achieve the goals of this MOU, the Parties hereby agree as follows:
  - a. NJBPU will provide to NJEDA \$4.5 million in funding upon execution of this MOU.
  - b. NJEDA will dedicate the funds to support the following proposed offshore wind sector initiatives that it will undertake (“Proposed Programs”), as a precursor to any potential WIND Institute established by the Legislature:
    - i. Execution of a competitive grant solicitation to develop a Global Wind Organization (“GWO”) safety training program and facility in New Jersey;
    - ii. Development of a best-in-class wind turbine technician training program;
    - iii. Creation of a plan to establish pathways into the offshore wind industry for New Jersey students and workers, driven by a cross-governmental working group to be coordinated by NJEDA; and
    - iv. Design and deliver a workforce development seminar that will provide local stakeholder groups with insight into the industry’s workforce development needs to empower these stakeholder groups to build relevant workforce solutions.
  - c. NJEDA has not proposed detailed parameters or specifications for any of the Proposed Programs. Accordingly, If NJEDA chooses to not undertake the Proposed Programs, NJEDA shall notify the NJBPU and may propose amendments to this MOU. The NJBPU may also propose amendments to the Proposed Programs.
  - d. NJEDA may, in its discretion, undertake the Proposed Programs with the assistance of consultants or contractors retained by NJEDA.
  - e. NJEDA staff will, at least quarterly, update and seek input from NJBPU staff on the work plan, development progress, and the drafting of program documents, including, but not limited to, solicitations, request for qualifications/proposals, guidelines/specifications, working group scope, and seminar materials, around the Proposed Programs. These updates shall be timely provided by NJEDA separate from the quarterly updates described in Section 1.f. The first update shall be provided within 90 days of this MOU’s effective date and shall include financial estimates for uses of the dedicated funds.
  - f. NJEDA will provide to NJBPU quarterly updates on the use of funds, including listing all funds used for administration and overhead under Section 3 below along with the specific administration and overhead use.
2. TERM: This MOU shall become effective on the date it is fully executed by both Parties and shall continue for a period of five (5) years. This MOU may be extended only by prior written agreement by the Parties. At the expiration of the MOU, NJEDA will return any unused NJBPU funds remaining after all costs incurred by NJEDA have been paid.
3. ADMINISTRATION EXPENSES: NJEDA may utilize up to \$250,000 of this funding for the costs to hire staff person(s) to lead the Proposed Programs. This will be a one-time cost utilizing the initial \$4.5 million of funding and not an ongoing obligation.
4. SUBJECT TO THE AVAILABILITY OF FUNDING: The funding that NJBPU will provide under this MOU is subject to appropriations and the availability of funds.
5. THIRD-PARTY BENEFICIARIES: This MOU shall not create in any individual or entity the status of a third-party beneficiary and nothing in this MOU shall be construed to create such status.
6. ASSIGNMENT: This MOU shall not be assignable, but shall bind and inure to the benefit of the Parties hereto and their respective successors.

- 7. AMENDMENT: This MOU may be amended, supplemented, changed, modified or altered only by mutual agreement of the Parties in writing.
- 8. TERMINATION: Either party may terminate this MOU upon service on the other party of written notice giving at least 90 days written notice of such intention to terminate. In the event of termination, the Parties agree to conduct a final accounting within 90 days of the termination effective date.
- 9. NOTICE: All correspondence and notices to NJBPU regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Kelly Mooij  
 Director  
 New Jersey Board of Public Utilities  
 44 S. Clinton Avenue, Trenton, NJ 08625

All correspondence and notices to NJEDA regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Kelli Brown  
 Senior Project Officer  
 New Jersey Economic Development Authority  
 36 West State Street, PO Box 990, Trenton, NJ 08625

- 10. This MOU is being entered into for the sole purpose of evidencing the mutual understanding and intention of the Parties.
- 11. The Parties, both entities of the State of New Jersey, are each subject to the New Jersey Tort Claims Act and the New Jersey Tort Claims Fund. This MOU shall be subject to all the provisions of the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.). Therefore, the Parties agree that each entity shall be liable for its own conduct and any claims against it without indemnification from the other party.

IN WITNESS WHEREOF, the Parties have caused this MOU to be signed by their duly authorized representatives or designees to be hereunto affixed the day, month, and year first written above.

For the Economic Development Authority:  
 Development:

For the Board of Public Utilities:

\_\_\_\_\_  
 Tim Sullivan  
 Chief Executive Officer

\_\_\_\_\_  
 Joseph L. Fiordaliso  
 President

\_\_\_\_\_  
 DATE

\_\_\_\_\_  
 DATE



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** September 9, 2020

**SUBJECT:** Clean Energy Memorandum of Understanding (MOU) — New Jersey Economic Development Authority (NJEDA) and New Jersey Board of Public Utilities (NJBPU)

**Request**

The Members are requested to approve a Memorandum of Understanding (MOU) between NJEDA and NJBPU. This MOU enables NJBPU to provide funding of \$1.250 million to support the development and delivery of a cleantech seed grant program and a cleantech R&D asset voucher program, both important steps to expand the State’s cleantech ecosystem. These initiatives will help to expand New Jersey’s clean energy economy to create new opportunities for local workers and companies, as well as help the State to meet its climate goals.

**Background**

In October 2018, Governor Murphy released the State’s comprehensive economic development plan: The State of Innovation: Building a Stronger and Fairer Economy in New Jersey. Governor Murphy then released the state’s Energy Master Plan in January 2020, setting a goal of 100 percent clean energy by 2050 and outlining a strategy to expand the Clean Energy Innovation Economy in New Jersey. The Energy Master Plan sets a vision for New Jersey to build on its clean energy economy foundations to drive growth through workforce development, clean energy finance solutions, and investments in innovative research and development programs. The programs and initiatives supported by this funding will expand and strengthen New Jersey’s Clean Energy Innovation Economy.

**MOU Descriptions**

The MOU will provide \$1.250 million in funding to bolster NJEDA’s work to support early-stage, New Jersey-based cleantech companies. Specific initiatives to be funded include:

- Development of a seed grant program that will aid local cleantech businesses during critical proof of concept and prototyping stages, empowering them to attract outside investors and begin generating revenue (*estimated budget is \$800,000*); (Note: given that this program targets very early stage companies, NJEDA will coordinate with the New Jersey Commission on Science, Innovation, and Technology on this program); and
- Execution of a research and development asset mapping and voucher initiative to increase

awareness, access, and utilization of the State's cleantech innovation-related assets  
(estimated budget is \$450,000).

Initiatives outlined in the MOU, including program design and budget, are subject to NJEDA Board approval.

NJEDA staff intends to utilize the funding provided through this MOU as quickly as possible, with the objective of having the monies fully committed via established programs no later than June 30, 2021.

The MOU includes requirements for NJEDA staff to regularly engage and update NJBPU staff on the status of these programs and initiatives.

The MOU also contemplate the NJEDA utilizing up to 5% of the \$1.250 million to support the administrative, personnel, and overhead costs of running the programs. This will be a one-time cost utilizing the initial \$1.250 million of funding and not an ongoing obligation.

**Recommendation**

It is the recommendation of Authority staff that the Members approve the MOU between NJEDA and NJBPU, attached as Exhibit A, for NJBPU to provide a total of \$1.250 million in funding to NJEDA to support efforts to expand and strengthen New Jersey's Clean Energy Innovation Economy through targeted cleantech ecosystem development programs and initiatives.



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Tim Sullivan, CEO

Prepared by: Pallavi Madakasira

Attachments:

- Exhibit A – Proposed Memorandum of Understanding for Cleantech Ecosystem Development

Exhibit A

CLEAN ENERGY AND CLEAN TECH INNOVATION  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY AND  
THE NEW JERSEY BOARD OF PUBLIC UTILITIES

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this \_\_\_\_\_ day of September 2020 by and between the New Jersey Economic Development Authority (“NJEDA”) and the New Jersey Board of Public Utilities (“NJBPU”). The NJEDA and the NJBPU are collectively referred to herein as the “Parties.”

WHEREAS, the NJEDA is an independent state agency, in but not of the Department of Treasury, that serves as the state’s principal agency for driving economic growth and is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy; and regulated utilities, including the development of clean, renewable sources of energy; and

WHEREAS, the NJEDA has an existing Memorandum of Understanding related to entrepreneurial program development and execution with the New Jersey Commission on Science, Innovation, and Technology (“NJ CSIT”), an independent commission, in but not of Treasury, that focuses supporting early state entrepreneurship and innovation ecosystem building within the State; and

WHEREAS, the NJBPU is the state agency with authority to oversee the general supervision, regulation, jurisdiction, and control over public utilities in the State, including electric utilities and their rates and service. The law requires the NJBPU to ensure safe, adequate, and proper utility services at reasonable rates for customers in New Jersey; and through the NJBPU Division of Clean Energy (“DCE”), promotes energy efficiency programs and the development of clean, renewable sources of energy including solar, wind, geothermal, combined heat and power (“CHP”) and sustainable biomass. The goal of the DCE is to lower energy costs, reduce demand for electricity, emit fewer pollutants into the air and create jobs. Through its programs, the DCE offers education, outreach and financial incentives to residential, commercial businesses and industry, schools and governmental customers; and

WHEREAS, Governor Murphy released the state’s 2019 Energy Master Plan on January 27, 2020, which set a goal of 100 percent clean energy by 2050 and outlined a strategy to expand the Clean Energy Innovation Economy in New Jersey through workforce training, investments in developing clean energy knowledge, and the growth of world-class research and development; and

WHEREAS, the 2019 Energy Master Plan recognizes that supporting clean energy and clean tech innovation aligns with two of the Administration’s top priorities of:

- i. Ensuring that New Jersey achieves 100% carbon free electricity and an 80% carbon footprint reduction by 2050, while simultaneously addressing long-standing environmental justice issues; and
- ii. Restoring New Jersey’s leadership as the most diverse and inclusive innovation ecosystem in the United States (“New Jersey’s Clean Energy and Clean Tech Ecosystem”); and

WHEREAS, the NJEDA and NJBPU have a history of partnering with each other in the furtherance of clean energy and clean tech innovation and the Parties agree that this MOU will advance implementation of the statewide 2019 Energy Master Plan; and

WHEREAS, the NJBPU has agreed to provide the NJEDA with \$1.250 million in Clean Energy funding to execute programs that strengthen the state's Clean Energy and Clean Tech Ecosystem and encourage the continued development and growth of the green workforce and economy focusing on innovation; and

WHEREAS, N.J.S.A. 52:14-1 et seq. authorizes state agencies to enter into agreements to provide assistance to each other.

NOW, THEREFORE, it is agreed between NJEDA and NJBPU:

1. DUTIES OF THE PARTIES: To achieve the goals of this MOU, the Parties hereby agree as follows:
  - a. NJBPU will provide to NJEDA \$1.250 million in Clean Energy and Clean Tech funding upon execution of this MOU.
  - b. NJEDA will utilize this funding to execute programs, in conjunction with the NJ CSIT, that support the growth and development of New Jersey's Clean Energy and Clean Tech Ecosystem. Specifically, the funds will support the following initiatives ("Proposed Programs"):
    - i. A seed grant program to support research and development ("R&D") activities for very early-stage, NJ-based clean tech companies. These grants will aim to enable businesses to continue their work into the proof of concept and prototyping stages, at which point they can more readily attract outside investors and, in some cases, begin to generate revenue. Given the early-stage nature of this ecosystem building activity, NJEDA will execute this program in conjunction with the NJ CSIT. While the NJEDA will work to launch this initiative at the earliest, NJEDA anticipates the seed grant program to launch by December 1, 2020, target awards by March 31, 2021 and be disbursed by June 30, 2021. A clean tech R&D asset mapping and voucher initiative to increase awareness, access, and utilization of the State's physical clean tech innovation-related assets such as testing equipment and specialized fabrication equipment. This initiative would launch an effort to inventory the relevant R&D assets and help facilitate greater third-party access by encouraging more standardized approaches to pricing, certifications/training, and usage agreements. Additionally, the initiative will develop a platform to make relevant asset-sharing information readily accessible to interested individuals and businesses in order to increase access to technology such as testing equipment and specialized fabrication equipment. NJEDA would help stimulate the asset-sharing marketplace by subsidizing the cost of a third party's access to specific R&D assets through a voucher program. NJEDA may partner with the NJ CSIT on this initiative. NJEDA may partner with the NJ CSIT on this initiative. While the NJEDA will work to launch this initiative at the earliest, NJEDA anticipates the asset mapping and voucher initiative to launch by January 31, 2021 and be disbursed by June 30, 2021.
  - c. NJEDA will provide to NJBPU quarterly updates on the use of funds. NJEDA will target to launch the programs and utilize the funds no later than June 30, 2021.
  - d. NJEDA has not proposed detailed parameters or specifications for any of the Proposed Programs. Accordingly, if NJEDA chooses to not undertake the Proposed Programs by its target date of June 30, 2021, NJEDA shall notify the NJBPU and may propose amendments to this MOU.
  - e. NJEDA may undertake the Proposed Programs with the assistance of consultants or contractors retained by NJEDA.
2. TERM: This MOU shall become effective on the date it is fully executed by both Parties. This MOU, unless terminated sooner as set forth in Paragraph 9, shall remain in effect for (5) years from the execution of this MOU.



3. ADMINISTRATION FEE: NJEDA may utilize up to 5% of the \$1.250 million to support the administrative, personnel, and overhead costs of running the programs. This will be a one-time cost utilizing the initial \$1.250 million of funding and not an ongoing obligation
4. SUBJECT TO THE AVAILABILITY OF FUNDING: The funding that NJBPU will provide under this MOU is subject to appropriations and the availability of funds.
5. THIRD-PARTY BENEFICIARIES: This MOU shall not create in any individual or entity the status of a third-party beneficiary and nothing in this MOU shall be construed to create such status.
6. ASSIGNMENT: This MOU shall not be assignable, except for the NJEDA's ability to partner and/or assign their responsibilities to NJ CSIT, but shall bind and inure to the benefit of the Parties hereto and their respective successors.
7. DISPUTE: If there are any disputes among the Parties concerning this MOU, the President of NJBPU and the CEO of NJEDA, or their authorized representatives, shall confer to resolve the dispute.
8. AMENDMENT: This MOU represents the entire and integrated agreement between the Parties and supersede any and all prior agreements or understandings (whether or not in writing). This MOU may be amended, supplemented, changed, modified or altered only by mutual agreement of the Parties in writing.
9. TERMINATION: Either party may terminate this MOU upon service on the other party of written notice giving at least 90 days written notice of such intention to terminate. In the event of termination, the Parties agree to conduct a final accounting within 90 days of the termination effective date.
10. NOTICE: All correspondence and notices to NJBPU regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Kelly Mooij  
Director, Division of Clean Energy  
New Jersey Board of Public Utilities  
44 S. Clinton Avenue, Trenton, NJ 08625

All correspondence and notices to NJEDA regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Pallavi Madakasira  
Director, Clean Energy Sector Lead  
New Jersey Economic Development Authority  
36 West State Street, PO Box 990, Trenton, NJ 08625

11. This MOU is being entered into for the sole purpose of evidencing the mutual understanding and intention of the Parties.
12. The parties, both entities of the State of New Jersey, are each subject to the New Jersey Tort Claims Act and the New Jersey Tort Claims Fund. This MOU shall be subject to all the provisions of the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.). Therefore, the Parties agree that each entity shall be liable for its own conduct and any claims against it without indemnification from the other party.

IN WITNESS WHEREOF, the Parties have caused this MOU to be signed by their duly authorized representatives or designees to be hereunto affixed the day, month, and year first written above.

For the Economic Development Authority:  
Development:

For the Board of Public Utilities:

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Tim Sullivan  
Chief Executive Officer

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Joseph L. Fiordaliso  
President

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DATE

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DATE

**TECHNOLOGY BUSINESS TAX CERTIFICATE  
TRANSFER PROGRAM**

Under Legal Review



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** September 9, 2020

**SUBJECT:** Technology Business Tax Certificate Transfer (NOL) Program:  
2020 Program – COVID-19 Modifications – Notice of Rule Modifications

**REQUEST**

The Members are requested to approve two modifications of the rules pursuant to Executive Order 103 (Murphy 2020) (“EO 103”) for the Technology Business Tax Certificate Transfer (NOL) Program. The first modification shortens the appeals process. The second revises the requirement for an employee to spend 80 percent of his or her time in New Jersey to reflect Executive Order 107 (Murphy 2020) (“EO 107”).

Please note these requested changes are being presented to the Authority’s board prior to the program application deadline of September 30, 2020 to provide notice of this change to all potential applicants prior to program application deadline.

**OVERVIEW**

On March 9, 2020, Governor Phil Murphy issued EO 103, declaring a State of Emergency and a Public Health Emergency to ramp up New Jersey’s efforts to contain the spread of COVID-19. Section 6 of EO 103 authorizes agencies to waive, suspend, modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary.

On March 21, 2020, Governor Murphy issued EO 107, generally announcing a statewide stay at home order and closure on all non-essential retail business, requiring all employers to offer work-from-home wherever practicable, and directing all residents to abide by social distancing practices (“EO 107 Measures”). Subsequent containment measures were announced and are continuing to be announced.

Under Legal Review

On June 30, 2020, Governor Murphy signed Executive Order 159 (“EO 159”) extending certain statutory deadlines across state government. This included an extension to the Technology Business Tax Certificate Transfer (NOL) Program application deadline and the date by when the employee requirement must be satisfied from June 30, 2020 to September 30, 2020. The (NOL) Program allows technology and biotechnology companies with fewer than 225 employees in the U.S. and with certain minimum number of full-time employees in the State to sell their net operating losses and/or research and development tax credits to profitable corporate entities. EO 159 recognized the need of small businesses impacted by the health crisis to have an additional three months to complete their application and meet the program requirements.

### **BACKGROUND- Appeals Timeline**

This year marks the 22nd anniversary of the Technology Business Tax Certificate Transfer (NOL) Program. EO 159 sought to address the economic impact of COVID-19 upon small business with regard to the NOL program by extending the application and employee requirement deadlines. The extensions benefitted potential NOL applicants in two ways. First, companies have more time to meet the minimum employment requirements as many employers required short term cash relief and furloughed employees; hence limiting their ability to meet the program’s minimum employment requirements. Secondly, the EO allowed extra time for companies to secure outside accounting firms to prepare third party financial statements. Without any changes to the existing rules, the extension to the application deadline also moves back the date by when these companies will receive funding during these very turbulent financial times.

Prior to the initial application deadline of June 30<sup>th</sup>, 2020 and the issuance of Executive Order 159 on the evening of June 30<sup>th</sup>, 44 program applicants were received. Those 44 companies are all experiencing losses and in desperate need for the NOL program proceeds and applied without the expectation of an extension. Assuming past trends continue this year, Authority Staff does not anticipate a large number of additional applications to the 2020 program, given the average number of historical applications has been around 52 per year. Because of the additional time afforded by the deadline extension and the unique pressures on small business due to the public health emergency, Authority Staff is currently reviewing the 44 applications extended deadline and plans to inform applicants of any missing documents or shortcomings that the company can rectify prior to the September 30 deadline. Staff anticipates that this process will eliminate any appeals due to missing or incomplete documents. The remaining applications that come in September 30<sup>th</sup> will then be reviewed and the companies will be informed in advance of Staff’s proposed recommendation to the Board. Thus, if Staff plans to recommend a declination, the company will have ample time to prepare for an appeal (9/30 application deadline to anticipated 11/13 Board meeting for the initial Board decision).

Based on the above process, particularly the early communication to applicants, and the urgent need for funding for these companies due to the COVID-19 pandemic, Staff considers that shortening the appeals process is essential and reasonable for this year. Staff recommends shortening the time in which a company can appeal from 20 days to 5 days, consistent with the time to appeal in other EDA COVID-19 emergency programs. Staff anticipates that this would allow for the appeals to be presented to the Board a month earlier (December 2020 vs January 2021), thus giving some expediency in funding. Additionally, staff recommends revising language

Under Legal Review

to reflect that pursuant to the EDA Act, the Governor may decide to expedite the effectivity of an EDA Board action by approving the action during the 10-business day Governor veto period.

This memo has attached the proposed form of Notice of Rule Waiver/Modification/Suspension required by EO 103 with the specific rule modification to N.J.A.C. 19:31-12.6. Staff recommends that this rule modification be in effect for the 2020 program year only, that is, until the earlier of December 31, 2020 or the end of EO 103.

### **BACKGROUND- Employment**

Additionally, a modification is necessary to reflect the Governor's EO 103 declaring a public health emergency and requiring employees to shelter at home to contain the spread of the virus. Per the program legislation, to be considered an employee for the program, an employees must satisfy the definition of "full-time employee," which generally means a person working for at least 35 hours a week (or other standard of service generally accepted by custom or practice as determined by EDA) and whose wages or income is subject to payment of estimated taxes according to the New Jersey Gross Income Tax Act. Additionally, the full-time employee must be "working in this State."

The program rules define a "full-time employee working in this State" as:

*a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.*

Historically when reviewing program applications, Authority Staff have only counted those employees who can demonstrate evidence of meeting the requirement of spending "80 percent of his or her [work] time in New Jersey". Pennsylvania residents have never been counted, as the PA/NJ Reciprocal Income Tax Agreement prohibits them from meeting "whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1".

With the onset of COVID-19 and in compliance with the EO 107 Measures, many employees who would be going into their respective New Jersey offices have been working from home. Thus, for the 2020 Program year, and consistent with emergency rule modifications for the Grow NJ and HUB programs, Authority Staff recommends a rule modification that recognizes that but for the COVID-19 pandemic and the EO 107 Measures, EDA would have counted certain out-of-State residents as eligible employees. This can be demonstrated through past evidence that the employee commuted to a New Jersey workplace and that the employee resides in the same location and reports to the same office, or through evidence that the employees (excluding Pennsylvania residents due to the tax agreement) live within reasonable proximity of New Jersey as defined by a 90 minute commutable distance to their assigned NJ office. The proposed modification surrounding employment eligibility only impacts the 2020 NOL program eligibility as outlined herein and does not impact or effect any ruling, decision, or determination from taxation regarding place of employment and applicable tax rates.

Under Legal Review

The attached proposed form of Notice of Rule Waiver/Modification/Suspension required by EO 103 also contains the specific rule modification to N.J.A.C. 19:31-12.2. Staff recommends that this rule modification be in effect while the EO 107 Measures or other similar measures are in effect but no later than the end of EO 103.

**RECOMMENDATION:**

Staff recommends two rule modifications pursuant to Executive Order 103 (Murphy 2020) (“EO 103”) for the Technology Business Tax Certificate Transfer (NOL) Program. First, the time for applicants to appeals is to be shortened from 20 days to 5 days. Second, consistent with Executive Order 107 (Murphy 2020) (“EO 107”), the requirement for a full-time employee to work “80 percent of his or her time in New Jersey” is modified to accept documentation that the employee would have worked in NJ but for the COVID-19 pandemic and the mitigation measures required in the EO 107.



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Tim Sullivan, CEO

Prepared by: Matthew Fields

Under Legal Review

**STATE OF NEW JERSEY**  
**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**  
**NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION**  
**PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY)(MARCH 9, 2020)**  
**COVID-19 STATE OF EMERGENCY**

Temporary Rule Modification adopted by the Members of the New Jersey Economic Development Authority

Date: September 9, 2020

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy)(“EO 103”)

Effective Date: 9/30/2020

Expiration Date:

- Modification to N.J.A.C. 19:31-12.2: the earlier of the end of the containment measures in Executive Order 107 (Murphy 2020) or the end of EO 103.
- Modification to N.J.A.C. 19:31-12.6: the earlier of December 31, 2020 or the end of EO 103.

This is an emergency adoption of a temporary rule modification of the Technology Business Tax Certificate Transfer (NOL) Program rules at N.J.A.C. 19:31-12.2 and N.J.A.C. 19:31-12.6. Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the New Jersey Economic Development Authority (NJEDA) is modifying its rules as follows:

The NOL Program functions on an annual cycle, in which applications are statutorily required on June 30 of each year. Generally, the NJEDA Board approves or declines applications a few months after that date and hears any appeals the following month. Approved applicants typically sell the amount of tax benefits approved for transfer at the beginning of the following year.

To provide adequate time for small businesses coping with the ongoing impact of the COVID-19 pandemic and the containment measures on small businesses to apply and qualify for the NOL Program, Executive Order 159 (2020) extended the deadline (and the date by when the employment requirements of the program must be satisfied) to September 30 for this year’s cycle. However, without any changes to the existing rules, the extension to the application deadline also



Under Legal Review

moves back the date by when these companies will receive funding during these very turbulent financial times. In order to expedite the time by when approved applicants can close on the sale of their approved tax benefit certificates, EDA is shortening the time in which to appeal from 20 days to 5 days. EDA also anticipates informing applicants in advance of the result of staff review of the applications. Additionally, EDA is amending the rule to reflect the possibility of early approval of EDA Board's actions with regard to NOL Program applications, as authorized by the N.J.S.A. 34:1B-4(i).

Additionally, EDA is modifying the NOL Program rule that requires a full-time employee to spend "80 percent of his or her time in New Jersey" to reflect that certain out-of-State residents can no longer work in New Jersey offices due to the containment measures required by Executive Order 103 (202), which generally required employees to shelter at home to contain the spread of the virus. The rule modification allows a full-time employee to count toward the NOL Program requirement if the applicant documents that the applicant could not continue regular office employment so as to comply with restrictions required by the Governor.

Full Text of the proposed modifications follows

19:31-12.2 Definitions

...  
"Full-time employee working in this State" means a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey, [or] who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority, **or for whom the applicant demonstrates to the Authority's satisfaction that the applicant is unable to continue regular employment to comply with any restrictions ordered by the Governor during a period of emergency declared by the Governor.**

...  
19:31-12.6 Approval process

(a) – (b) (No change.)

(c) The members' action is effective 10 working days after the Governor's receipt of the minutes, provided no veto has been issued, **or upon approval by the Governor of the Authority's action.**

(d) An applicant may appeal the Board's action by submitting in writing to the Authority, within [20] **5** days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. The Authority cannot consider any new evidence or information about the project other than evidence or information that would demonstrate that the applicant met all of the application criteria by the **September** [June] 30 deadline.

Under Legal Review

At its September 9, 2020 meeting, the Members of the NJEDA found that modifications of the rules above are necessary because enforcement of the existing rules would be detrimental to the public welfare during this emergency.

September 9, 2020

\_\_\_\_\_  
Date



\_\_\_\_\_  
Tim Sullivan

## **INCENTIVE PROGRAMS**

**GROW NEW JERSEY ASSISTANCE PROGRAM (GROW NJ)  
MODIFICATIONS**



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** September 9, 2020

**SUBJECT:** Nuts.com, Inc. (“Nuts.com”)  
\$9,600,000 Grow NJ - Modification

**Request:**

Because of the reduction of eligible jobs from 150 to 55, approval is requested from the Members to affirm that the project has not otherwise materially changed to allow staff to complete its certification of project completion. Additionally, as staff is still reviewing the job certification and the number of jobs may still be reduced, staff requests delegated authority to approve a further 10% reduction from the current number of 55(6).

All other terms and conditions of the Grow NJ award will be consistent with the current approval.

**Background:**

Nuts.com is an online and offline retailer, wholesaler, and manufacturer of nuts, dried fruit, chocolates, seeds, spices, coffee and tea, and gifts.

On June 13, 2017, EDA’s Board approved Nuts.com for a \$9,600,000, 8-year Grow NJ award to incent 150 new jobs. Statewide employment, which per the Grow NJ regulations does not include retail jobs, was 158. The qualified business facility (“QBF”) is a non–industrial 24,372 sf office, technology and product development space located in Jersey City which required a minimum capital investment of \$974,880. Nuts.com anticipated to expend \$3,142,487 in capital investment.

On January 28, 2020, Nuts.com submitted certification of its project completion. The independent CPA certified the company made \$4,167,210 in eligible capital investment. Staff reduced the CPA certified eligible capital investment by \$1,288,669 which were costs deemed to be ineligible for the project. The reduced amount of \$2,878,541 although 8% less than the originally anticipated eligible capital investment of \$3,142,487 still exceeds the minimum requirement of \$974,880. The company certified it created 55 of the 150 anticipated new full-time jobs, which exceeds the program minimum of 10 new jobs. The company certified a median salary of \$65,000, which does not exceed the Hudson county median salary of \$53,560 by 35% thus, resulting in a loss of the \$250 salary bonus.

During a conference call with staff, Jeff Braverman, CEO of Nuts.com, attributed the reduction of jobs to competition with the marketing search ads for new customers. Nuts.com has put together a marketing team to put together a comprehensive strategic plan moving forward. Staff informed the company that if the statewide employment in any tax period is below 80% of the statewide employment as of the last tax period prior to the initial Board approval, Nuts.com would forfeit the tax credit for that tax period and each subsequent tax period until the first tax period in which statewide employment has been restored. In addition, if the full-time employment at the QBF drops below 80% of the eligible Grow Jobs in the project certification, Nuts.com would forfeit the tax credit for that tax period and each subsequent tax period until the first tax period in which Grow Jobs has been restored.

Based on the \$2,878,541 of certified capital investment and the 55 new jobs, as well as the loss of the jobs with salary in excess of county average bonus, the amount of the Grow NJ award will be reduced to \$3,410,000. Since jobs were reduced by more than 25% from what was approved, the net benefit to the State over 20 years was recalculated using the current net benefit model. Although the net benefit to the State over 20 years (net of award) was reduced from \$14,561,963 to \$5,221,399, the project continues to satisfy program requirements of being 110% of the award. If the Board approves, staff expects to make its final decision on the approval of the project completion certification by the end of 2020 to afford the company with a 2020 vintage tax credit certificate, but in no event will said decision be later than the 4-year expiration of the award on June 13, 2021.

Staff requests that the Board agree that, other than as described in this memorandum, the Grow NJ award has not materially changed since the company expended \$2,878,541 in capital investment at the approved QBF, the company continues the operations as described to the Board at approval, the company created jobs at the QBF, and the project continues to satisfy 110% net benefit to the State.

#### **SUMMARY OF PROJECT CHANGES**

	<b>At Approval</b>	<b>At Certification</b>
<b>Proposed/Actual Jobs:</b>	150 (New) 0 (Retained)	55 (New) 0(Retained)
Eligible Min. New Jobs	10	10
Eligible Min. Retained Jobs	0	0
Eligible Min. Cap-Ex	\$974,880	\$974,880
Anticipated/Actual Cap-Ex	\$3,142,487	\$2,878,541
<b>Base Amount:</b>	<b>\$5,000</b>	<b>\$5,000</b>
<b>Bonus Increases:</b>		
Transit Oriented Development	\$2,000	\$2,000
Jobs w/Salary in Excess of County Average	\$250	\$ 0
Targeted Industry (Manufacturing)	\$500	\$500
Exceeds LEEDs Silver	\$250	\$250
<b>Total Amount per Incented Employee</b>	<b>\$8,000</b>	<b>\$7,750</b>

<b>Annual Award:</b>		
New:	150 x \$8,000= \$1,200,00	55 x \$7,750= \$426,250
Retained:	N/A	N/A
Total:	\$1,200,000	\$426,250
<b>Total Award:</b>	\$9,600,000	\$3,410,000
<b>Gross Benefit to the State (over 20 years)</b>	\$24,161,963	\$7,846,726
<b>Net Benefit to the State (over 20 years, Net of award)</b>	\$14,561,963	\$5,221,399

**Recommendation:**

Because of the reduction of eligible jobs from 150 to 55, approval is requested from the Members to affirm that the project has not otherwise materially changed to allow staff to complete its certification of project completion. Additionally, as staff is still reviewing the job certification and the number of jobs may still be reduced, staff requests delegated authority to approve a further 10% reduction from the current number of 55 (6).

All other terms and conditions of the Grow NJ award will be consistent with the current approval.




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Tim Sullivan, CEO

Prepared by: Thomas McCusker



**MEMORANDUM**

To: Members of the Authority

From: Tim Sullivan  
Chief Executive Officer

Date: September 9, 2020

SUBJECT: ResinTech Inc. and Affiliates P42319; Grow NJ COVID-19 Related Extension Application

**Request:**

Consent to grant an COVID-19 Related Extension of the Project Certification Deadline from October 20, 2020, to the 1<sup>st</sup> Six Months after the Emergency.

**Background:**

On October 14, 2016, ResinTech was approved for \$138,817,600 to incent 92 retained and 173 new jobs at an industrial facility in Camden. The applicant executed the Incentives Agreement for the size of the Qualified Business Facility to be 338,359 square feet. The project is comprised of two buildings housing offices, lab, warehouse, and manufacturing spaces, one at 1600 River Ave referred to as ActionPak and the other at 1801 Federal Street referred to as ResinTech.

**ActionPak Building**

The ActionPak Building (1600 River Ave) was substantially completed in May. Substantial completion enabled the company to receive a Temporary Certificate of Occupancy (TCO) which enabled them to install equipment and move people into the facility. The ActionPak building is currently in operation, with an estimated \$50.4 million in capital investment to date and approximately 183,000 square feet.

**ResinTech Building**

The ResinTech Building (1801 Federal Street) was substantially completed in July, for Warehouse and Office only. The manufacturing section will be substantially completed in September. The ResinTech building has experienced a series of delays in recent months, which are described in detail below, has spent an estimated \$88.4 million in capital investment there to date and is approximately 160,000 square feet.

Between the ActionPak and ResinTech buildings, approximately 191 employees have been hired and are already in place, 124 of which are New and 67 are Retained. In addition, the company has CO's for approximately 55% of the total square footage and TCO's for approximately 27%.

The Economic Opportunity Act of 2013 ("EOA 2013") (as amended in 2017) provides that projects must evidence that investment and employment requirements at the Qualified Business Facility ("QBF") are met within three years of the date of Board approval. The law further allows for two six-month extensions at the discretion of the Authority, which are currently approved through delegated authority.



In response and recognition of the current State of Emergency declared in Executive Order 103 (Murphy 2020) (“Emergency”), P.L. 2020, c. 8 (approved March 20, 2020) amended the Grow NJ law to allow for an extension by the Authority’s Chief Executive Officer for the lesser of six months or the end of the emergency, then up to two further six-month extensions after the conclusion of the Emergency by the Board under certain circumstances (each a “COVID-19 Related Extension”). To be considered for a COVID-19 Related Extension, the Grow recipients must have already been allowed and approved for the first two six-month extensions as permitted in EOA 2013 (as amended in 2017) and must evidence the following to the satisfaction of the Authority:

1. The COVID-19 Related Extension is due to the economic disruption caused by the Emergency or related Public Health Emergency;
2. The project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;
3. The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification;
- and 4. The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay.

ResinTech has been able to maintain employment levels to date. During the height of the crisis, any employee that could work from home was required to work from home. All office employees worked from home from March-June. This mitigated potential sources of infection for those employees who needed to work in production on site in the manufacturing plant and warehouse. As the company prepared to move to Camden, it instituted a mandatory mask policy for office workers as well. The Company provided free masks and increased training for all employees on the importance of maintaining distance and for regular hand washing. For onsite production employees, the company took extra precautions such as mandating masks if unable to social distance, preventing employees from congregating inside – especially in common areas, distributing free hand sanitizer, eliminating employee travel, and stopping all visitors from coming to the building. The company has required employees to stay on the same shifts and staggered schedules, so that if there was an outbreak, it would be contained to a single shift.

ResinTech Inc. has applied for a six-month COVID-19 Extension to extend its project completion certification from October 20, 2020, to the 1<sup>st</sup> Six Months after the Emergency. The below information provides the Applicant’s evidence to support the four criteria discussed above.

### **Analysis and Discussion**

#### **1. The COVID-19 Related Extension is due to the economic disruption caused by the Emergency or related Public Health Emergency:**

The COVID-19 pandemic has caused disruption to suppliers around the globe, which has delayed the delivery of various equipment. Specifically, ResinTech’s vendor of tanks, has experienced slowdowns in production as well as disruptions in distribution of finished product (additional details provided below). These tanks are an important component of the facility and the delay in receipt has pushed back ResinTech’s anticipated date of project completion. In addition, the delay in completing the purchase of various goods and services has pushed back the ability to document and certify related costs to EDA.

#### **2. The project is delayed due to unforeseeable acts related to the project beyond the eligible business’s control and without its fault or negligence**

The project’s completion has been delayed by several factors including delays due to Construction, Jobs, and Equipment/Machinery Installation. While the certification process itself is not delayed, payment of final invoices for submission will be delayed, which will impact the timing of the final certification.

COVID-19 and States of Emergency in Pennsylvania and India are causing unforeseen delays. Tanks that are critical to ResinTech's production process were supplied by a couple of manufacturers in India. India had been shut down for 5-6 weeks which delayed ResinTech's purchase of the tanks. Subsequently, there was a backlog at the ports, which will further delay the tanks getting to the new facility until September 2020. Similarly, furniture for the Company's offices and chemical labs were being manufactured in Pennsylvania. Those businesses were deemed non-essential and have only recently been able to resume work on the necessary materials.

ResinTech also experienced a delay from the local utility to get power to the plant to support contractor work. ResinTech's general contractor provided a detailed explanation for many of these delays, as well as a revised timeline for completion. Delays in any part of the construction have resulted in other delays (i.e., impacts on getting equipment installed results in delays starting up manufacturing lines, which in turn delays hiring new employees, etc.).

**3. The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification**

Outside of the outlined delays, the project is generally continuing on schedule. Absent the COVID-19 emergency, the originally anticipated completion date for the project was July 8, 2020 and that date would have allowed the Company to certify timely. The Company expects to receive the final Certificate of Occupancy by the end of September 2020. Many of the tanks and pipes for the production process have already been installed. The Company and its contractors are making as much progress as they can with the materials that have been able to be delivered to the site, while ensuring the safety of all contractor employees on site. The parties have been in contact with vendors across the globe to help them overcome logistical issues so that their supplies can reach the site in a timely manner. In some instances, they have even agreed to pay additional shipping/freight costs so that deliveries could continue during interruptions from COVID-19. EDA Staff has received copies of letters from two of the suppliers in India discussing how the pandemic has caused delays in their production and shipping. Other vendors were delayed, but those shipments have arrived since the outbreak began. EDA Staff has also received supporting shipping documents for products which have been ordered and shipped, with new or estimated delivery dates.

**4. The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay**

In addition to the steps which have been discussed above, and in the general contractor's letter sent to ResinTech, the Company has also worked with the City of Camden to facilitate construction continuing in all areas possible.

Staff spoke with the Company's CEO and CFO on July 23, 2020, to obtain a clearer picture of where the construction process is and the new estimate for project completion. The Company expects to come in a little less than originally budgeted for the project, but within the accepted margin of difference. We were also provided with a virtual tour of the facility, both inside and out. All equipment and piping are expected to be on site, and installed by September/October 2020, and the latest estimate by the Company is that the project should be fully completed by the end of November 2020.

**Recommendation**

Consent to grant an extension of the Project Certification Deadline, from October 20, 2020, to the 1<sup>st</sup> Six Months after the Emergency.



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Tim Sullivan, CEO

Prepared by: Mark Chierici

**FILM TAX CREDIT PROGRAM**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

**APPLICANT:** Bruised Film Holdings, Inc.

PROD-00188081

**APPLICANT BACKGROUND:**

Bruised Film Holdings, Inc. is the production company responsible for “Bruised”, a powerful love story of a young boy who saves his mother and in turn, a mother who saves her son. The film captures the vibrant pulse and diversity of the Newark, New Jersey ghetto, and the thrill of an unforgettable female underdog wrestling for her future survival.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$12,507,771
B. Total Post-Production Expenses	\$820,176
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$9,936,896
Percentage Calculation = C/(A-B)	85.02%
<b>Criterion Met</b>	<b>Yes</b>

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the

production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Total Qualified Film Production Expenses incurred in NJ in two privilege periods, of which at least \$1 million is incurred in a single privilege period after July 1, 2018.	\$9,929,896
<b>Criterion Met</b>	<b>Yes</b>

#### AWARD CALCULATION

<b>Base Award Criteria</b>	<b>Calculation</b>	<b>Result</b>
30% of Qualified Film Production Expenses	\$9,929,896 x 30% =	\$2,978,968
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$9,929,896 x 2% =	\$198,597
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$50,000 x 5% = (Atlantic County, stage rental)	\$2,500
<b>Total Award</b>		<b>\$3,180,065</b>

<b>APPLICATION RECEIVED DATE:</b>	11/8/2019 (Application #32)
<b>DATE APPLICATION DEEMED COMPLETE:</b>	1/8/2020
<b>PRINCIPAL PHOTOGRAPHY COMMENCEMENT:</b>	11/11/2019
<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	Newark City
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	10/31/2020
<b>APPLICANT’S FISCAL YEAR END:</b>	12/31/2020
<b>TAX CREDIT VINTAGE YEAR(S):</b>	2020
<b>TAX FILING TYPE:</b>	Corporate Business Tax
<b>ANTICIPATED CERTIFICATION DATE:</b>	10/31/2020

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to

N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2020. After today's approvals, \$60.6 million remains in the program for State Fiscal Year 2020 which may be available to 17 additional applications in the pipeline totaling \$47.2 million.

**APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** S. Novak

**FILM TAX CREDIT TRANSFER PROGRAM**

**SCHEDULE A**

***GRANT PROGRAM***

<i>Applicant and/or Nominee</i>	<i>Project Number</i>	<i>Grant Amount</i>
Bruised Film Holdings, Inc	P 00188081	\$3,180,065

DRAFT



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

**APPLICANT:** Dickinson 1, LLC

PROD-00188090

**APPLICANT BACKGROUND:**

Dickinson 1, LLC is the production company responsible for “Dickinson S2”. The comedy series set in the 1800s explores the constraints of society, gender and family from the perspective of a budding writer who doesn't fit into her own time through her imaginative point of view.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$60,339,195
B. Total Post-Production Expenses	\$3,684,027
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$3,639,220
Percentage Calculation = C/(A-B)	6.42%
<b>Criterion Met</b>	<b>No</b>

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup,

wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$3,639,220
<b>Criterion Met</b>	<b>Yes</b>

### AWARD CALCULATION

<b>Base Award Criteria</b>	<b>Calculation</b>	<b>Result</b>
30% of Qualified Film Production Expenses	\$3,639,220 x 30% =	\$1,091,766
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$0 x 2% =	\$0
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$0 x 5% =	\$0
<b>Total Award</b>		<b>\$1,091,766</b>

<b>APPLICATION RECEIVED DATE:</b>	11/8/2019 (Application #33)
<b>DATE APPLICATION DEEMED COMPLETE:</b>	1/15/2020
<b>PRINCIPAL PHOTOGRAPHY COMMENCEMENT:</b>	9/25/2019
<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	Jersey City
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	12/12/2019
<b>APPLICANT’S FISCAL YEAR END:</b>	12/31/2020
<b>TAX CREDIT VINTAGE YEAR(S):</b>	2020
<b>TAX FILING TYPE:</b>	Corporate Business Tax
<b>ANTICIPATED CERTIFICATION DATE:</b>	10/31/2020

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2020. After today's approvals, \$60.6 million remains in the program for State Fiscal Year 2020 which may be available to 17 additional applications in the pipeline totaling \$47.2 million.

**APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** S. Novak

**FILM TAX CREDIT TRANSFER PROGRAM**

**SCHEDULE A**

***GRANT PROGRAM***

<i>Applicant and/or Nominee</i>	<i>Project Number</i>	<i>Grant Amount</i>
Dickinson 1, LLC	P00188090	\$1,091,766

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**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

**APPLICANT:** Netflix Productions, LLC

PROD-00188105

**APPLICANT BACKGROUND:**

Netflix Productions, LLC is the production company responsible for “Beauty”, the story of a talented teenage girl who wrestles with the prospects of wealth and fame when a lucrative record contract is dangled before her eyes.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$23,343,314
B. Total Post-Production Expenses	\$3,399,786
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$16,037,071
Percentage Calculation = C/(A-B)	80.41%
<b>Criterion Met</b>	<b>Yes</b>

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup,

wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$16,037,071
<b>Criterion Met</b>	<b>Yes</b>

### AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	\$16,037,071 x 30% =	\$4,811,121
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$16,037,071 x 2% =	\$320,741
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$0 x 5% =	\$0
<b>Total Award</b>		<b>\$5,131,862</b>

<b>APPLICATION RECEIVED DATE:</b>	11/18/2019 (Application #34)
<b>DATE APPLICATION DEEMED COMPLETE:</b>	1/30/2020
<b>PRINCIPAL PHOTOGRAPHY COMMENCEMENT:</b>	10/28/2019
<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	Harrison Town
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	12/9/2019
<b>APPLICANT’S FISCAL YEAR END:</b>	12/31/2020
<b>TAX CREDIT VINTAGE YEAR(S):</b>	2020
<b>TAX FILING TYPE:</b>	Corporate Business Tax
<b>ANTICIPATED CERTIFICATION DATE:</b>	10/31/2020

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2020. After today's approvals, \$60.6 million remains in the program for State Fiscal Year 2020 which may be available to 17 additional applications in the pipeline totaling \$47.2 million.

**APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** S. Novak

**FILM TAX CREDIT TRANSFER PROGRAM**

**SCHEDULE A**

***GRANT PROGRAM***

<i>Applicant and/or Nominee</i>	<i>Project Number</i>	<i>Grant Amount</i>
Netflix Productions, LLC (Beauty)	P00188105	\$5,131,862

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**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

**APPLICANT:** Netflix Productions, LLC

PROD-00188164

**APPLICANT BACKGROUND:**

Netflix Productions, LLC is the production company responsible for “Army of the Dead”, a story set amid a zombie outbreak in Las Vegas, during which a man assembles a group of mercenaries to take the ultimate gamble, venturing into the quarantined zone to pull off the greatest heist ever attempted.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$118,834,590
B. Total Post-Production Expenses	\$18,249,221
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$29,973,349
Percentage Calculation = C/(A-B)	29.79%
<b>Criterion Met</b>	<b>No</b>

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup,

wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Total Qualified Film Production Expenses incurred in NJ in two privilege periods, of which at least \$1 million is incurred in a single privilege period after July 1, 2018.	\$27,010,472
<b>Criterion Met</b>	<b>Yes</b>

#### AWARD CALCULATION

<b>Base Award Criteria</b>	<b>Calculation</b>	<b>Result</b>
30% of Qualified Film Production Expenses	\$27,010,472 x 30% =	\$8,103,141
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$27,010,472 x 2% =	\$540,209
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$6,645,019 x 5% = (Atlantic County; primarily consisting of site fees, rentals and hotels)	\$332,250
<b>Total Award</b>		<b>\$8,975,600</b>

<b>APPLICATION RECEIVED DATE:</b>	12/13/2019 (Application #35)
<b>DATE APPLICATION DEEMED COMPLETE:</b>	7/17/2020
<b>PRINCIPAL PHOTOGRAPHY COMMENCEMENT:</b>	7/15/2019
<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	Atlantic City
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	2/15/2021
<b>APPLICANT’S FISCAL YEAR END:</b>	12/31/2020
<b>TAX CREDIT VINTAGE YEAR(S):</b>	2020
<b>TAX FILING TYPE:</b>	Corporate Business Tax
<b>ANTICIPATED CERTIFICATION DATE:</b>	5/1/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a

credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2020. After today's approvals, \$60.6 million remains in the program for State Fiscal Year 2020 which may be available to 17 additional applications in the pipeline totaling \$47.2 million.

**APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** S. Novak

**FILM TAX CREDIT TRANSFER PROGRAM**

**SCHEDULE A**

***GRANT PROGRAM***

<i>Applicant and/or Nominee</i>	<i>Project Number</i>	<i>Grant Amount</i>
Netflix Productions, LLC (Army of the Dead)	P00188164	\$8,975,600

DRAFT

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

**APPLICANT:** All Star Movie LLC

PROD-00187861

**APPLICANT BACKGROUND:**

All Star Movie LLC is the production company responsible for “The All Stars”. The All Stars will follow a mid-20’s ex-con and a mid-70’s cop as they race against time and obsessive ‘sneakerhead’ collectors to obtain the very first pair of 1929 Chuck Taylor Converse All-Stars to Sneakercon. The project will explore the legend and the legacy of Chuck Taylor, who sold and designed basketball sneakers starting in 1929. Billy Bob Thornton and the actress Awkwafina are set to star in the film. Alec Sokolow is the writer and Sam Sokolow is the producer.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$14,111,499
B. Total Post-Production Expenses	\$ 1,856,725
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$12,254,774
Percentage Calculation = C/(A-B)	100%
<b>Criterion Met</b>	<b>Yes</b>

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include,

but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a "qualified film production expenses" unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$13,244,499
<b>Criterion Met</b>	<b>Yes</b>

#### AWARD CALCULATION

<b>Base Award Criteria</b>	<b>Calculation</b>	<b>Result</b>
30% of Qualified Film Production Expenses	\$13,244,499 x 30% =	\$3,973,349
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan (attached) deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$13,244,499 x 2% =	\$264,889
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$4,051,202 x 5% = (Atlantic County; primarily consisting of site fees, rentals and hotels/housing)	\$202,560
<b>Total Award</b>		<b>\$4,440,798</b>

<b>APPLICATION RECEIVED DATE:</b>	8/28/2019 (Application #26)
<b>DATE APPLICATION DEEMED COMPLETE:</b>	8/28/2019
<b>PRINCIPAL PHOTOGRAPHY COMMENCEMENT:</b>	1/30/2020
<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	Atlantic City
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	12/31/2020
<b>APPLICANT'S FISCAL YEAR END:</b>	12/31/2020
<b>TAX CREDIT VINTAGE YEAR(S):</b>	SFY2020
<b>ANTICIPATED CERTIFICATION DATE:</b>	6/30/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to

N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2020. After today's approvals, \$60.6 million remains in the program for State Fiscal Year 2020 which may be available to 17 additional applications in the pipeline totaling \$47.2 million.

**APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** S. Novak

**FILM TAX CREDIT TRANSFER PROGRAM**

**SCHEDULE A**

***GRANT PROGRAM***

<i>Applicant and/or Nominee</i>	<i>Project Number</i>	<i>Grant Amount</i>
All Star Movie LLC	P00187861	\$4,440,798

DRAFT



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

**APPLICANT:** Stikini Films, LLC

PROD-00187831

**APPLICANT BACKGROUND:**

Stikini Films, LLC is the production company responsible for “You Should Have Left”, the unsettling story of a wealthy man with a younger wife and a six-year-old child. Mistrust and suspicion characterize their marriage while they are in a remote location that may or may not be obeying all the physical laws of the universe.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$1,712,656
B. Total Post-Production Expenses	\$266,061
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$1,426,595
Percentage Calculation = C/(A-B)	98.61%
<b>Criterion Met</b>	<b>Yes</b>

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which th New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal

property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$1,465,625
<b>Criterion Met</b>	<b>Yes</b>

#### AWARD CALCULATION

<b>Base Award Criteria</b>	<b>Calculation</b>	<b>Result</b>
30% of Qualified Film Production Expenses	\$1,465,625 x 30% =	\$439,687
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan (attached) deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$1,465,625 x 2% =	\$29,312
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$0 x 5% =	\$0
<b>Total Award</b>		<b>\$468,999</b>

<b>APPLICATION RECEIVED DATE:</b>	8/13/2019 (Application #24)
<b>DATE APPLICATION DEEMED COMPLETE:</b>	7/29/2020
<b>PRINCIPAL PHOTOGRAPHY COMMENCEMENT:</b>	8/27/2019
<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	Jersey City
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	10/4/2019
<b>APPLICANT'S FISCAL YEAR END:</b>	12/31/2020
<b>TAX CREDIT VINTAGE YEAR(S):</b>	2020
<b>TAX FILING TYPE:</b>	Corporate Business Tax
<b>ANTICIPATED CERTIFICATION DATE:</b>	12/31/2020

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to

N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2020. After today's approvals, \$60.6 million remains in the program for State Fiscal Year 2020 which may be available to 17 additional applications in the pipeline totaling \$47.2 million.

**APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** S. Novak

**FILM TAX CREDIT TRANSFER PROGRAM**

**SCHEDULE A**

***GRANT PROGRAM***

<i>Applicant and/or Nominee</i>	<i>Project Number</i>	<i>Grant Amount</i>
Stikini Films, LLC	P00187831	\$468,999

DRAFT

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

**APPLICANT:** Rose City Pictures, Inc.

PROD-00187683

**APPLICANT BACKGROUND:**

Rose City Pictures, Inc. is the production company responsible for “The Many Saints of Newark”. Based on the series The Sopranos, the story opens in 1967 Newark; the lead character Dickie M. is a troubled gangster, constantly striving to do the right thing but falling short as he navigates his way through the world of organized crime.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$68,749,092
B. Total Post-Production Expenses	\$10,761,393
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$8,497,633
Percentage Calculation = C/(A-B)	14.65%
<b>Criterion Met</b>	<b>No</b>

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the

production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Total Qualified Film Production Expenses incurred in NJ in two privilege periods, of which at least \$1 million is incurred in a single privilege period after July 1, 2018.	\$8,488,915
<b>Criterion Met</b>	<b>Yes</b>

#### AWARD CALCULATION

<b>Base Award Criteria</b>	<b>Calculation</b>	<b>Result</b>
30% of Qualified Film Production Expenses	\$8,488,915 x 30% =	\$2,546,674
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$8,488,915 x 2% =	\$169,778
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$0 x 5% =	\$0
<b>Total Award</b>		<b>\$2,716,452</b>

<b>APPLICATION RECEIVED DATE:</b>	6/13/2019 (Application #21)
<b>DATE APPLICATION DEEMED COMPLETE:</b>	6/20/2019
<b>PRINCIPAL PHOTOGRAPHY COMMENCEMENT:</b>	4/3/2019
<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	Newark City
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	10/31/2020
<b>APPLICANT’S FISCAL YEAR END:</b>	12/31/2020
<b>TAX CREDIT VINTAGE YEAR(S):</b>	2020
<b>TAX FILING TYPE:</b>	Corporate Business Tax
<b>ANTICIPATED CERTIFICATION DATE:</b>	12/31/2020

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to

N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2020. After today's approvals, \$60.6 million remains in the program for State Fiscal Year 2020 which may be available to 17 additional applications in the pipeline totaling \$47.2 million.

**APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** S. Novak

**FILM TAX CREDIT TRANSFER PROGRAM**

**SCHEDULE A**

***GRANT PROGRAM***

<i>Applicant and/or Nominee</i>	<i>Project Number</i>	<i>Grant Amount</i>
Rose City Pictures, LLC	P00187683	\$2,716,452

DRAFT



**LOANS/GRANTS/GUARANTEES**

**PETROLEUM UNDERGROUND STORAGE TANK (PUST)**



**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan, Chief Executive Officer  
**DATE:** September 9, 2020  
**SUBJECT:** NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program

The following supplemental commercial project has been approved by the Department of Environmental Protection to perform closure/upgrade and site remediation activities. The scope of work is described on the attached project summary:

**PUST Commercial Grant:**

Prod 188281	Harry Hawtin and Andrea Lynn Hawtin	\$303,650
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<b>Total UST Funding – September 2020</b>	<b>303,650</b>
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A handwritten signature in blue ink, appearing to read "T. Sullivan", is written above a horizontal line.

Tim Sullivan, CEO

Prepared by: Kathy Junghans

## NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

### Underground Storage Tank - Commercial

**APPLICANT:** Harry Hawtin and Andrea Lynn Hawtin

PROD-00188281

**PROJECT USER(S):** Same as applicant

**PROJECT LOCATION:** 94 West Main Street      Freehold Township      Monmouth County

**APPLICANT BACKGROUND:**

Between October 2017 and January 2019 Harry Hawtin and Andrea Lynn Hawtin received an initial grant in the amount of \$12,202 under P43014 and a supplemental grant in the amount of \$22,548 under P45242 to remove a commercial leaking underground storage tank (UST) and perform the required remediation. The tank was decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the supplemental project costs are technically eligible to perform additional remedial activities.

Financial statements provided by the applicants demonstrate that the applicants' financial condition conforms to the financial hardship test for a conditional hardship grant.

**OTHER NJEDA SERVICES:**

\$12,202, P43014; \$22,548, P45242

**APPROVAL REQUEST:**

The applicants are requesting aggregate supplemental grant funding in the amount of \$303,650 to perform the approved scope of work at the project site. Total grant funding including this approval is \$338,400.

**FINANCING SUMMARY:**

**GRANTOR:** Petroleum UST Remediation, Upgrade & Closure Fund

**AMOUNT OF GRANT:** \$303,650.00

**TERMS OF GRANT:** No Interest; 5-year repayment provision on a pro-rata basis in accordance with the PUST Act.

**PROJECT COSTS:**

UST Project: Remediation	\$303,650.00
EDA Administrative Cost	\$500.00

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**TOTAL COSTS:                    \$304,150.00**

**PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION  
UPGRADE AND CLOSURE FUND**

**LOANS AND/OR GRANTS**

**SCHEDULE A**

**Commercial Grant:**

<b>Applicant and/or Nominee</b>	<b>Project Number</b>	<b>Site</b>	<b>Grant Amount</b>	<b>Terms</b>
<b>Harry Hawtin and Andrea Lynn Hawtin</b>	<b>P188281</b>	<b>94 West Main Street, Freehold Township, Monmouth County</b>	<b>\$303,650.00</b>	<b>No Interest; 5 year repayment provision on a pro-rata basis in accordance with the PUST Act.</b>

**REAL ESTATE**



**MEMORANDUM**

**TO:** The Members of the Authority  
**FROM:** Tim Sullivan, CEO  
**RE:** Step-Out Labs of North Brunswick Program Refinement Request  
**DATE:** September 9, 2020

**Summary**

After two years of marketing and tenanting the Bioscience Center Step-Out Labs, Members of the Board are asked to approve two minor program refinements:

1. To approve an update to the Program's targeted tenant description.
2. To allow smaller package units to be offered to fully lease out the remaining available space.

These proposed refinements will add clarity based on lessons learned after the first few years of administering the Step-Out lab Program.

**Background**

The [New Jersey Bioscience Center](#), formerly known as the Technology Center of New Jersey, is a 50-acre, 5 building research park in North Brunswick owned and operated by NJEDA. The park consists of 300,000 SF of lab and office space and the largest tenants are Boehringer Ingelheim and Allergan. The park includes several different levels of offerings to support life science companies at all different stages of development. The first offering for the newest businesses is the Bioscience Center Incubator - a 46,000 square foot facility with 27 wet labs and access to shared equipment and business support services. The Incubator has been in existence for 18 years and boasts of some significant job creators in the state including Genewiz (over 1,000 employees), Amicus (public company over 600 employees) and Advaxis (NASDAQ).

Building off the success of the Bioscience Center Incubator, in August 2017, the Board approved a next development stage product offering. This newest offering in the research park is the multi-tenant [Step-Out Labs at North Brunswick](#), formerly known as the Biotechnology Development Center (BDC). The Step-Out labs program accepted its first tenant on June 1<sup>st</sup>, 2018 after a \$1M capital improvement project was completed. The Step-Out Labs Program targets life sciences companies in need of lab and office space totaling less than 8,000 SF, and

which generally exceeds the 4,000 SF average maximum space and the 5 years in business maximum in the Incubator program. Tenants in the Step-Out Labs program sign 3-year lease agreements vs the one year agreement in the incubator program. Demand for the facility proved strong and the Program quickly achieved occupancy of 89%.

### **Update to Targeted Tenant Policy**

Effective August 1<sup>st</sup>, 2020, there are six Step-Out labs tenants, four of which graduated from the Bioscience Incubator. The incubator graduates which are part of the Step-Out lab program include Bionex Pharma, Kamat Pharmatech, Grace Therapeutics and BioAegis Therapeutics. The remaining two life science companies entered the park directly into the Step Out Labs.

There currently exists vacant space in the Step-Out Labs due to the expansion and growth of a member tenant, Apicore LLC, out of the Step-Out Labs into the research park. Apicore is focused on research and manufacturing of generic pharmaceutical products. Until recently, the company was the Step Out Labs' second largest tenant. The company expanded from 4,000 SF in the Step-Out Labs to 12,000 SF in the research park in March. The ability to flex from one space in the park to another as companies grow is one of the greatest value propositions within the Bioscience Center Campus.

In August 2017, when the Board approved the Step-Out Labs program design, a description of the targeted tenants was included as follows:

*The Biotechnology Development Center (BDC) will provide step-out expansion space for companies graduating out of CCIT (Bioscience Incubator), as well as space for well-funded **start-up companies** that are beyond the stage of a CCIT tenant.*

*BDC will target all sub-sectors of the biotechnology industry ranging from new chemical entities drug discovery (NCE) to reformulation drug development (505b2) to contract research organizations (CRO) and generics research and development companies. A typical NCE tenant will have a higher ratio of offices to labs while CROs and generic R&D companies will have a higher ratio of labs and to offices. Tech IV second floor's configuration can accommodate the needs of both types of companies*

The target tenant description noted above specifically spoke to “start-up companies” beyond the incubator, which requires companies be under 5 years old. In the last two years of administering the Step-Out Labs program, opportunities are being presented for U.S. domiciles of public companies, albeit still early in their discovery models, along with skunkworks divisions (projects developed by small internal group of scientists) of more mature corporations. In a co-tenanted environment, having this diverse mix of companies is believed to help educate and support the growth of the tenants and the NJ Life Science community. Given the unique multi-tenant facility on the campus and in the Step-Out Labs, as proposed, a broader mix of companies from across the life sciences spectrum at different stages in their life cycles allows for potential mentoring and will also create additional collaborative opportunities for existing life sciences companies in the Step-Out Labs facility. Note that there is a potential tenant interested in the proposed flexibility.



As such, Members are asked to approve an update to the program's targeted tenant description which focuses on the life science industry. We request that the former targeted tenant description (above) be replaced with the following language:

*The Step-Out Labs targets all sub-sectors of the biopharma industry ranging from new chemical entities drug discovery (NCE) to reformulation drug development (505b2) to contract research organizations (CRO) to generics research and development companies to established R&D companies having modest lab needs. The facility accommodates companies conducting biopharma research and development with lab and office space needs appropriate for a multi-tenant environment.*

### **Allowing for Leasing Smaller Unit Packages**

The current facility pricing is based on lab and office "package pricing". The one price per space (lab or office) is inclusive of all fees and utilities and the Step-Out Lab tenant must lease at least three spaces (one of which is a lab) occupying approximately 2,000 SF. All leases have a term length of three years and are renewable.

In order to reach full occupancy, greater flexibility from the original three unit minimum is recommended. Considering the vacancy in the current COVID19 economic climate, Members of the Board are requested to allow greater program flexibility as it relates to "package size" by offering smaller package units. Removing the minimum requirements from the current policy will allow staff to use reasonable business discretion to ensure full occupancy of the remaining lab and office space of 5,209 SF. Note that the site is now 77% occupied.

### **Recommendation**

The Members are requested to approve the updated Step-Out Lab description and package offerings under the amended criteria detailed herein.



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Tim Sullivan,  
Chief Executive Officer

Prepared by: Lenzie Harcum



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**RE:** FMERA Purchase and Sale & Redevelopment Agreement with  
Parker Creek Partners, LLC for the Bowling Center Parcel in Eatontown

**DATE:** September 9, 2020

### **Request**

I am requesting that the Board consent to the Fort Monmouth Economic Revitalization Authority (“FMERA”) entering into the redevelopment agreement that is contained within FMERA’s Purchase and Sale & Redevelopment Agreement, as amended (“PSARA”) with Parker Creek Partners, LLC (“PCP” or “Purchaser”) for the sale and redevelopment of the Bowling Center Parcel (the “Project”) in the Fort’s Eatontown Reuse Area.

### **Background**

FMERA was created by P.L. 2010, c. 51 (“the Act”) to carry out the coordinated and comprehensive redevelopment and revitalization of Fort Monmouth. The Act designates the New Jersey Economic Development Authority (“NJEDA”) as a designated redeveloper for any property acquired by or conveyed to FMERA and authorizes FMERA to enter into redeveloper agreements with NJEDA for the redevelopment of the Fort, while also allowing FMERA to enter into redevelopment agreements directly with private developers.

In October 2016, FMERA and the Army entered into an Economic Development Conveyance Agreement (“EDC Agreement”) with the Army for the Phase 2 portion of the Fort, and title to the property was transferred to FMERA in November 2016. The Bowling Center Parcel is located in the Eatontown section of the Phase 2 property.

The Bowling Center Parcel is approximately 2.8 acres (the “Property”), and contains the Bowling Center, also known as Building 689, an approximately 17,599 sf structure located at the corner of Avenue of Memories and Wilson Avenues. The parcel also includes Building 682, a 4,720-sf wood frame building constructed in 1941, which must be demolished by the Purchaser. The Reuse Plan contemplates the reuse of Building 689 as a bowling alley.

At its February 2018 meeting, FMERA’s Board authorized staff to solicit bids for the Bowling Center through the Offer to Purchase (“RFOTP”) process. The RFOTP gave bidders the option of proposing to purchase Building 689 and ground leasing portions of the site (i.e. the land beneath Building 689 and its 10,000± sf expansion area), rather than purchasing both the land and the building. Ground leasing the land from FMERA would make the lessee potentially eligible to obtain a special concessionaire permit from the State of New Jersey, Division of Alcoholic Beverage Control to serve alcohol on the premises.

However, the PSARA and Ground Lease were not contingent on a Purchaser's ability to obtain a special concessionaire permit, which is at its sole risk, cost, and expense.

Responses to the RFOTP were due on August 20, 2018 and PCP submitted the sole response. An evaluation committee reviewed the proposal and found it to be compliant with the RFOTP and recommended proceeding with negotiations for a PSARA and Ground Lease.

PCP is led by James Wassel, who has over 35 years of development and operating experience in the restaurant and hospitality industries. In addition, PCP has contracted with an industry leader, Brunswick Bowling, to serve as an advisor in the planning, redevelopment and operation of the bowling facility. PCP's intention is to create a multi-faceted recreation and entertainment center with high quality food and service.

PCP intends to develop the Property in one or more phases for commercial, recreational, entertainment and retail uses. The Project will consist of the renovation of the existing Bowling Center and upgrades to the kitchen, and adding a bar, bocce courts, pool tables, shuffleboard tables and a stage. The Purchaser will be obligated to demolish Building 682 and install necessary site improvements at its sole cost and expense. If developed in phases, the renovation of the existing Bowling Center (i.e. Building 689), the demolition of Building 682 and associated site improvements would constitute Phase One. After Building 682 is demolished, PCP, under the Land Use Rules (based on the maximum floor area ratio), will expand Building 689 by up to 10,000± sf. This expansion would constitute Phase Two of the Project. PCP intends to finance the Project through its equity partners as well as through conventional financing from a local or regional bank. Its total capital investment, net of the purchase price, is estimated at \$5,200,000 reflecting \$3,700,000 for Phase One and \$1,500,000 for Phase Two.

### **Purchase and Sale & Redevelopment Agreement**

The Purchase and Sale and Redevelopment Agreement ("PSARA") was executed on July 2, 2019. Pursuant to the terms of the PSARA, PCP will pay \$1,350,000 for the Property, which exceeds the \$1,000,000 minimum bid specified in the RFOTP. Purchaser shall alert FMERA within 30 days of closing whether it intends to take title to the property or ground lease all or portions of the 2.8-acre Bowling Center Parcel for ninety-nine (99) years for \$1 per year.

Closing will occur within one-hundred twenty (120) days after satisfaction of all conditions precedent to closing, including: consent of the NJEDA Board; completion of due diligence; receipt of Mandatory Conceptual Review approval from FMERA; submission of Purchaser's site plan application to the Borough of Eatontown; and FMERA's receipt of title to Parcel 102D, an environmental carve-out, from the Army. The Due Diligence Period ran for sixty (60) days from the PSARA execution date and was extended for an additional thirty (30) days to complete environmental investigations. PCP completed due diligence on October 30, 2019. Purchaser had a period of up to ninety (90) days following completion of Due Diligence to obtain Project approvals (the "Approval Period") and the right to extend the Approval Period by an additional ninety (90) days (the "Approval Extension Period") so long as Purchaser was diligently and in good faith pursuing approvals.

The Project will consist of the renovation of Building 689 as a bowling entertainment center, the installation of necessary site improvements, the demolition of Building 682, and construction of a 10,000±

sf expansion of Building 689. Purchaser will be responsible for the demolition of Building 682 by the date which is the earlier of: (i) twelve (12) months after the expiration of the Approval Period or the Approval Extension Period, whichever is later; or (ii) the date Purchaser receives a certificate of occupancy or temporary certificate of occupancy for the existing Bowling Center. Purchaser will commence the Project within ninety (90) days of the Approval Period (and, if applicable, the Approval Extension Period) and complete the Project within twelve (12) months thereafter. At Purchaser's option, Purchaser may elect to undertake and complete construction of the Project in phases as described above, with completion of each phase evidenced by receipt of certificates of occupancy. If Purchaser elects to complete the Project in phases, it will commence Phase One within ninety (90) days of the Approval Period (and, if applicable, the Approval Extension Period) and complete Phase One of the Project within twelve (12) months thereafter. Purchaser will commence Phase Two of the Project within twenty-four (24) months of Closing and complete Phase Two within twelve (12) months thereafter.

Additionally, PCP will fund or install, at its sole cost and expense, five hundred (500') linear feet of new water mains and five hundred (500') linear feet of new sewer mains outside the Property as directed by FMERA.

FMERA will have the right to repurchase the Property if construction is not timely completed. PCP represents that it will invest approximately \$5,200,000 to complete the Project. The Purchaser also covenants to create twenty-two (22) permanent, full-time and/or part-time jobs at the Property within twelve (12) months of Project completion or pay a penalty of \$1,500 for each job not created.

FMERA intends to convey title to the improvements and ground lease, if applicable, the land to PCP in as-is condition, but with clear title and subject to the Army's on-going obligations under CERCLA to address any pre-existing contamination that may exist on the property. PCP has recently acquired a liquor license through the Borough of Eatontown and has confirmed to FMERA that it plans to purchase the property in its entirety. The Army has obtained a No Further Action letter from the New Jersey Department of Environmental Protection with respect to Parcel 102D, and title to Parcel 102D is expected to be received by FMERA within the next month.

### **Delegated Authority and 1<sup>st</sup> Amendment**

To help developers cope with the adjustments required by EO 107 and with the widespread economic impact of the COVID-19 pandemic containment measures, and to ensure that developers do not irrevocably terminate PSARAs solely in an attempt to obtain immediate relief of their obligations, the FMERA Board approved expanded delegations to allow the Authority's Executive Director to extend due diligence, approval and post-closing PSARA timelines. This delegation allows FMERA's Executive Director to execute PSARA amendments that would provide for up to five-month extensions for due diligence, approval and post-closing timelines, in the aggregate. The extensions are limited to COVID-19 related delays and are granted on an individual basis to developers who demonstrate that their projects have been impacted by COVID-related events. The Board's delegation of authority remains in place while the EO 107 restrictions are in effect. All extensions are memorialized in a PSARA amendment between FMERA and its purchasers.

Under the terms of the PSARA, Purchaser was entitled to an Approval Period of up to ninety (90) days following the completion of Due Diligence to obtain all necessary approvals, and if proceeding in good faith, an additional ninety (90) day extension. The Approval Extension Period expired on May 1, 2020.

Due to COVID-19 related delays and shutdowns, Purchaser was not able to obtain all approvals in the designated timeframe and required additional time to obtain the necessary approvals. PCP submitted a request dated June 23, 2020 for an extension of the Approval Extension Period. FMERA staff reviewed this request and under the Executive Director’s delegated authority, provided a five (5) month Approval Period extension, to be retroactively applied from May 1, 2020 until October 1, 2020, and memorialized the extension under the attached First Amendment to the Purchase and Sale and Redevelopment Agreement dated July 15, 2020.

Pursuant to the FMERA Act, all purchasers of real estate on Fort Monmouth must enter into a redevelopment agreement containing the following provisions, which will be covenants running with the land until the redeveloper completes the project: (i) a provision limiting the use of the property to the uses permitted by the Reuse Plan or an amendment to the Reuse Plan as approved by the FMERA Board and uses permitted by FMERA’s Land Use Rules; (ii) a provision requiring the redeveloper to commence and complete the project within a period of time that FMERA deems reasonable; and (iii) a provision restricting the transfer of the property or the redeveloper’s rights under the PSARA prior to completion of the project. Based on the redevelopment provisions of the PSARA between FMERA and Parker Creek Partners, LLC, staff concludes that the essential elements of a redevelopment agreement between FMERA and PCP are sufficiently addressed and that it is not necessary for FMERA to enter into a separate redevelopment agreement with PCP for its redevelopment of the Bowling Center Parcel.

Attached is the July 2, 2019 PSARA between FMERA and Parker Creek Partners. The PSARA specifies that Parker Creek Partners, LLC will be confirmed as designated redeveloper of the Property upon NJEDA approval of the PSARA in accordance with N.J.S.A. 52:27I-38.

**Recommendation**

In summary, I am requesting that the Members consent to FMERA entering into the redevelopment agreement contained within the Purchase and Sale Agreement & Redevelopment Agreement with Parker Creek Partners, LLC for the sale and redevelopment of the Bowling Center Parcel in the Fort’s Eatontown Reuse Area.

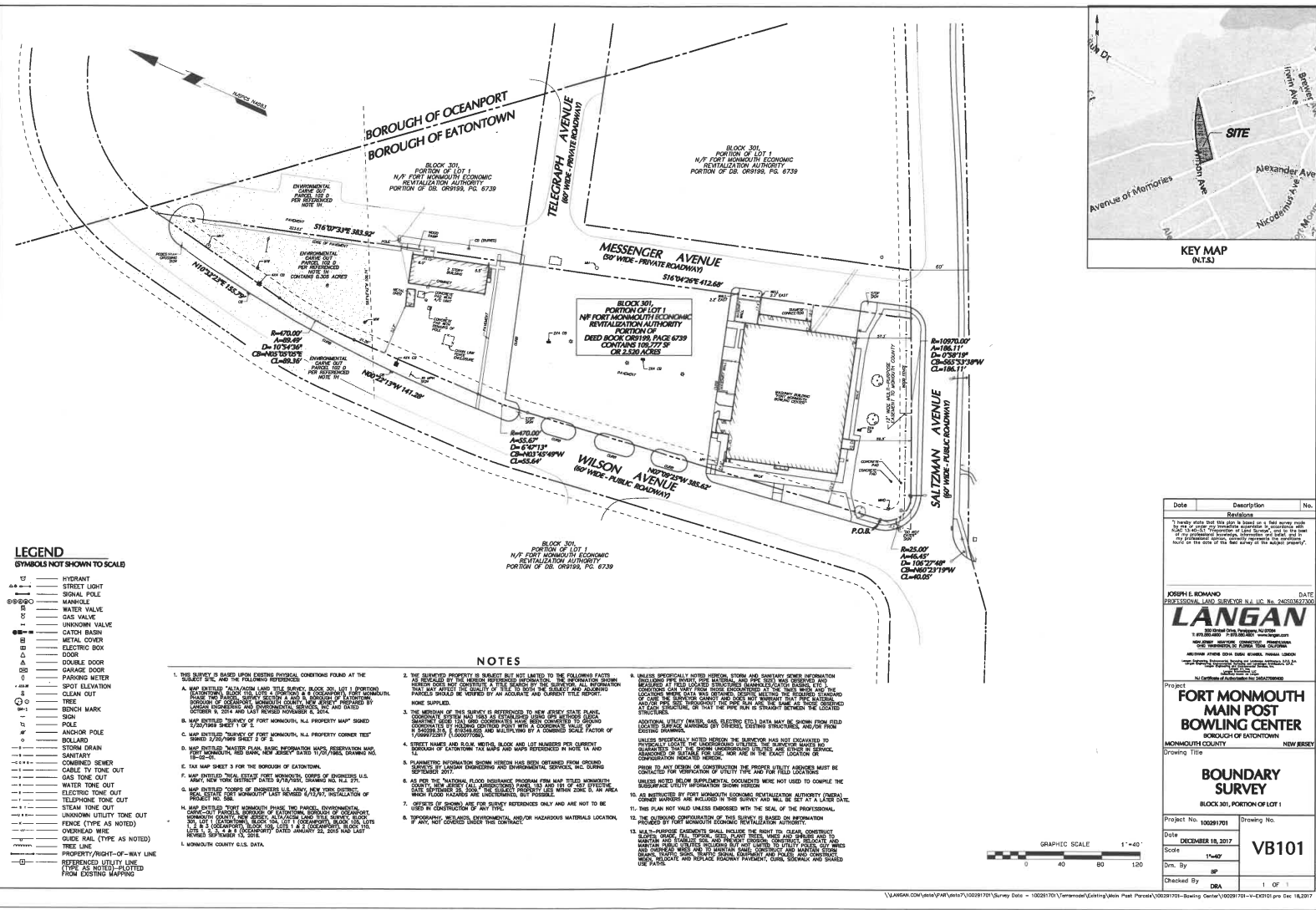


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Tim Sullivan  
Chief Executive Officer

Attachments: Purchase and Sale & Redevelopment Agreement  
First Amendment to the Purchaser and Sale & Redevelopment Agreement  
Parcel Map

Prepared by: Sarah Giberson & David E. Nuse



Date	Description	No.
Revisions		
	1. Update notes that the plan is based on a field survey with 1/8" = 100' scale and was conducted on 10/22/2019. This plan is a preliminary plan and is subject to change without notice. The engineer and surveyor shall be held responsible for the accuracy of the data and the results of the survey. The engineer and surveyor shall be held responsible for the accuracy of the data and the results of the survey.	
DATE	JOSEPH E. ROMANO	
	J. ROMANO, LAND SURVEYOR, N.J. LIC. No. 24030900300	

PROJECT  
**FORT MONMOUTH  
MAIN POST  
BOWLING CENTER**  
BOROUGH OF EATONTOWN  
MONMOUTH COUNTY, NEW JERSEY

Drawing Title

**BOUNDARY SURVEY**  
BLOCK 301, PORTION OF LOT 1

Project No. 100291701 Drawing No.

Date: DECEMBER 18, 2017  
Scale: 1"=40' **VB101**

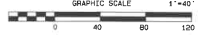
Drawn By: JP  
Checked By: DBA 1 OF 1

**LEGEND**  
SYMBOLS NOT SHOWN TO SCALE

☰	HYDRANT
—●—	STREET LIGHT
⋈	SIGNAL POLE
○	MANHOLE
⊕	WATER VALVE
⊕	GAS VALVE
—	UNKNOWN VALVE
—	CATCH BASIN
—	METAL COVER
—	ELECTRIC BOX
—	DOOR
—	DOUBLE DOOR
—	GARAGE DOOR
—	PARKING METER
—	SPOT ELEVATION
—	CLEAN OUT
—	TREE
—	BENCH MARK
—	IRON
—	POLE
—	ANCHOR POLE
—	BOLLARD
—	STORM DRAIN
—	SANITARY
—	COMBINED SEWER
—	CABLE TV TONE OUT
—	GAS TONE OUT
—	WATER TONE OUT
—	ELECTRIC TONE OUT
—	TELEPHONE TONE OUT
—	STEAM TONE OUT
—	UNKNOWN UTILITY TONE OUT
—	FENCE (TYPE AS NOTED)
—	OVERHEAD WIRE
—	QUIE DIAL (TYPE AS NOTED)
—	TREE LINE
—	PRIORITY/RIGHT-OF-WAY LINE
—	PROPERTY/UTILITY LINE (TYPE AS NOTED) PLATTED FROM EXISTING MAPPING

**NOTES**

- THE SURVEY IS BASED UPON EXISTING PHYSICAL CONDITIONS FOUND AT THE SUBJECT SITE, AND THE FOLLOWING REFERENCES:
- THE SURVEYED PROPERTY IS SUBJECT BUT NOT LIMITED TO THE FOLLOWING FACTS AS RECORDED BY THE RECORD REFERENCED INDENTATION. THE INFORMATION SHOWN HEREIN DOES NOT CONSTITUTE A WARRANTY BY THE SURVEYOR. ALL INFORMATION PROVIDED SHOULD BE REVIEWED BY AN ACCURATE AND CURRENT TITLE REPORT. HOME APPLIED.
- THE BOUNDARY OF THIS SURVEY IS REFERENCED TO NEW JERSEY STATE PLATS, COUNTY RECORD MAPS, AND PLATS OF THE NATIONAL BOUNDARY SURVEY. LOCAL JURISDICTIONS TO HOLDING COUNTY RECORD MAPS WITH A COORDINATE SCALE FACTOR OF 1.00000000 (EIGHTY-FIVE) ARE MULTIPLE OF A COMBINE SURVEY SYSTEM.
- SURVEY NAMES AND BLOCK, WARD, BLOCK AND LOT NUMBERS PER CURRENT RECORDS OF EATONTOWN TAX MAPS AND ARE REFERENCED IN NOTE 1X AND 1Y.
- AN UNUSUAL INFORMATION SURVEY METHOD HAS BEEN OFFERED FROM SURVEYORS SUBMITTED BY LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC. DURING SURVEYED DATE.
- AS FOR THE NATIONAL FLOOD INSURANCE PROGRAM FIRM MAP TITLED MONMOUTH COUNTY FLOOD HAZARD ZONE MAP (FIRM NO. 22015C10002R) AND FIRM NO. 22015C10002R, WHICH FLOOD HAZARD ZONE UNDESIRABLE BUT POSSIBLE.
- OTHER THAN THE USE FOR SURVEY REFERENCES ONLY AND ARE NOT TO BE USED BY CONSTRUCTION OF ANY TYPE.
- TOPOGRAPHY, INCLUDING ENVIRONMENTAL AND/OR HAZARDOUS MATERIALS LOCATION, IF ANY, NOT COLOCATED UNDER THIS CONTRACT.





**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**RE:** FMERA Purchase and Sale & Redevelopment Agreement with OPort Partners, LLC for the Warehouse, Post Office, Commissary/PX & the Parking Area Parcels in Oceanport

**DATE:** September 9, 2020

**Request**

I am requesting that the Board consent to the Fort Monmouth Economic Revitalization Authority (“FMERA”) entering into the redevelopment agreement that is contained within FMERA’s Purchase and Sale & Redevelopment Agreement (“PSARA”) with OPort Partners, LLC (“OPort” or “Purchaser”) for the sale and redevelopment of the Warehouse, Post Office, Commissary/PX & the Parking Area Parcels (the “Project”) in the Oceanport section of Fort Monmouth.

**Background**

FMERA was created by P.L. 2010, c. 51 (“the Act”) to carry out the coordinated and comprehensive redevelopment and revitalization of Fort Monmouth. The Act designates the New Jersey Economic Development Authority (“NJEDA”) as a designated redeveloper for any property acquired by or conveyed to FMERA and authorizes FMERA to enter into redeveloper agreements with NJEDA for the redevelopment of the Fort, while also allowing FMERA to enter into redevelopment agreements directly with private developers.

In October 2016, FMERA and the Army entered into an Economic Development Conveyance Agreement (“EDC Agreement”) with the Army for the Phase 2 portion of the Fort, and title to the property was transferred to FMERA in November 2016. The Warehouse, Post Office, Commissary/PX & the Parking Area Parcels are located in the Oceanport section of the Phase 2 property.

**Requests for Offers to Purchase**

At the December 2017 meeting, staff recommended, and the FMERA Board approved the issuance of three separate Requests for Offers to Purchase (“RFOTPs”) -- for the Commissary and PX, the Warehouse District, and the Post Office Area – with the option to propose individual or interrelated projects on one or more parcels.

- a. The Commissary & PX Parcel consists of the 53,700± sf Commissary, completed in 1998 and the Post Exchange (PX) complex, a series of four circa 1970 wood-frame buildings totaling 45,626± sf, along with Building 812, a 5,563± sf building constructed in 1941. The Fort Monmouth Reuse & Redevelopment Plan (the “Reuse Plan”) envisions the Commissary as a future retail building that could serve the residential and commercial occupants of the Oceanport Education/Mixed-Use Neighborhood. Reuse Plan Amendment #2 envisions the demolition of both the PX and Building 812 for future low- and medium-density housing, along with ancillary open space. Due to an altered surrounding landscape and renewed

interest in the Commissary and the PX for reuse as office/R&D space, active recreation or for other commercial uses, staff recommended, and the FMERA Board approved broadening the allowable uses for the Commissary site to include more appropriate and potentially higher uses. These additional uses required a Reuse Plan amendment.

- b. The Warehouse District consists of five general purpose administrative buildings (Buildings 909, 910, 911, 912 & 913) constructed in 1943 and two circa 1954 warehouse buildings (975 and 976) totaling 77,589± sf. The 7.7± acre Warehouse District is bounded by Razor Avenue, Murphy Drive and the Monmouth County Emergency Homeless Shelter. All seven buildings are contemplated for demolition in the Reuse Plan and Plan Amendment #2, to be replaced by new housing. Given the institutional uses that will now lie to the east and south of this parcel, staff recommended that the Warehouse District property should be offered through the RFOTP process for commercial, active recreation or office/R&D use rather than residential use, and the existing improvements should be demolished. These uses required a Reuse Plan amendment.
- c. The Post Office Area contains four buildings on 6± acres located south of the Fitness Center, and bounded by Alexander, Todd and Razor Avenues. The property is zoned for institutional use in the Reuse Plan, as the anticipated site for a new Oceanport elementary school.

The parcel includes the 7,641± sf former Post Office (Building 1005), constructed in 1971; Tickets & Tours (Building 1010), a 2,600± sf building constructed in 1970; Building 800, a 14,964± sf administration and classroom building dating to 1942; and Building 801, the 9,267± sf recreation equipment checkout facility built in 1941.

The Reuse Plan envisions the demolition of all four buildings on this site and reuse of the property as a new school location. The Oceanport School District, however, is no longer considering this location for a school use. Staff therefore recommended that the property be offered for an alternate use consistent with its anticipated surrounding uses, namely commercial, active recreation or office/R&D use. These uses required a Reuse Plan amendment.

- d. Located between the Post Office Area and the Commissary and PX, and across Razor Avenue from the Warehouse District, the 1000 Area Parking (“Parking Area”) is a 6± acre lot that provided off-street parking for the buildings that adjoin it. Due to anticipated environmental restrictions, staff recommended the 1000 Area Parking be reused as surface parking. This parcel was offered for off-street parking as an optional sub-parcel available to parties bidding on the Commissary and PX and/or the Warehouse District. This recommended use is consistent with the property’s commercial zoning in the Reuse Plan and in Amendment #2.

Since all of these parcels were in close proximity to one another and to facilitate proposals of the highest and best use, the RFOTP scoring provided additional consideration to parties who proposed to purchase multiple parcels. Additionally, parties bidding on the Commissary & PX and/or the Warehouse District had the option of also bidding on the Parking Area and received additional scoring consideration over bidders on those parcels who elected not to bid on the Parking Area.

FMERA received five (5) proposals for the Commissary and PX Parcels, four (4) proposals for the Post Office Area and five (5) proposals for the Warehouse District in response to its May 8, 2018 RFOTP. Following the evaluation and scoring process, OPort was selected as the highest-scoring potential Purchaser of two of the three



parcels, the Warehouse District and the Post Office Area. Although OPort included an offer for the 1000 Area Parking, the Commissary & PX Complex, another proposer scored highest in conjunction with its proposed use for the Commissary & PX Complex. Therefore, the evaluation committee recommended proceeding with negotiations with OPort for a PSARA for the Warehouse and Post Office Parcels only. The PSARA for the Post Office and Warehouse Parcels (the “Warehouse PSARA”) was approved by the FMERA Board at its July 17, 2019 meeting and executed by FMERA and OPort on September 16, 2019.

On October 11, 2019, the highest-scoring potential Purchaser for the Commissary and PX Parcels and 1000 Area Parking terminated its negotiations for that property. As OPort was the second highest scorer, FMERA initiated negotiations with OPort for these parcels. The PSARA for the Commissary/PX and Parking Area (“Commissary PSARA”) was approved by the FMERA Board at its November 13, 2019 meeting and executed by FMERA and OPort on February 5, 2020.

### **The Initial Purchase and Sale & Redevelopment Agreements**

#### **The Warehouse PSARA**

Under the terms of the Warehouse PSARA, Purchaser proposed to demolish all of the existing buildings and use the Warehouse Parcel for Class A office buildouts, and the Post Office Parcel for additional Class A office buildouts. Purchaser was to pay one million nine hundred and fifty thousand (\$1,950,000.00) dollars for the property and invest a total of thirty-one million four hundred and forty-three thousand and seven hundred and fifty (\$31,443,750.00) dollars into the Project: Twelve million nine hundred thousand (\$12,900,000.00) dollars for the Post Office Area and eighteen million five hundred and forty-three thousand and seven hundred and fifty (\$18,543,750.00) dollars as to the Warehouse District. OPort was provided a sixty-day Due Diligence period commencing on the effective date of the PSARA and had thirty days to apply and diligently pursue approvals following the later to the occur of the final and non-appealable amendment to the Reuse Plan or completion of Due Diligence. Its Approval Period was for fourteen months with an optional six-month extension. The Project was to be completed within eighteen (18) months after completion of demolition and site work, not to exceed twenty-two (22) months after closing on the Property. Closing(s) on the Property was to occur within thirty (30) days after satisfaction or waiver of the Conditions Precedent to Closing. Conditions precedent to Closing included OPort obtaining or waiving All Approvals within the Approval Period necessary to develop the Project; an amendment to the Reuse Plan to accommodate the Project; FMERA obtaining title and a Finding of Suitability to Transfer (“FOST”) from the Army for Parcel 57; and the consent of the NJEDA Board. The parties would endeavor to satisfy these contingencies prior to the expiration of Purchaser’s Approval Period. Purchaser had thirty (30) days to apply and diligently pursue approvals following the later to occur of the final and non-appealable amendment to the Reuse Plan or completion of Due Diligence. OPort estimated that it will create approximately four hundred thirty nine (439) part-time and/or full-time permanent jobs within twenty-four (24) months of project completion or pay a penalty of \$1,500 per permanent job not created. OPort will also be responsible for funding a total of one thousand (1000’) linear feet of new water main and one thousand (1000’) linear feet of new sewer main along Razor and Anson Avenues, or in such other off-site location as directed by FMERA. Abutting developers will be obligated to install or fund additional water and sewer infrastructure to complete the connection of the Property to off-site public utilities. Purchaser will also be responsible for running new electrical distribution lines from the Property to an upgraded JCP&L substation following FMERA’s conveyance of the abutting electric substation to JCP&L at a future date.

#### **The Commissary PSARA**

Under the terms of the Commissary PSARA, Purchaser proposed to reuse the main Commissary building as a commercial building and to demolish all the remaining buildings. The site would ultimately serve as an enrichment center incorporating a provision for food service, a culinary school, crafts production, arts adaption, etc. Purchaser was to pay three million (\$3,000,000.00) dollars for the property and invest a total of twenty-three million (\$23,000,000.00) dollars into the Project. OPort was provided a sixty-day Due Diligence period commencing on the effective date of the PSARA and had the right to exercise two additional thirty (30) day due diligence extensions. Its Approval Period was for fourteen months with an optional six-month extension. The Project was to be completed twenty-seven (27) months after closing on the Property. Closing(s) on the Property was to occur within thirty (30) days after satisfaction or waiver of the Conditions Precedent to Closing. Conditions Precedent to Closing included OPort obtaining or waiving All Approvals within the Approval Period necessary to develop the Project; an amendment to the Reuse Plan to accommodate the Project; FMERA obtaining title and a FOST for Parcels 55, 57, 64, and 65; and the consent of the NJEDA Board. The parties would endeavor to satisfy these contingencies prior to the expiration of Purchaser's Approval Period. Purchaser was to have thirty (30) days to apply and diligently pursue approvals following the later to occur of the final and non-appealable amendment to the Reuse Plan or completion of Due Diligence. OPort estimated that it will create approximately three hundred eleven (311) part-time and/or full-time permanent jobs within twenty-four (24) months of project completion or pay a penalty of \$1,500 per permanent job not created. OPort will also be responsible for funding a total of five hundred (500') linear feet of new water main and five hundred (500') linear feet of new sewer main along Rasor and Anson Avenues, or in such other off-site location as directed by FMERA. Abutting developers will be obligated to install or fund additional water and sewer infrastructure to complete the connection of the Property to off-site public utilities. Purchaser will also be responsible for running new electrical distribution lines from the Property to an upgraded JCP&L substation following FMERA's conveyance of the abutting electric substation to JCP&L at a future date.

**Reinstatement, Amendment and Merger of Warehouse PSARA and Commissary PSARA**

- a. Merger: After OPort was awarded both the Warehouse and Commissary PSARAs, OPort submitted to staff that the highest and best use for the two parcels was to merge the Post Office, Parking Area and Commissary/PX parcels for one cohesive parcel to encompass Class A office space, general and food related research uses, and flex space, with ancillary related product storage and distribution in support of other primary uses. This merger will also serve as a support to the Commissary space which shall serve as an enrichment center incorporating a provision for food services, a culinary school, crafts production, arts adaptation (including music and art facilities for enrichment learning for all ages) as well as the display of art. The complex may also potentially include retail, office, entertainment, research and development. This merger simplifies land use planning and land use compliance. In order to facilitate this merger, timelines including Due Diligence, Approval Period, Reuse Plan Amendment, and Closing between the Warehouse and Commissary Parcels needed to be standardized.

While the Warehouse parcel will remain a standalone parcel, as it is separated from the other properties by a JCP&L owned right of way which intersects the parcels, the timelines for the Warehouse Parcel have been brought into alignment within this amendment.

- b. Purchase Price Reduction: Due to COVID-19 related delays in closings for various Fort properties, FMERA negotiated a six hundred thousand (\$600,000.00) Purchase Price reduction with Purchaser in

exchange for an expedited closing by September 30, 2020 and OPort agreeing to close without receiving All Approvals. This early closing will allow FMERA to meet its financial obligations for 2020. If Purchaser does not close on the Property by September 30, 2020, OPort must pay the original aggregate Purchase Price of Four Million Nine Hundred and Fifty Thousand (\$4,950,000.00) dollars. The reduced purchase price remains above the required minimum bids threshold as required under the RFOTPs.

FMERA staff reviewed the impact of a reduced purchase price on OPort's score under the RFOTP process. OPort is the only remaining bidder who submitted bids for all four properties. Arrow Holdings is the only other remaining bidder; however, even with the adjusted Purchase Price, OPort remains the highest scored project for the site.

- c. Reinstatement: Due to delays in due diligence activities based on previously undiscovered environmental items and COVID-19 delays, Purchaser conditionally terminated the Warehouse PSARA by letter dated April 22, 2020 with the hope that FMERA would provide an extension to the Due Diligence Period to complete additional environmental testing. Due to delays in due diligence activities based on existing environmental and building items and COVID-19 delays, Purchaser conditionally terminated the Commissary PSARA by letter dated June 5, 2020 with the hope that FMERA would provide an extension to the Due Diligence Period to completed additional environmental testing and building inspection. FMERA agreed that OPort was working in good faith during the Due Diligence Period under both PSARAs and was entitled to additional time to investigate the sites. Therefore, the Reinstatement and Merger allows for a Due Diligence Period extension until August 22, 2020.

### **Rule Modification**

On May 20, 2020, the FMERA Board approved a Rule Modification under Executive Order 103 ("EO 103") for PSARAs that allows COVID-impacted development projects with purchase prices over \$2,000,000 or an aggregate purchase price of \$2,000,000 for all the Developer's projects to request the return of its 10% deposit, as defined under N.J.A.C. 19:31C-2.7(b).

In consideration of the current irregularities and vagaries of the real estate marketplace caused by the global, country-wide, and state-wide fall-out from COVID-19 and in response to EO 103, the FMERA Board's rule modifications provide assistance to developers who have significant amounts of money held in escrow as a result of N.J.A.C. 19:31C-2.7(b) deposit requirements. This relief equates to FMERA's release of some or all of the 10% deposit submitted upon entrance into exclusive negotiations or execution of the PSARA. Per the FMERA Board-approved rule modification and in order to qualify for this release, the Developer would A) have to demonstrate financial hardship and B) have to demonstrate that the released deposit money will be used: 1) to finance additional due diligence activities (e.g., legal, engineering, other consulting) for the project in question, 2) for such other business operations at the developer's main business(es) such as payroll, utilities, rental or mortgage payments, and similar other operating expenses, or 3) to replace income from leases or mortgages that have been deferred or vacated by the developer's tenants.

On June 2, 2020, OPort submitted a request to FMERA via certification, requesting the release of its 10% deposit and provided justification which demonstrated COVID-driven impacts to the project. OPort's letter cited increased costs and time delays in the due diligence investigations of the property, suspension of all non-essential development work, increased Company carrying costs, and increased professional costs to account for accelerated performance timelines as significant hurdles to the project's development, creating a financial hardship based on

COVID-19. The release of the 10% deposit will be used to fund remaining environmental due diligence and associated engineering, legal and consulting fees, and to support the Company's main business payroll, utilities, rental and mortgage payments, and other qualified business expenses. OPort was required to certify to this financial hardship and use of the deposit prior to its release.

**The Reinstated, Amended and Merged Purchase and Sale & Redevelopment Agreement**

Consistent with the above, the attached Reinstated, Amended and Merged PSARA includes the following revisions to material terms:

1. **Deposit Return:** The Deposit under the Agreement shall be reduced to five percent (5%) of the original Purchase Price, or \$247,500. The balance of the existing Deposit in the sum of \$495,000 plus accrued interest, if any, shall be immediately refunded to OPort subject to the following conditions:
  - a. Purchaser certifies that it is experiencing financial hardships as a result of the COVID-19 pandemic; and the returned portion of the original Deposit shall be used to allow OPort to maintain and have cash available as needed to finance its ongoing business operations, including: 1) environmental due diligence and associated engineering, legal and consulting fees, 2) business payroll or 3) utility costs and other qualified business expenses, etc.;
  - b. Purchaser shall be obligated, upon Seller's request, to provide documentation regarding the use of the returned Deposit monies;
  - c. Purchaser shall have fifteen (15) days to supply such documentation that reasonably satisfies Seller as to the use of the returned Deposit monies. Should Purchaser fail to provide such documentation, OPort must either 1) return the 10% deposit which shall be held in escrow until Closing as originally contemplated in the two PSARAs; or 2) be subject to default as described in Section 23 of both of the respective PSARAs;
  - d. Notwithstanding the above, the obligation to retain the 5% deposit ("Modified Deposit") remains unchanged; the provisions here in no way alter the conditions as provided in Section 23 of the initial PSARAs, including Seller's right to retain and/or receive the Initial and Second Deposit as described in those Agreements; and
  - e. Upon the return of the 10% Deposit to Purchaser, the amount payable at Closing pursuant to Subparagraph 4(a) shall be adjusted accordingly to reflect the return of the 10% Deposit. The 10% Deposit return shall in no way impact the Purchase Price. The amount represented by the 10% Deposit return shall be due to Seller upon the initial closing notwithstanding decision to close subject to 8(c)(1) or 8(c)(2).
2. **Purchase Price:** In the event that the Purchaser exercises Purchaser's option to waive the Approvals Period and proceed to Closing on or before September 30, 2020 pursuant to Sections 8(c)(i), the Purchase Price shall be reduced to a total of Four Million Three Hundred Fifty Thousand Dollars (\$4,350,000.00).
3. **Redevelopment Project:** Purchaser has modified the Redevelopment Project for the parcels to include two phases of demolition and construction:

- a. Phase I: shall include the adaptive reuse of the existing Commissary building in accordance with existing or approved zoning, and the use of the southern portion of the Parking Area Sub-parcel for parking purposes.
  - b. Phase II: shall include the development of the remaining area of the overall Property as defined in the agreement.
4. Property Uses: Commissary/PX parcel shall permit Food Service, Flex space, Office, R&D and Instructional Schools and Studios. The Commissary Building must be adaptively reused as Craft Production facility; Food Service - Related Establishment; or for Food Service - Research & Development (R&D). The Warehouse District will permit Flex Space, Medical Office, Office, and Research & Development. The Property uses have been modified to remove community business.
5. Project Schedule:
  - a. Purchaser will commence construction of Phase I within thirty (30) days of receipt of all applicable permits; Purchaser will complete construction within twenty-four (24) months of Closing if Purchaser closes by September 30, 2020 and within Eighteen (18) months of Closing if Purchaser closes after September 30, 2020.
  - b. Purchaser shall commence Phase II within thirty (30) days of receipt of all applicable approvals; Purchaser will complete Phase II within forty-eight (48) months of the Closing if Purchaser closes by September 30, 2020 and within thirty-six (36) months of Closing if Purchaser closes after September 30, 2020. If Purchaser closes pursuant to Section 8(c)(2), Purchaser shall complete any three buildings of Phase II within 18 months of Closing in order to demonstrate good faith progress.
  - c. If Purchaser elects not to complete the Project in phases, Purchaser will commence construction on the Project within thirty (30) days of receipt of all applicable permits; Purchaser will complete construction of the Project within forty-eight (48) months of Closing if Purchaser closes by September 30, 2020 and within thirty-six (36) months of Closing if Purchaser closes after September 30, 2020.
6. Due Diligence Period: The Due Diligence Period is extended until August 22, 2020.
7. Conditions Precedent to Closing now include the following:
  - a. Seller using all reasonable efforts to provide Purchaser with an access agreement from the Army for the remaining environmental carveouts.
  - b. At or prior to closing, Seller shall convey the western side of Rasor/Ansen Avenue for no consideration to the Purchaser as a private access drive or to the Borough of Oceanport for dedication.

All other material terms of the initial PSARAs remain unchanged.

The attached Reinstated, Amended and Merged PSARA was approved by FMERA's Board on June 17, 2020.

Pursuant to the FMERA Act, all purchasers of real estate on Fort Monmouth must enter into a redevelopment agreement containing the following provisions, which will be covenants running with the land until the redeveloper completes the project: (i) a provision limiting the use of the property to the

uses permitted by the Reuse Plan or an amendment to the Reuse Plan as approved by the FMERA Board and uses permitted by FMERA's Land Use Rules; (ii) a provision requiring the redeveloper to commence and complete the project within a period of time that FMERA deems reasonable; and (iii) a provision restricting the transfer of the property or the redeveloper's rights under the PSARA prior to completion of the project. Based on the redevelopment provisions of the Reinstated, Amended and Merged PSARA between FMERA and OPort Partners, LLC, staff concludes that the essential elements of a redevelopment agreement between FMERA and OPort are sufficiently addressed and that it is not necessary for FMERA to enter into a separate redevelopment agreement with OPort for its redevelopment of the Warehouse, Commissary/PX, Post Office and Parking Area Parcels.

The Reinstated, Amended and Merged PSARA specifies that Oport will be confirmed as designated redeveloper of the Property upon NJEDA approval in accordance with N.J.S.A. 52:27I-38.

**Recommendation**

In summary, I am requesting that the Members consent to FMERA entering into the redevelopment agreement contained within the Reinstated, Amended and Merged Purchase and Sale & Redevelopment Agreement with OPort Partners, LLC for the sale and redevelopment of the Warehouse, Post Office, Commissary/PX and Parking Area Parcels in the Fort's Oceanport Reuse Area.



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Tim Sullivan  
Chief Executive Officer

Attachment: Reinstated Amendment and Merger to Purchase and Sale & Redevelopment Agreement with OPort Partners, LLC for the Warehouse, Post Office, Commissary/PX & the Parking Area in Oceanport

Prepared by: Kara A. Kopach & David E. Nuse



OPort Partners, LLC parcels – Fort Monmouth

**REINSTATED, AMENDED AND MERGED PURCHASE AND SALE AGREEMENT  
AND REDEVELOPMENT AGREEMENT**

**BETWEEN**

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**

**As Seller,**

**AND**

**OPORT PARTNERS, LLC,**

**As Purchaser**

**As of July 13 2020**



**EXHIBIT LIST**

**A – Property Depiction**

**B – Depiction of District A**

**C – Phase I Concept Plan**

**D – Finalized Conceptual Site Plan**

**E – Access Agreement Area – [to be delivered at a later date]**

**REINSTATED, AMENDED AND MERGED PURCHASE AND SALE AGREEMENT  
AND  
REDEVELOPMENT AGREEMENT**

This **REINSTATED, AMENDED AND MERGED PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT** (this “**Agreement**”) is made as of July\_\_\_\_, 2020 (the “**Effective Date**”) between **Fort Monmouth Economic Revitalization Authority** (“**FMERA**” or “**Seller**”), a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey, pursuant to P.L. 2010, c. 51, N.J.S.A. 52:27I-18 et seq., whose address is 502 Brewer Avenue, Oceanport, New Jersey 07757, and **OPort Partners, LLC** (“**OPort**” or “**Purchaser**”), a limited liability company of the State of New Jersey, whose address is 116 Chestnut Street, Suite 102, Red Bank, New Jersey 07701. Seller and Purchaser are collectively referred to herein as the “**Parties**”.

**WITNESSETH:**

**WHEREAS**, Seller and Purchaser entered into that certain Purchase and Sale Agreement and Redevelopment Agreement dated September 16, 2019 regarding the purchase sale and redevelopment of real property known as the Warehouse District/Post Office Area, as amended by the First Amendment to the Purchase and Sale Agreement dated January 6, 2020, the Second Amendment to the Purchase and Sale Agreement and Redevelopment Agreement April 13, 2020 (collectively, the “**WPO PSARA**”);

**WHEREAS**, Seller and Purchaser entered into that certain Purchase and Sale Agreement and Redevelopment Agreement dated February 5, 2020 regarding the purchase sale and redevelopment of real property known as the Commissary, PX Complex, Environmental Carveouts and Parking Lot (the “**CPP PSARA**”);

**WHEREAS**, Purchaser conditionally terminated the WPO PSARA by letter dated April 22, 2020, and Purchaser conditionally terminated the CPP PSARA by letter dated June 5, 2020;

**WHEREAS**, the parties mutually desire to reinstate, amend and merge the WPO PSARA and the CPP PSARA by this Agreement in order to establish consistency as to the terms, timetables

and conditions of each PSARA and the Project described in each of the PSARA's in order to facilitate the purchase, sale and redevelopment of all Sub-parcels and Environmental Carveouts consisting of the overall Property (for purposes of this Agreement the CCP PSARA and the CCP PSARA shall be referred to the PSARA's or the PSARA);

**WHEREAS**, the parties intend that all terms, exhibit and conditions contained in the WPO PSARA or the CCP PSARA not specifically modified by this Agreement shall remain unchanged and will remain in full force and effect and should any terms of this Agreement conflict with any aspect of the WPO PSARA or the CCP PSARA, this Agreement shall control;

**WHEREAS**, each of the Commissary, PX Complex, Parking Lot, Post Office Area and Warehouse District parcels are referred to herein individually as, a "Sub-parcel"; and with the Environmental Carveouts included, are referred to collectively as the "Property"; and

**WHEREAS**, as of the Effective Date of this Agreement and upon New Jersey Economic Development Authority ("NJEDA") approval of this Agreement (whichever occurs later), Purchaser is the designated redeveloper of the Property pursuant to N.J.S.A. 52:271-38; and

**WHEREAS**, FMERA Board's approved a modification to Rule N.J.A.C. 19:31C-2.7(b) on May 20, 2020 permitting the return of a portion of the deposit comprising 10% of the Purchase Price when a Purchaser has demonstrated that it is suffering financial hardship as a result of the COVID-19 pandemic, the returned deposit will be used for one of the prescribed uses, and the development project or projects has a Purchase Price of \$2,000,000 or more; and

**WHEREAS**, on June 12, 2020, OPort submitted a request to FMERA via certification, requesting the release of its 10% deposit, citing increased costs and time delays in the due diligence investigations of the property, suspension of all non-essential development work, increased company carrying costs and increased professional costs to account for accelerated performance timelines as significant hurdles to the project's development that has created a financial hardship

as result of the impacts of the COVID-19 State of Emergency under Executive Order 103 (2020), as significant hurdles to the project's development; and

**WHEREAS**, OPort has represented that the release of the 10% deposit will be used to conduct additional due diligence activities for the project contemplated in the PSARA and other business operations to support the Company's main business payroll, utilities, rental and mortgage payments;

**WHEREAS**, OPort has certified that increased costs and time delays in due diligence investigations, site planning and all phases of project investigation and plan development have created a financial hardship based on COVID-19; and

**WHEREAS**, the Parties acknowledge that OPort must, upon FMERA's request, supply documentation demonstrating the actual use of the returned portion of the deposit for the reason supplied above or for another approved use; and

**WHEREAS**, the Parties acknowledge that return of the Deposit in no way impacts the Purchase Price which shall remain due in full as Closing.

**WHEREAS**, Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller, and to redevelop, the Property, subject to the terms and conditions set forth herein.

**NOW THEREFORE**, for good and valuable consideration, the mutual receipt and legal sufficiency of which the Parties hereby acknowledge Seller and Purchaser hereby agree as follows:

**1. Recitals.**

The Recitals are imported by reference into this Agreement as if set out and repeated in full herein. Capitalized terms used but not otherwise defined shall have the respective meanings ascribed to such terms in the CCP PSARA and WPO PSARA, respectively.

**2. Purchase and Sale Agreement.**

Subject to the terms and conditions set forth in this Agreement and the performance by the Parties of all of the obligations hereunder, the Seller agrees to sell and convey to Purchaser, and the Purchaser agrees to purchase and acquire from Seller, the Property. The Seller will sell and convey to the Purchaser the Property in its as-is condition, which consists of: (a) the land and all the buildings, fixtures and other improvements on the land; (b) all of the Seller's rights relating to the Property; and (c) all personal property specifically included in this Agreement.

**3. The Property.**

The Property is depicted in the map attached hereto as to **Exhibit "A"** and is further described as follows: The Warehouse District consists of approximately 8 acres and includes Buildings 975, 976, 909, 910, 911, 912 and 913. The Post Office Area totals approximately 6 acres and includes Buildings 800, 801, 1005 and 1010. The Commissary and PX Complex, is approximately 6.385 acres in area. The Parking Lot consists of an approximately 4.90-acre paved lot that provides approximately 670 parking spaces for use by the adjoining Commissary and PX Complex. The Commissary and PX Complex includes the 25,626 g.s.f. Post Exchange (Buildings 1000, 1001, 1002 & 1003), the 53,700 g.s.f. former grocery (Building 1007) and the 5,563 g.s.f. Army Community Service Center (Building 812). The Environmental Carveouts consist of Parcel 1002 and portions of Parcel 57, 64 and 65 including the FOST 3 and FOST 4 lands indicated in **Exhibit A**, together with any other portions of the Commissary Sub-parcel, Post Office Sub-parcel and PX Sub-parcel not conveyed with the Commissary Sub-parcel, Post Office Sub-parcel and PX Sub-parcel.

**4. The Purchase Price.**

- a. Subject to any adjustments as called for in this Section 4 or in Section 24, the price that the Purchaser will pay the Seller as consideration for the Property is Four Million Nine Hundred and Fifty Thousand (\$4,950,000.00) Dollars payable as follows:

In connection with the CCP PSARA, Purchaser deposited an **Initial Deposit** with the Seller and the Seller has transferred said

Initial Deposit, with interest, to the Escrow Agent, in the amount of	\$150,000.00
In connection with the CCP PSARA, Purchaser deposited a <b>Second Deposit</b> with the Seller and the Seller has transferred said <b>Second Deposit</b> , with interest, to the Escrow Agent, in the amount of	\$300,000.00
In connection with the WPO PSARA, Purchaser deposited an <b>Initial Deposit</b> with the Seller and the Seller has transferred said <b>Initial Deposit</b> , with interest, to the Escrow Agent, in the amount of	\$97,500.00
In connection with the WPO PSARA, Purchaser deposited a <b>Second Deposit</b> with the Seller and the Seller has transferred said <b>Second Deposit</b> , with interest, to the Escrow Agent, in the amount of	\$195,000.00
Balance to be paid at closing of title, by wire transfer, in cash or by certified check	\$4,207,500

- b. The Purchase Price for each Subparcel and the Environmental Carveouts is allocated as follows:

Warehouse District Sub-parcel	\$950,000.00
Post Office Area Sub-parcel	\$1,000,000.00
Parking Lot Sub-parcel	\$674,999.00
Commissary Sub-parcel and PX Complex Sub-parcel	\$2,325,000.00
Environmental Carveouts	\$1.00

- c. In the event Purchaser exercises Purchaser's option to waive the Approvals Period and proceed to Closing on or before September 30, 2020 pursuant to Section 8(c)(i), the

Purchase Price shall be reduced to a total of Four Million Three Hundred Fifty Dollars (\$4,350,000.00).

- d. In the event Purchaser does NOT exercise Purchaser's option to waive the Approvals Period and proceed to Closing pursuant to Section 8(c)(i), Purchaser may elect, in Purchaser's sole discretion, to either: (a) close on such portions of the Property that are available for conveyance from Seller; or (b) delay closing until such time as all of the Conditions Precedent to Closing in Section 8 below are satisfied for the unadjusted Purchase Price.
- e. Deposit Return. The Deposit under the Agreement shall be reduced to five percent (5%) of the original Purchase Price of the CCP PSARA and WPO PSARA combined in the sum of \$247,500. The balance of the existing Deposit in the sum of \$495,000 plus accrued interest, if any, shall be immediately refunded to OPort subject to the following conditions:
  - 1. Purchaser certifies that it is experiencing financial hardships as a result of the COVID-19 pandemic; and the returned portion of the original Deposit shall be used the purposes as set forth in the recitals to this Agreement to allow OPort to maintain and have cash available as needed to finance its ongoing business operations including: 1) to finance additional site work for the Project, 2) for planning & design required for the Mandatory Conceptual Review Process and Oceanport Planning Board review or 3) for other essential business operations including payroll, service fees, etc.
  - 2. Purchaser shall be obligated, upon Seller's request, to provide documentation regarding the use of the returned Deposit monies;
  - 3. Purchaser shall have fifteen (15) days to supply such documentation that reasonably satisfies Seller as to the use of the returned Deposit monies. Should Purchaser fail to provide such documentation; OPort must either 1) return the 10% deposit which shall be held in escrow until Closing as originally contemplated in the CCP and

WPO PSARAs; or 2) be subject to default as described in Section 23 of both the CCP and WPO PSARAs;

4. Notwithstanding the above, the obligation to retain the 5% deposit (“Modified Deposit”) remain unchanged; the provisions herein no way alter the conditions as provided in Section 23 of the CCP and WPO PSARAs, respectively, including Seller’s right to retain and/or receive the Initial and Second Deposit as described in these Agreements; and
5. Upon the return of the 10% Deposit to Purchaser, the amount payable at Closing pursuant to Subparagraph 4(a) shall be adjusted accordingly to reflect the return of the 10% Deposit. The 10% Deposit return shall in no way impact the Purchase Price. The amount represented by the 10% Deposit return shall be due to Seller upon the initial closing notwithstanding decision to close subject to 8(c)(1) or 8(c)(2) below.

**5. Redevelopment Project, Project Approvals, and Reuse Plan Amendment.**

- a. **Capital Investment.** Purchaser’s total Capital Investment, net of the Purchase Price, is estimated to be a total of \$54,443,750: \$12,900,000.00 as to the Post Office Area, \$18,543,750.00 and \$23,000,000 as to the Commissary. Purchaser shall render periodic progress reports annually to FMERA following Commencement of Construction.
- b. **Redevelopment Project.** Purchaser represents that it is purchasing the Property with the intent to demolish the existing Buildings 800, 801, 975, 976, 909, 910, 911, 912, 913, 1005 and 1010 on the Property and to construct the Project, which consists of the development of:
  - i. the Warehouse District which shall include three (3) buildings totaling approximately 75,000 sf. of Class A buildouts for office, medical office, technology, research and flex space, related product storage and distribution with a primary focus on medical, biotechnology and software development; and



- ii. For the purposes of the Redevelopment of the Post Office Area, Commissary and PX Complex and the Parking Lot, the parcels shall be merged for one section of the Redevelopment Project, referred to as "District A" as depicted on Exhibit "**B attached hereto.**" District A shall include the reuse of the Commissary building and the demolition of all the remaining buildings in District A. The Commissary Building is to be redeveloped as an enrichment center incorporating a provision for food services, a culinary school, crafts production, arts adaptation (including music and art facilities for enrichment learning for all ages) as well as the display of art. The complex may also potentially include retail, office, entertainment, research and development. The Commissary and PX Complex may also include flex-space/warehouse space provided that such flex-space/warehouse space is: (i) in support of another principal use such as office or research and development; and (ii) not the primary use of any building on the Commissary and PX Complex. District A shall allow up to 140,000 sq. ft. of Class A Office space.
- iii. District A shall permit, Class A office space which may include general and food related research uses and flex space as ancillary related product storage and distribution in support of other primary uses. All facilities will have Class A tenant buildouts. Additionally, the proposed District A development may include certain indoor recreational uses such as dance schools, martial arts, yoga studios, Pilates, karate, or similar group uses involving group instruction. A portion of District A will continue to be used for parking purposes in connection with the overall redevelopment of the Property. The Parking Lot may also potentially include alternate Intended Uses including office and R & D uses. The Parking Lot may also include flex-space/warehouse space provided that such flex-space/warehouse space is: (i) in support of another principal use such as office or research and development; and (ii) not the primary use of any building on the Parking Lot.
- iv. The Project may be completed in Phases:
  - 1. "**Phase I**" shall include the adaptive reuse of the existing commissary building (Building 1007) on the Commissary Sub-parcel in accordance

with existing or approved zoning, which will be fitted with new, conforming tenants. The Phase I development shall also include the use of the southern portion of the Parking Lot Sub-parcel for parking purposes. The southern portion of the existing parking area will be upgraded to serve the Building, creating approximately 82 parking spaces in an area which previously contained 114 parking spaces. The other Phase I improvements to be made to the parking area on the Parking Lot Sub-parcel consist of repairing/resurfacing as needed, restriping, and the replacement of concrete/pavement with landscaping. A concept plan for the Phase I development (the "Phase I Concept Plan") entitled "Commissary Phase I Parking Concept" prepared by Kennedy Consulting Engineers, LLC dated May 27, 2020 is attached hereto as **Exhibit "C" (Phase I Concept Plan)**". The parties agree that the Phase I development shown on the Phase I Concept Plan is only a concept, which may be adjusted, upon mutual agreement of the Parties.

2. "Phase II" development shall include the development of the remaining areas of the overall Property as delineated in Section 5(b)(i-iv).
3. It is understood that Purchaser shall not receive the Certificate of Completion until both Phase I and Phase II are completed.

**c. Project Schedule. Purchaser shall comply with the following Project schedule:**

- i. Purchaser will commence construction for Phase I within thirty (30) days of receipt of all applicable permits; Purchaser will Complete construction within Twenty-Four (24) months of Closing if Purchaser closes pursuant to Section 8(c)(1) and within Eighteen (18) months of Closing if Purchaser closes pursuant to Section 8(c)(2).
- ii. Purchaser shall commence Phase II within thirty (30) days of receipt of all applicable approvals; Purchaser will Complete Phase II within Forty-eight (48) months of the Closing if Purchaser closes pursuant to Section 8(c)(1) and within thirty-six (36) months of Closing if Purchaser closes pursuant to Section 8(c)(2). If Purchaser closes pursuant to Section 8(c)(2), Purchaser shall

complete any three buildings of Phase II within 18 months of Closing in order demonstrate good faith progress.

- iii. If Purchaser elects not to complete the Project in phases, Purchaser will commence construction on the Project within thirty (30) days of receipt of all applicable permits; Purchaser will Complete construction of the Project within forty-eight (48) months of Closing if Purchaser closes pursuant to Section 8(c)(1) and within thirty-six (36) months of Closing if Purchaser closes pursuant to Section 8(c)(2).

**d. Project Approvals.**

- i. **“Approval Period”** shall be fourteen (14) months commencing upon the later to occur of Purchaser’s receipt from FMERA of the final and non-appealable Amendment to the Reuse Plan or completion of Due Diligence Period, in which Purchaser will diligently seek to obtain All Approvals.
- ii. Purchaser shall obtain All Approvals within the Approval Period. In the event that Purchaser is unable to obtain All Approvals within the Approval Period, Seller may grant, at its sole discretion, an extension of the Approval Period for an additional six (6) months which shall be granted if Seller determines that the Purchaser is diligently and in good faith pursuing All Approvals. Any additional Approval Extension Period shall run from the expiration of the Approval Period. Despite anything to the contrary herein, Purchaser may elect to waive receipt of some or all Approvals within the Approval Period and close on the Property without said All Approvals provided that conditions precedent provided in Section 8 are satisfied or waived.

**e. Financial Assurances and Guarantees.**

- i. Prior to the Commencement of the Construction, Purchaser shall post all financial assurances and guarantees required pursuant to municipal ordinances for performance, maintenance and site restoration with the municipality and name FMERA as a beneficiary.
- ii. The provisions of this Subsection 5(e) shall survive Closing

**f. Job Creation: Security.**

- i. The sections in the CCP PSARA and WPO discussing Job Creation remain in effect. The Parties recognize that the aggregate job numbers are 506 construction related part-time and/or full-time temporary jobs and 750 part-time and/or full-time permanent jobs at the Property.

**g. Reuse Plan Amendment**

- i. Purchaser has provided the final Conceptual Site Plan prepared by Kennedy Consulting Engineers, LLC dated June 17, 2020 attached hereto as **Exhibit D** ("Final Conceptual Site Plan"). The Parties agree that Reuse Plan Amendment #15, which has been reviewed by both parties, shall serve to modify the Reuse Plan in fulfillment of requirement as described in Section 8(a)(v). Amendment #15 shall be reviewed at FMERA June 2020 Board meeting simultaneously with this Reinstated, Amended and Merged PSARA Amendment. Purchaser understands that any changes to the Final Conceptual Site Plan shall not obligate FMERA to amend Plan Amendment #15 nor require submission of a later Reuse Plan Amendment. The Purchaser's site plan and subdivision plans remain subject to (i) Seller's Mandatory Conceptual Review and (ii) the planning board review process of the Borough of Oceanport. The Project may be amended upon mutual agreement of Seller.

**6. Title and Survey Investigation.**

- i. As of the Effective Date, Seller has provided Purchaser with the Boundary Survey. Within forty-five (45) days of a request by Purchaser Seller will cause the Boundary Survey to be certified to Purchaser, Purchaser's attorney, the title company and such additional parties as may be reasonably requested by Purchase once provided.

**7. Due Diligence Period.**

- a. The "Due Diligence Period" shall mean the period commencing on the Effective Date of this Agreement and ending at five o'clock (5:00) p.m. August 22, 2020, during which time the Purchaser upon prior written notice to Seller, at its sole cost and expense, may

investigate the Property to determine whether the as-is condition of the Property is satisfactory to the Purchaser.

- b. Purchaser may terminate this Agreement in its sole, absolute and unfettered discretion by delivering written notice of such termination to the Seller prior to five o'clock (5:00) P.M. on the last day of the Due Diligence Period without penalty and receive a full refund of the Initial and Second Deposits, and all interest accrued thereon.

**8. Conditions Precedent to Closing.**

- a. Closing is subject to and conditioned upon the following conditions, which are agreed by the Parties to be included for the protection of the Parties:
  - i. Approval of Purchaser as redeveloper of the Property by the NJEDA Board;
  - ii. The receipt by Purchaser of All Approvals unless waived in whole or in part by Purchaser within the timeline as set forth in Section 5(c). Despite anything to the contrary herein, Purchaser may elect, in Purchaser's sole and absolute discretion, to waive All Approvals in whole or in part in accordance with this Section and Section 8(c) and close on the Property with the Reuse Plan Amendment but without any other Approvals, provided that Purchaser will still be required to obtain a Mandatory Conceptual Review approval of the Project by FMERA prior to receiving preliminary and final site plan approval from the Borough.
  - iii. Seller shall have performed all covenants, agreements and conditions required by this Agreement to be performed by Seller prior to or as of Closing and shall have cured all defaults;
  - iv. Seller shall have satisfied all conditions relating to the conveyance of fee simple marketable title insurable at regular rates;
  - v. Seller shall have obtained approval from the FMERA's Board for a Reuse Plan Amendment #15 for the Property.
  - vi. Seller shall at or prior to Closing, either: (i) convey the western side of Rasor/Ansen Avenue for no consideration to the Purchaser as a private access road serving the Property and the abutting Commissary/PX parcel; or (ii)

convey the western side of Razor/Ansen Avenue to Purchaser for dedication to the Borough of Oceanport.

- vii. In the event the Purchaser does not exercise Purchaser's option to close pursuant to Section 8(c)(i), the Closing shall be contingent upon Seller first obtaining clear and insurable title to the Environmental Carveouts that are part of the Property from the Army; Purchaser may elect to take title to all property or in subsequent closings.
  - viii. Seller shall prior to Closing make reasonable efforts to provide to Purchaser an access agreement from the Army regarding the area depicted in the map attached hereto as **Exhibit "E"** ("Access Agreement Area") which permits Purchaser and Purchaser's representatives, agents, contractors and employees, including persons, vehicles and equipment access to and from the Access Agreement Area for the purposes of facilitating Purchaser's planning, design, financing, approvals for and construction of the Project, or in the absence therefore provide a status report on the Seller's efforts to obtain.
- b. The Parties mutually agree as follows concerning the Conditions Precedent to Closing:**
- i. Each Party shall use its best efforts to perform all conditions required by this Agreement diligently prior to or as of Closing and each Party shall have cured any of its respective defaults prior to Closing or at Closing; and
  - ii. Either Party may waive any of the foregoing Conditions Precedent to Closing or may waive the cure of the other Party's default at any time prior to Closing or at Closing, subject to the terms of section 8(c)(i) and section 8(a)(ii). Such waiver shall be in writing and acknowledged by both Seller and Purchaser.
- c. Time and Place of Closing.** Purchaser shall have the option in Purchaser's sole and absolute discretion to Close under the following Closing Schedules:
- i. In consideration of the Reduced Purchase Price provided for in Section 4(c) above, Purchaser may elect to waive All Approvals in writing (except FMERA's Board approval of the Reuse Plan Amendment) and close on the

Property by September 30, 2020. It is understood that closing on or by September 30, 2020 is a material term of the price reduction and this option shall become null and void should the Closing not occur by this date for any reason. As part of this closing, FMERA shall convey the Environmental Carveouts associated with the FOST 3 Lands, as indicated in Exhibit A. Seller shall convey Title to FOST 4 Lands as indicated in Exhibit A for no additional consideration in a subsequent closing within forty-five (45) days of Seller's receipt of title to each Environmental Carveout from the Army.

- ii. In the event the Purchaser does not exercise Purchaser's option to close pursuant to 8(c)(i), closing shall occur within thirty (30) days of the end of the Approval Period or ten (10) days after all title and environmental obligations are satisfied including Seller obtaining clear and insurable title to all Environmental Carveouts that are part of the Property from the Army, whichever is later, the closing may occur in phases; or

**9. Successors and Assigns.**

This Agreement shall inure to the benefit of and shall bind the Parties, their successors and assigns.

**10. Entire Agreement.**

All defined terms in the WPO PSARA and the CCP PSARA shall have the same meaning in this Agreement. All terms, exhibits and conditions contained in the WPO PSARA or the CCP PSARA not modified by this Agreement shall remain unchanged and will remain in full force and effect. Should any terms of this Agreement conflict with any aspect of the WPO PSARA or the CCP PSARA, this Agreement shall control. This Agreement can only be changed by an agreement in writing signed by both Purchaser and Seller. The Seller states that the Seller has not made any other Agreement to sell the Property to anyone else.

**11. Authority Representations of Purchaser and Seller.**

Purchaser and Seller hereby represent to each other on and as of the date of this Agreement and on and as of the date of the transfer(s) provided for herein, that each have full capacity, right, power and authority to execute, deliver and perform this Agreement, and all required action and approvals therefore have been duly taken and obtained. The individual(s) signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller and Purchaser shall be duly authorized to sign the same on Purchaser's and Seller's behalf and to bind Seller and Purchaser thereto. This Agreement and all documents to be executed pursuant to Seller and Purchaser are and shall be binding upon and enforceable against Seller and Purchaser in accordance with their respective terms. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulations or ruling of any court or governmental authority, or conflict with, result in a breach of, or constitute a default under any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Purchase or Seller is bound.

**12. Notices.**

- a. Any notices required to be given under this Agreement must be in writing and shall be addressed as follows:

TO: Fort Monmouth Economic Revitalization Authority  
502 Brewer Avenue  
Oceanport, New Jersey 07757  
Attention: Bruce Steadman, Executive Director

CC: DeCotiis, FitzPatrick, Cole & Giblin, LLP  
500 Frank W. Burr Boulevard, Suite 31  
Teaneck, NJ 07666  
Attention: Douglas F. Doyle, Esq.

AND

TO: OPort Partners, LLC  
c/o Denholtz Properties  
116 Chestnut Street  
Suite 102  
Red Bank, NJ 07701



Attention: Steven Denholtz, Esq., Managing Member

CC: Giordano, Halleran & Ciesla, PC  
125 Half Mile Road, Suite 300  
Red Bank, New Jersey 07701-6777  
Attention: John A. Giunco, Esq.

- b. All notices which must be given under this Agreement are to be given either by:
  - i. personal service,
  - ii. certified mail, return receipt requested, addressed to the other party at their address specified above, or
  - iii. overnight delivery service, addressed to the other party at their address specified above (e.g. Federal Express, United Parcel Service, DHL, United State Postal Service Next Day Mail); and
  - iv. with a copy by facsimile and/or electronic mail.
- c. Either party may change the address to which notice must be provided pursuant to this Agreement by providing notice, in accordance with this provision, to the other party at that party's last-identified address, provided that such change of address shall not take effect until five (5) days following the date of such notice.
- d. Each party authorizes the other to rely in connection with their respective rights and obligations under this Agreement upon approval by the parties named above or any person designated in substitution or addition hereto by notice, in writing, to the party so relying.

**13. Brokerage Commissions.**

Seller and Purchaser represent to each other that each has had no dealings with any other broker, salesperson or agent in connection with the sale of the Property. In no event shall Seller be responsible for a commission to any broker. The provisions of this Section shall survive Closing and/or any termination of this Agreement.

**14. Counterparts.**

This Agreement may be simultaneously executed in several counterparts, or with counterpart signature pages, and may be delivered by facsimile or electronic mail, it being understood that all such counterparts or counterpart signature pages, taken together, shall constitute one and the same instrument.

**15. Exhibits.**

By execution of this Agreement, Purchaser acknowledges receipt of all Exhibits described in and attached to this Agreement.

**SIGNATURES TO FOLLOW**

Wherefore the Seller and Purchaser have signed this Agreement as of the date first written above.

ATTEST:

FORT MONMOUTH ECONOMIC  
REVITALIZATION AUTHORITY, Seller

*Regina McGrade*

By: *Bruce Steadman*  
Bruce Steadman  
Executive Director

ATTEST:

OPORT PARTNERS, LLC, Purchaser

\_\_\_\_\_

By: \_\_\_\_\_  
Steven Denholtz, Esq.  
Managing Member

Wherefore the Seller and Purchaser have signed this Agreement as of the date first written above.

ATTEST:

FORT MONMOUTH ECONOMIC  
REVITALIZATION AUTHORITY, Seller

\_\_\_\_\_

By: \_\_\_\_\_  
Bruce Steadman  
Executive Director

ATTEST:

OPORT PARTNERS, LLC, Purchaser

\_\_\_\_\_

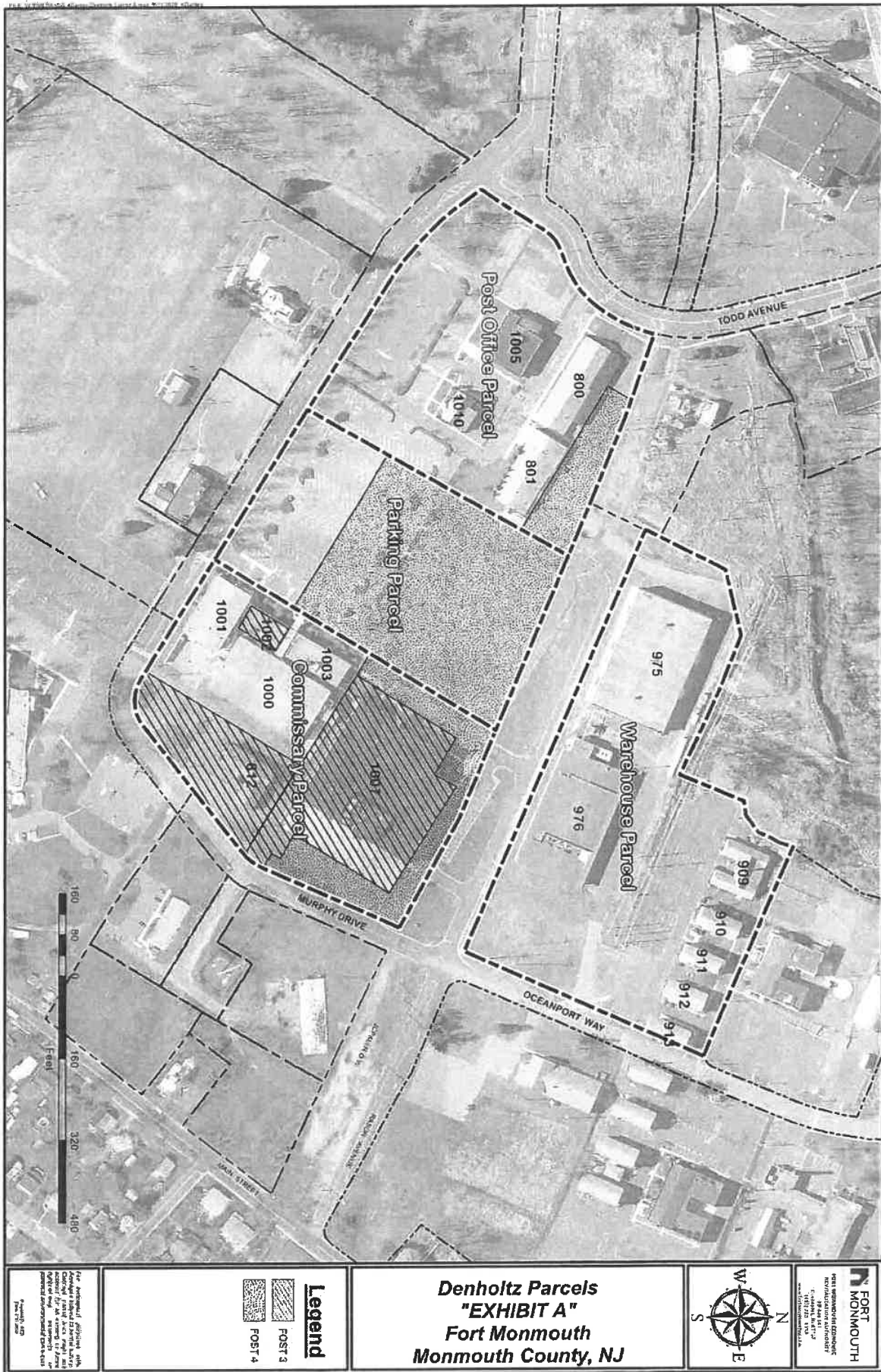
By: \_\_\_\_\_  
Steven Denholtz, Esq.  
Managing Member



*Janet Chilnick*

**Exhibit A**  
**Property Depiction**

2



Bruce Stuchman

MS

For Additional Information, visit the website at: [www.fortmonmouth.com](http://www.fortmonmouth.com). Contact: Planning and Development Department, 1000 Oceanport Way, Fort Monmouth, NJ 07731. Phone: 732.326.1000. Fax: 732.326.1001.

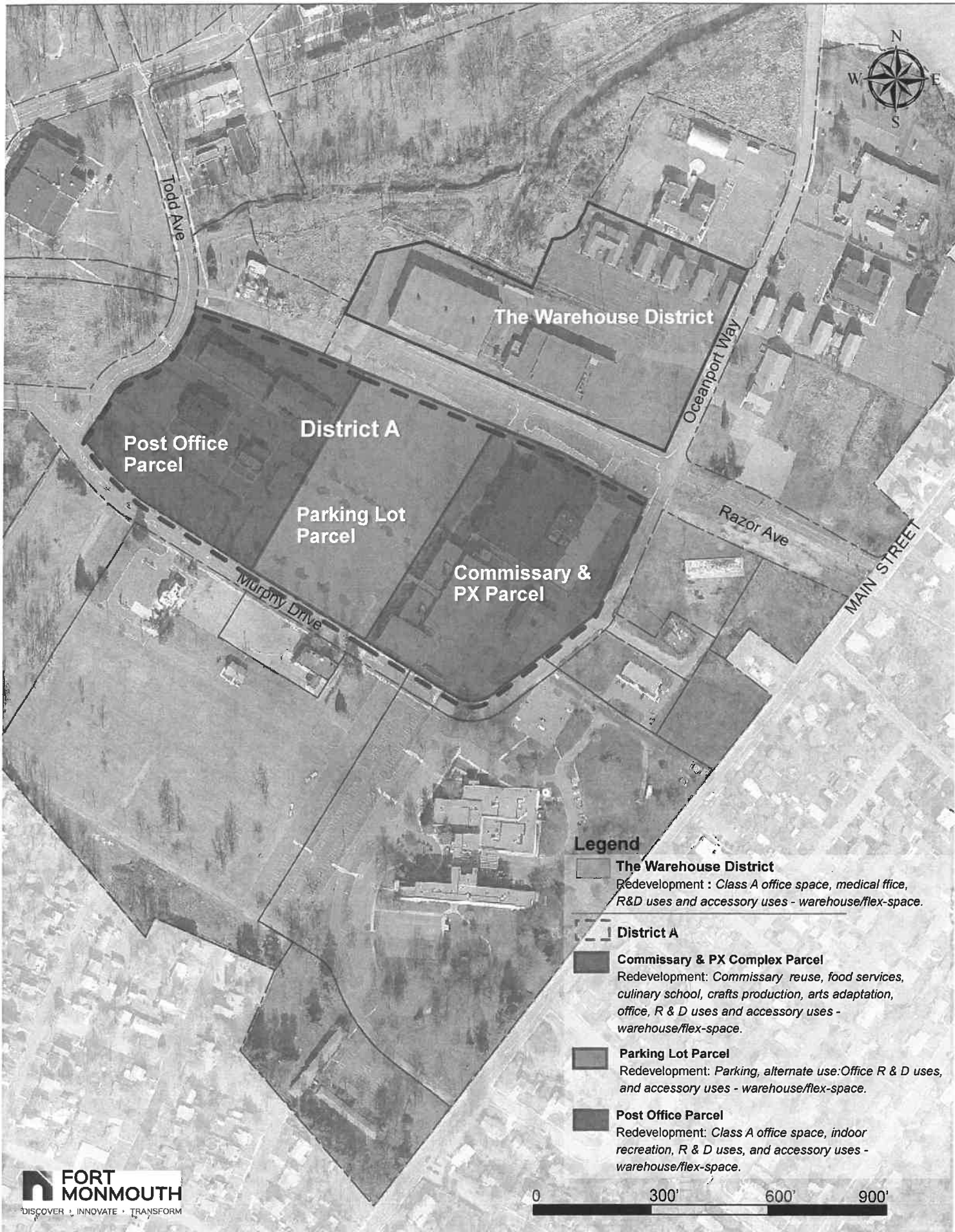
Legend	
	POST 3
	POST 4
	POST 4

**Denholtz Parcels  
"EXHIBIT A"  
Fort Monmouth  
Monmouth County, NJ**



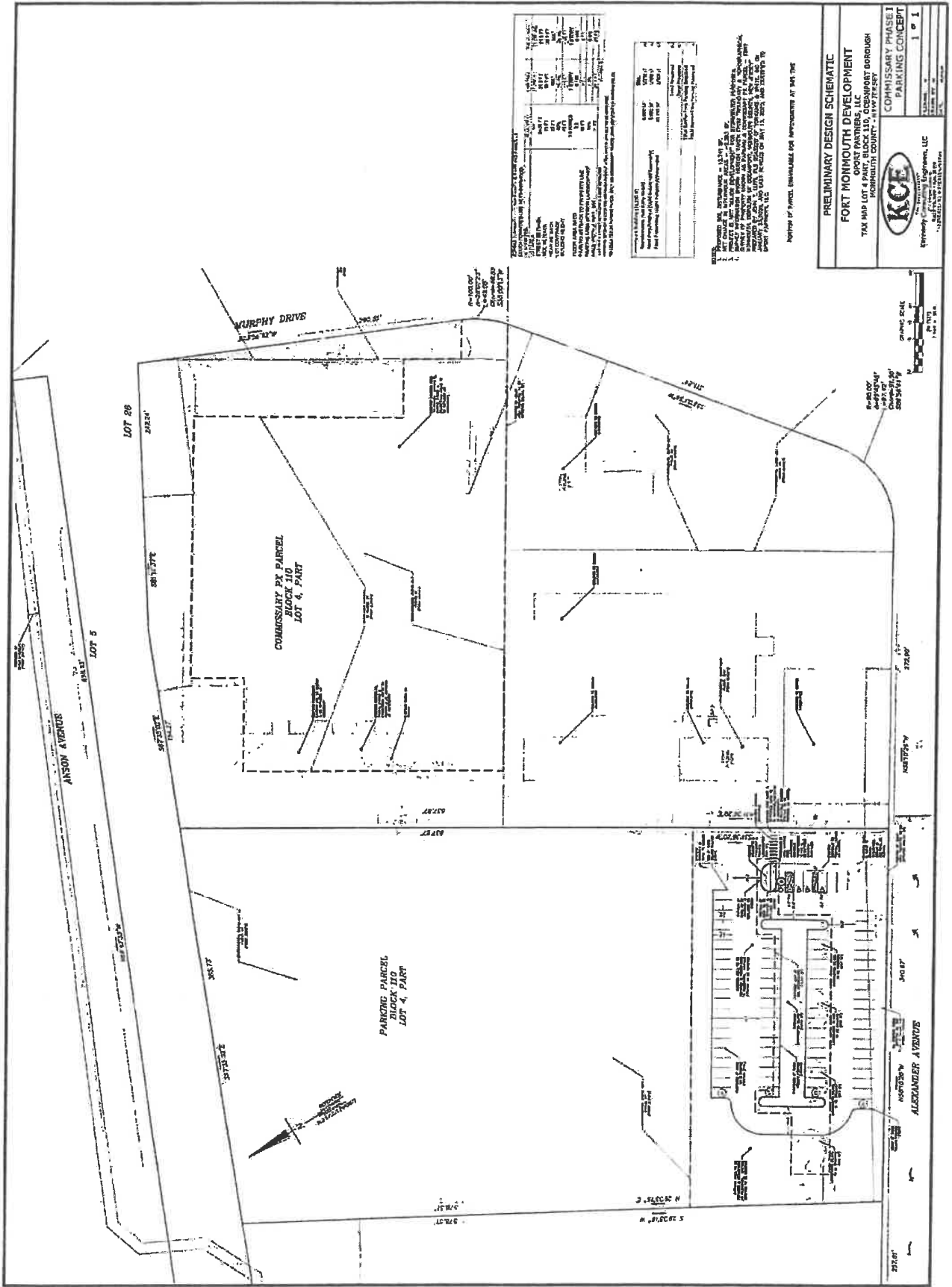
**FORT MONMOUTH**  
 1000 OCEANPORT WAY  
 FORT MONMOUTH, NJ 07731  
 TEL: 732.326.1000  
 FAX: 732.326.1001

**Exhibit B**  
**Depiction of District A**





**Exhibit C**  
**Phase I Concept Plan**



PROPERTY TAX INFORMATION	
Parcel ID	10000000000000000000
Area (Acres)	1.0000
Area (Sq Ft)	43560
Assessed Value	\$1,000,000
Market Value	\$1,200,000
Property Class	Residential Single-Family
County	Monmouth
Municipality	Fort Monmouth
Block	110
Lot	4

**PRELIMINARY DESIGN SCHEMATIC**  
**FORT MONMOUTH DEVELOPMENT**  
 744 MAP LOT 4 & PART BLOCK 110 BOROUGH  
 MONMOUTH COUNTY, NEW JERSEY

**KCE**  
 KCE ENGINEERING ARCHITECTURE, LLC  
 1000 ROUTE 100, SUITE 200  
 FORT MONMOUTH, NJ 08040  
 TEL: 732.328.1000  
 FAX: 732.328.1001  
 WWW.KCE-ARCHITECTS.COM

COMMISSARY PHASE  
 PARKING CONCEPT  
 1 P 1

NOTICE OF PREPARED FOR APPROVAL AT 10:00 AM  
 PREPARED BY: ARCHITECTURE - 10/10/20  
 1000 ROUTE 100, SUITE 200  
 FORT MONMOUTH, NJ 08040  
 TEL: 732.328.1000  
 FAX: 732.328.1001  
 WWW.KCE-ARCHITECTS.COM

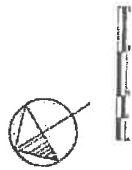
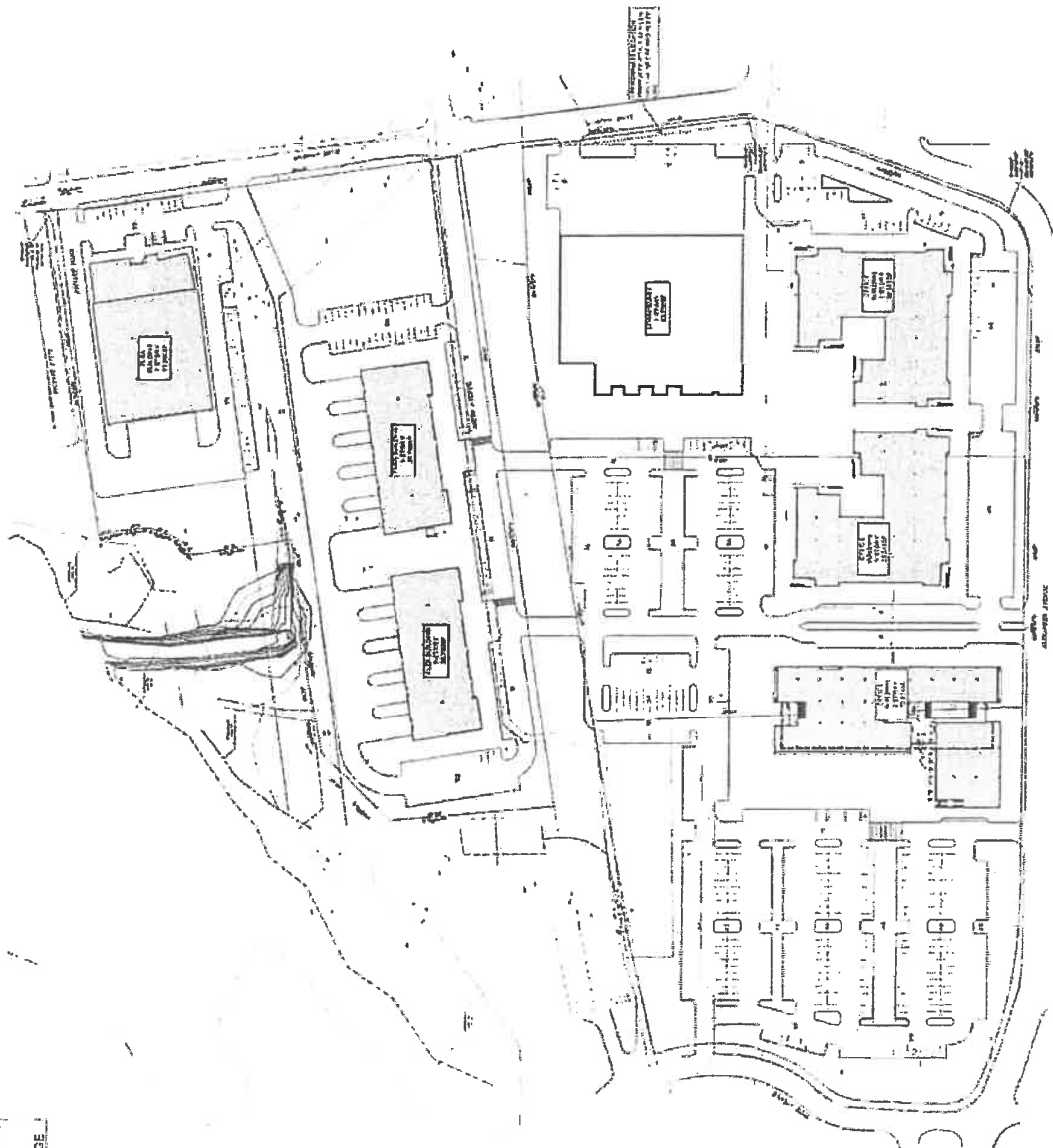
THIS PLAN IS THE PROPERTY OF KCE ENGINEERING ARCHITECTURE, LLC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. NO PART OF THIS PLAN IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF KCE ENGINEERING ARCHITECTURE, LLC.

**Exhibit D**  
**Finalized Conceptual Site Plan**

BUILDING SUMMARY - WAREHOUSE PARCELS			
Building A (13,200 SF)	24,200 SF	1/800-ft	30
Light Industrial/Assembly	7,000 SF	4/1000-ft	28.1
Office			
Building B (78,700 SF)	10,300 SF	1/800-ft	12.9
Light Industrial/Assembly	10,100 SF	4/1000-ft	41.4
Office			
Building C (10,700 SF)	10,300 SF	1/800-ft	12.9
Light Industrial/Assembly	10,100 SF	4/1000-ft	41.4
Office			
<b>Total (33,600 SF)</b>	<b>32,500 SF</b>	<b>4/1000-ft</b>	<b>130.0</b>

BUILDING SUMMARY - MANUFACTURING & POST OFFICE PARCELS			
Building D (13,200 SF)	15,800 SF	4/1000-ft	197.4
Food Service/Industrial Establishments	25,800 SF	1/800-ft	33.5
Light Industrial/Assembly			
Office			
Building E (13,200 SF)	31,500 SF	4/1000-ft	130.0
Office			
Building F (72,874 SF)	71,074 SF	4/1000-ft	291.1
Office			
<b>Total (107,200 SF)</b>	<b>107,200 SF</b>	<b>4/1000-ft</b>	<b>419.0</b>



NOTES:  
 . MAXIMUM IMPERVIOUS COVERAGE 70%  
 . NORTH PARCELS, 75% SOUTH PARCELS  
 . MAXIMUM F.A.R. : 0.30 NORTH PARCELS,  
 . 30 SOUTH PARCELS  
 . CONCEPT PLAN SUBJECT TO CHANGE

**FORT MONMOUTH CONCEPT PLAN - OCEANPORT, NEW JERSEY**

SKL-1: OVERALL CONCEPT  
 June 9, 2020



SKIDMORE, OWINGS & MERRILL  
 ARCHITECTS

**Exhibit E**

**Access Agreement Area – [to be delivered at a later date]**

STATE OF NEW JERSEY )  
 )  
COUNTY OF MONMOUTH )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of July, by Janet Chilnick, on behalf of the Purchaser, OPort Partners, LLC.

\_\_\_\_\_  
Attorney



*Janet Chilnick*

STATE OF NEW JERSEY     )  
    )  
 COUNTY OF MONMOUTH    )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of August 2020, by Fort Monmouth Economic Revitalization Authority, a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey (the "Seller"), pursuant to P.L. 2010, c. 51, by Bruce Steadman, its Executive Director, on behalf of the Seller.

*Regina McGrade* \_\_\_\_\_

Docs #4422663-v1

**Regina McGrade  
 Notary Public  
 New Jersey  
 My Commission Expires March 8, 2023  
 No. 2430957**

STATE OF NEW JERSEY )

)

COUNTY OF MONMOUTH )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_, by \_\_\_\_\_, on behalf of the Purchaser, OPort Partners, LLC.

\_\_\_\_\_  
Attorney



DRAFT



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**RE:** Security Services  
NJEDA Headquarters and Barnes Street Parking Lot, Trenton, NJ

**DATE:** September 9, 2020

**Summary**

I request the Members' approve a purchase order, under the State of New Jersey's cooperative contract, for security services with Universal Protection Service, LLC, doing business as Allied Universal Security Services, for security related services for the NJEDA Headquarters and Barnes Street Parking Lot, Trenton as well as a delegating authority to the CEO to enter into similar purchase orders for security services when available under a cooperative State contract.

**Background**

The Authority's current contract for security services is set to expire on October 14, 2020.

The Real Estate Division researched the contract website of the State of New Jersey, Department of Treasury, Division of Purchase and Property (DPP), NJStart, and found that DPP formally procured a cooperative contract for security services which is available for use by all state agencies and authorities. The awardee under that contract is the Authority's incumbent security services provider, Universal Protection Service, LLC, doing business as Allied Universal Security Services (AUS). Real Estate staff confirmed that all required compliance documentation has been collected by DPP. For reference, attached to this memo as Exhibit A are copies of the DPP's RFP and Purchase Order.

The current DPP cooperative contract is in the second year of its initial three-year term which will expire in May 31, 2022. There are two additional one-year extension options remaining under the contract, which would extend the expiration date to May 31, 2024 if exercised by DPP.

The existing UAS staff currently providing security at the Authority's Headquarters and the Barnes Street Parking Lot will remain on duty with the same schedules five days a week, ensuring continuity of services.



These services are subject to the State Building Services Contracts Act which establishes the prevailing wage to be paid by county where the services are being performed, as well as prescribed, published increases. AUS submitted its fees to DPP in accordance with the current prevailing wage rates and the following rates will apply to services provided to the Authority:

SECURITY GUARD SERVICES HOURLY RATES - MERCER COUNTY						
			Hours		Tasks	Rate
Item 73	Armed guard with radio	7:00 AM to 3:00 PM	1 Guard		7 AM to 8 AM In lot - 8 AM to 3 PM at front desk	32.93
					Weekly	1,317.20
					Monthly	5,268.80
					Annual	63,225.60
Item 77	Unarmed guard with radio	3:00 PM to 7:00 PM	1 Guard		3 PM to 7 PM Between front desk and upper parking lot	29.80
					Weekly	596.00
					Monthly	2,384.00
					Annual	28,608.00
Item 77	Unarmed guard with radio	3:00 PM to 8:00 PM	1 Guard		3 PM to 7 PM in Lot, 7 PM to 8 PM in Lobby	29.80
					Weekly	745.00
					Monthly	2,980.00
					Annual	35,760.00
TOTALS FOR ALL 3 GUARDS						
					Weekly	2,658.20
					Monthly	10,632.80
					Annually	127,593.60

The estimated annual amount for security services, based on the current prevailing wage rates, is \$127,593.60, which over the balance of the existing contract term, including contemplated extensions, would be an estimated \$467,836.80. The annual amount may change with any increase to the prevailing wage rates for Mercer County.



Staff recommends that the Authority enter into a Purchase Order with AUS to provide security services coterminous with the remainder of the existing DPP contract and any extensions thereto. In addition, staff recommends the Members delegate to the CEO authority to enter into similar cooperative contract purchase orders for security services when available through DPP's procuring of these services under a cooperative contract.

**Recommendation**

In summary, I request the Members' approve entering into purchase orders under the DPP cooperative blanket contract for security services with Universal Protection Service, LLC, doing business as Allied Universal Security Services, for the remainder of the existing DPP contract and any extensions thereto for the NJEDA Headquarters and the Barnes Street Parking Lot, and the Members delegate to authority to the CEO to enter into similar purchase orders under cooperative contracts for security services through DPP.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is written above a horizontal line.

Tim Sullivan  
Chief Executive Officer

Prepared by: Cathleen A. Hamilton and Vince Wardle  
Attachments: Exhibit A: NJStart RFP and NJStart Purchase Order

EXHIBIT A

Attachment  
NJStart RFP  
Security Services



# Bid Solicitation

## Bid # 18DPP00247

**For:** REVISED T0900 – Armed and Unarmed Security Guard Services for NJ Statewide Locations

Event	Date	Time
<b>Vendor's {Bidder's} Electronic Question Due Date</b> (Refer to Bid Solicitation <a href="#">Section 1.3.1</a> for more information.)	9/27/2018	2:00 PM
<b>Mandatory/Optional Pre-Quote Submission Conference</b> (Refer to Bid Solicitation <a href="#">Section 1.3.5</a> for more information.)	Not Applicable	
<b>Mandatory Site Visit</b> (Refer to Bid Solicitation <a href="#">Section 1.3.4</a> for more information.)	Not Applicable	
<b>Quote Submission Date</b> (Refer to Bid Solicitation <a href="#">Section 1.3.2</a> for more information.)	1/8/2019	2:00 PM

Dates are subject to change. All times contained in the Bid Solicitation refer to Eastern Time. All changes will be reflected in Bid Amendments to the Bid Solicitation posted on the Division of Purchase and Property website and on [www.njstart.gov](http://www.njstart.gov).

	Status	Category
<b>Small Business Set-Aside</b>	<input checked="" type="checkbox"/> Not Applicable	
	<input type="checkbox"/> Entire Blanket P.O.	<input type="checkbox"/> I <input type="checkbox"/> IV
	<input type="checkbox"/> Partial Blanket P.O.	<input type="checkbox"/> II <input type="checkbox"/> V
	<input type="checkbox"/> Subcontracting Only	<input type="checkbox"/> III <input type="checkbox"/> VI

Bid Solicitation Issued By

State of New Jersey  
 Department of the Treasury  
 Division of Purchase and Property  
 Trenton, New Jersey 08625-0230

Using Agency/Agencies

State of New Jersey Using Agencies  
 Cooperative Purchasing Program Participants

Date: As of 12/12/2018

**Table of Contents**

**1.0 INFORMATION FOR VENDORS {BIDDERS} ..... 5**

1.1 PURPOSE AND INTENT ..... 5

1.2 BACKGROUND ..... 6

1.3 KEY EVENTS ..... 6

1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD ..... 6

1.3.2 SUBMISSION OF QUOTES ..... 6

1.3.3 VENDOR {BIDDER} SUPPORT ..... 7

1.3.4 MANDATORY/OPTIONAL SITE VISIT ..... 7

1.3.5 MANDATORY/OPTIONAL PRE-QUOTE CONFERENCE ..... 7

1.3.6 PRE-QUOTE DOCUMENT REVIEW ..... 7

1.4 ADDITIONAL INFORMATION ..... 8

1.4.1 BID AMENDMENTS: REVISIONS TO THIS BID SOLICITATION ..... 8

1.4.2 VENDOR {BIDDER} RESPONSIBILITY ..... 8

1.4.3 COST LIABILITY ..... 8

1.4.4 CONTENTS OF QUOTE ..... 8

1.4.5 ANNOUNCEMENT OF QUOTE INFORMATION ..... 9

1.4.6 PRICE ALTERATION IN QUOTES ..... 9

1.4.7 QUOTE ERRORS ..... 9

1.4.8 JOINT VENTURE ..... 10

1.4.9 RECIPROCITY FOR JURISDICTIONAL VENDOR {BIDDER} PREFERENCE ..... 10

1.4.10 QUOTE ACCEPTANCES AND REJECTIONS ..... 11

1.4.11 ELECTRONIC SIGNATURES ..... 11

**2.0 DEFINITIONS ..... 12**

2.1 CROSSWALK ..... 12

2.2 GENERAL DEFINITIONS ..... 12

2.3 BLANKET P.O.-SPECIFIC DEFINITIONS/ACRONYMS ..... 14

**3.0 SCOPE OF WORK ..... 15**

3.1 SECURITY CLEARANCES ..... 16

3.1.1 STATE HOUSE COMPLEX-SPECIFIC BACKGROUND CHECKS & REIMBURSEMENT ..... 16

3.2 TOURS OF DUTY ..... 17

3.3 STATE HOLIDAYS ..... 17

3.4 SECURITY GUARD GENERAL REQUIREMENTS ..... 17

3.5 RATE OF PAY ..... 18

3.6 FIREARMS ..... 18

3.7 SUPERVISING SECURITY GUARD REQUIREMENTS ..... 19

3.8 SENIOR COORDINATOR (SC) REQUIREMENTS ..... 19

3.9 VENDOR {CONTRACTOR} RESPONSIBILITIES ..... 20

3.9.1 TRAINING REQUIREMENTS ..... 21

3.10 SECURITY GUARD DUTIES ..... 21

3.11 DEPARTMENT OF MILITARY AND VETERANS AFFAIRS (DMAVA) REQUIREMENTS ..... 22

3.11.1 DMAVA PHYSICAL AGILITY STANDARDS ..... 23

3.11.2 DMAVA CERTIFICATE OF MEDICAL EXAMINATION ..... 23

3.11.3 DMAVA SECURITY CLEARANCE ..... 23

3.12 SPECIFIC SERVICES ..... 23

3.13 MOBILE/ROVING SECURITY GUARDS ..... 23

3.14 STATE BUILDING SERVICE CONTRACTS WAGE ..... 24

3.15 BLANKET P.O. PRICE INCREASE (STATE BUILDING SERVICE CONTRACTS PREVAILING WAGE) ..... 24

**4.0 QUOTE PREPARATION AND SUBMISSION ..... 25**

4.1 GENERAL ..... 25

4.2 QUOTE DELIVERY AND IDENTIFICATION ..... 25

4.3 NJSTART ELECTRONIC SUBMISSION VS. HARD COPY SUBMISSION INSTRUCTION ..... 25

4.3.1 NJSTART SUBMISSION OF QUOTE ..... 25

4.3.2 HARD COPY SUBMISSION ..... 26

4.4 QUOTE CONTENT ..... 27

4.4.1 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED WITH QUOTE ..... 27



4.4.2	FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BEFORE BLANKET P.O. AWARD AND THAT SHOULD BE SUBMITTED WITH THE QUOTE .....	31
4.4.3	TECHNICAL QUOTE.....	32
4.4.4	ORGANIZATIONAL SUPPORT AND EXPERIENCE .....	34
4.4.5	STATE-SUPPLIED PRICE SHEET .....	36
4.4.6	COOPERATIVE PURCHASING PROGRAM.....	38
<b>5.0</b>	<b>SPECIAL CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO THE BLANKET P.O. ....</b>	<b>39</b>
5.1	PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS .....	39
5.2	BLANKET P.O. TERM AND EXTENSION OPTION .....	39
5.3	BLANKET P.O. TRANSITION .....	39
5.4	CHANGE ORDER .....	39
5.5	VENDOR {CONTRACTOR} RESPONSIBILITIES.....	40
5.6	SUBSTITUTION OF STAFF.....	40
5.7	SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S).....	40
5.8	OWNERSHIP OF MATERIAL .....	40
5.9	SECURITY AND CONFIDENTIALITY.....	41
5.9.1	DATA CONFIDENTIALITY.....	41
5.10	NEWS RELEASES .....	43
5.11	ADVERTISING.....	43
5.12	LICENSES AND PERMITS.....	43
5.13	CLAIMS AND REMEDIES.....	43
5.13.1	CLAIMS.....	43
5.13.2	REMEDIES .....	43
5.13.3	REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL BLANKET P.O. REQUIREMENTS .....	44
5.14	LIQUIDATED DAMAGES.....	44
5.15	RETAINAGE.....	44
5.16	ADDITIONAL WORK AND/OR SPECIAL PROJECTS .....	44
5.17	MODIFICATIONS AND CHANGES TO THE STATE OF NJ STANDARD TERMS AND CONDITIONS (SSTC) ....	45
5.17.1	INSURANCE - PROFESSIONAL LIABILITY INSURANCE.....	45
5.17.2	AUTO AND GENERAL LIABILITY INSURANCE.....	45
5.18	ACCESSIBILITY COMPLIANCE .....	45
5.19	BLANKET P.O. ACTIVITY REPORT .....	45
5.20	ELECTRONIC PAYMENTS .....	46
5.21	PROGRAM EFFICIENCY ASSESSMENT FOR STATE USING AGENCIES.....	46
5.22	FORCE MAJEURE.....	47
<b>6.0</b>	<b>QUOTE EVALUATION.....</b>	<b>48</b>
6.1	RIGHT TO WAIVE.....	48
6.2	DIRECTOR'S RIGHT OF FINAL QUOTE ACCEPTANCE .....	48
6.3	STATE'S RIGHT TO INSPECT VENDOR (BIDDER) FACILITIES .....	48
6.4	CLARIFICATION OF QUOTE / STATE'S RIGHT TO REQUEST FURTHER INFORMATION.....	48
6.5	QUOTE EVALUATION COMMITTEE.....	48
6.6	ORAL PRESENTATION .....	48
6.7	EVALUATION CRITERIA.....	49
6.7.1	TECHNICAL EVALUATION CRITERIA .....	49
6.7.2	VENDOR'S {BIDDER'S} STATE-SUPPLIED PRICE SHEET.....	49
6.7.3	QUOTE DISCREPANCIES .....	49
6.7.4	EVALUATION OF THE QUOTES.....	49
6.8	NEGOTIATION AND BEST AND FINAL OFFER (BAFO).....	50
6.9	"REQUEST FOR REVISION" WITHIN NJSTART.....	50
6.10	POOR PERFORMANCE.....	50
<b>7.0</b>	<b>BLANKET P.O. AWARD .....</b>	<b>52</b>
7.1	DOCUMENTS REQUIRED BEFORE BLANKET P.O. AWARD .....	52
7.1.1	REQUIREMENTS OF PUBLIC LAW 2005, CHAPTER 51, N.J.S.A. 19:44A-20.13 - N.J.S.A. 19:44A-20.25 (FORMERLY EXECUTIVE ORDER NO. 134), EXECUTIVE ORDER NO. 117 (2008) AND N.J.A.C. 17:12-5 ET SEQ.....	52
7.1.2	SOURCE DISCLOSURE REQUIREMENTS.....	53
7.1.3	AFFIRMATIVE ACTION.....	53
7.1.4	BUSINESS REGISTRATION .....	53
7.2	FINAL BLANKET P.O. AWARD.....	54
7.3	INSURANCE CERTIFICATES.....	54

7.4 PERFORMANCE SECURITY ..... 54

**8.0 BLANKET P.O. ADMINISTRATION..... 55**

8.1 STATE CONTRACT MANAGER ..... 55

8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES..... 55

8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER..... 55

**9.0 STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS ..... 56**

**BID SOLICITATION SPECIFIC ATTACHMENTS/DOCUMENTS:**

- Price Schedule/Sheet;
- Offer and Acceptance Page;
- Bid Solicitation Checklist;
- Cooperative Purchasing Form;
- Attachment #1 – Fiscal Year Hourly Usage per Price Line (FY 16-19);
- Attachment #2 – Seniority List for Current Staff; and
- Attachment #3 – Sample Annual Periodic Health Assessment.

## **1.0 INFORMATION FOR VENDORS {BIDDERS}**

**NOTICE:** This Bid Solicitation is part of the **NJSTART** Procurement Program. ***The Vendor {Bidder} is advised to thoroughly read all sections, as many have been revised, and follow all instructions contained in this Bid Solicitation, including the instructions on the Bid Solicitation's Offer and Acceptance Page*** and read through all Quick Reference Guides (QRGs) located on the [NJSTART Vendor Support Page](http://www.state.nj.us/treasury/purchase/njstart/vendor.shtml) (<http://www.state.nj.us/treasury/purchase/njstart/vendor.shtml>), before preparing and submitting its Quote.

**NJSTART** terminology is used throughout this document. See Bid Solicitation Section 2.1 for a crosswalk of **NJSTART** terminology to legacy terminology.

Please be advised that in accordance with P.L. 2018, c. 9, also known as the Diane B, Allen Equal Pay Act, which was signed in to law by Governor Phil Murphy on April 24, 2018, a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

### **1.1 PURPOSE AND INTENT**

This Bid Solicitation is issued by the Procurement Bureau, Division of Purchase and Property (Division), Department of the Treasury on behalf of the State of New Jersey. The purpose of this Bid Solicitation is to solicit Quotes for Armed and Unarmed Security Guard services for various State agencies and locations located in the Northern, Central, and Southern regions of the State.

The intent of this Bid Solicitation is to award a Master Blanket Purchase Order (Blanket P.O.) to that responsible Vendor {Bidder} whose Quote, conforming to this Bid Solicitation is most advantageous to the State, price and other factors considered. The State, however, reserves the right to separately procure individual requirements that are the subject of the Blanket P.O. during the Blanket P.O. term, when deemed by the Director of the Division of Purchase and Property (Director) to be in the State's best interest.

The State of NJ Standard Terms and Conditions (SSTC) accompanying this Bid Solicitation will apply to all Blanket P.O.s made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this Bid Solicitation and should be read in conjunction with them unless the Bid Solicitation specifically indicates otherwise.

The State of New Jersey (State) intends to extend the Blanket P.O. awarded to the Division's Cooperative Purchasing Program participants. These participants include quasi-State entities, counties, municipalities, school districts, volunteer fire departments, first aid squads, independent institutions of higher learning, County colleges, and State colleges. In order for the State Blanket P.O. to be extended to Cooperative Purchasing Program participants, the Vendor {Bidder} must agree to the extension by executing the Cooperative Purchase Form. Also refer to Section 4.4.6 of this Bid Solicitation. Although the State, with the consent of the Vendor {Bidder}, is making the use of any Blanket P.O. resulting from this Bid Solicitation available to non-State Agencies, the State makes no representation as to the acceptability of any State Bid Solicitation terms and conditions under the Local Public Contracts Law or any other enabling statute or regulation.

## **1.2 BACKGROUND**

This is a reprourement of the similar services provided under **Armed and Unarmed Security Guard Services for New Jersey Statewide Locations** presently due to expire **March 11, 2019**. Vendors {Bidders} interested in the current Blanket P.O. specifications and pricing information may review the current Blanket P.O. T0900 at [www.njstart.gov](http://www.njstart.gov) by following these steps:

Go to: [www.njstart.gov](http://www.njstart.gov)  
Select "Contract & Bid Search"  
Select "Contracts/Blankets"  
Under "Contract/Blanket Description" type in T0900, Click "Find It"  
The current Blanket P.O's will appear under "Results".

Vendors {Bidders} are cautioned that this new Bid Solicitation addresses current requirements.

## **1.3 KEY EVENTS**

### **1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD**

The Division will electronically accept questions and inquiries from all potential Vendors {Bidders} via the "Q&A" Tab of the Bid Solicitation in **NJSTART**.

- A. Questions should be directly tied to the Bid Solicitation and asked in consecutive order, from beginning to end, following the organization of the Bid Solicitation; and
- B. Each question should begin by referencing the Bid Solicitation page number and section number to which it relates.

Vendors {Bidders} may refer to the QRG "Submit a Quote" for additional instruction. QRGs are located on the [NJSTART Vendor Support Page](#).

A Vendor {Bidder} shall not contact the Using Agency and/or the Procurement Specialist directly, in person, by telephone or by e-mail, concerning this Bid Solicitation, prior to the final award of the Blanket P.O.

The cut-off date for electronic questions and inquiries relating to this Bid Solicitation is indicated on the Bid Solicitation cover sheet. In the event that questions are posed by Vendors {Bidders}, answers to such questions will be issued by Bid Amendment. Any Bid Amendment to this Bid Solicitation will become part of this Bid Solicitation and part of any Blanket P.O. awarded as a result of this Bid Solicitation. Bid Amendments to this Bid Solicitation, if any, will be posted as a File Attachment on the "Summary" page of the Bid Solicitation in **NJSTART** after the cut-off date. (See Bid Solicitation Section 1.4.1 for further information.)

### **1.3.1.1 EXCEPTIONS TO THE STATE OF NJ STANDARD TERMS AND CONDITIONS (SSTC)**

**Questions regarding the State of New Jersey Standard Terms and Conditions (SSTC) and exceptions to mandatory requirements must be posed during this Electronic Question and Answer period and shall contain the Vendor's {Bidder's} suggested changes and the reason(s) for the suggested changes.**

### **1.3.2 SUBMISSION OF QUOTES**

In order to be considered for award, the Quote must be received by the Procurement Bureau of the Division at the appropriate location by the required time.

Vendors {Bidders} shall submit a Quote either electronically through [NJSTART](#) or via hard copy.

**QUOTES NOT RECEIVED PRIOR TO THE QUOTE OPENING DEADLINE SHALL BE REJECTED. THE DATE AND TIME OF THE QUOTE OPENING ARE INDICATED ON THE BID SOLICITATION COVER SHEET AND ON THE "SUMMARY" TAB OF THE BID SOLICITATION WEBPAGE WITHIN [NJSTART](#).**

**IF THE QUOTE OPENING DEADLINE HAS BEEN REVISED, THE NEW QUOTE OPENING DEADLINE SHALL BE SHOWN ON THE POSTED BID AMENDMENT AND ON THE "SUMMARY" TAB OF THE BID SOLICITATION WEBPAGE WITHIN [NJSTART](#).**

Procedural inquiries concerning the use of [NJSTART](#) may be directed to [njstart@treas.nj.gov](mailto:njstart@treas.nj.gov) and/or (609) 341-3500.

The State will not respond to substantive questions related to the Bid Solicitation or any other Blanket P.O. via this e-mail address or phone number. For inquiries related to substantive questions refer to Section 1.3.1 (Electronic Question and Answer Period).

### **1.3.3 VENDOR {BIDDER} SUPPORT**

Vendors {Bidders} are strongly encouraged to visit the [NJSTART Vendor Support Page](#), which contains Quick Reference Guides (QRGs), supporting videos, a glossary of [NJSTART](#) terms, and helpdesk contact information.

The Vendor {Bidder} should utilize the QRGs before attempting to submit its Quote using the [NJSTART](#) process. It is the Vendor's {Bidder's} responsibility to ensure that the [NJSTART](#) Quote and attachments have been properly submitted.

### **1.3.4 MANDATORY/OPTIONAL SITE VISIT**

Not applicable to this procurement.

### **1.3.5 MANDATORY/OPTIONAL PRE-QUOTE CONFERENCE**

Not applicable to this procurement.

### **1.3.6 PRE-QUOTE DOCUMENT REVIEW**

The following are publicly available documents that a Vendor {Bidder} needs to review in order to prepare and submit accurate and comprehensive Quotes:

- A. Army Regulation (AR) 190-56 Standards: <http://milreg.com/File.aspx?id=137>;
- B. New Jersey State Police Criminal History Background Check Information: <http://www.njsp.org/criminal-history-records/>;
- C. State Building Services Occupations – Job Descriptions (pertains to Guard I & Guard II)(Occupation Codes 27101 & 27102): [http://www.nj.gov/labor/wagehour/wagerate/state\\_bldg\\_svc\\_job\\_description.html#guardI](http://www.nj.gov/labor/wagehour/wagerate/state_bldg_svc_job_description.html#guardI);
- D. State Building Services Contracts Act – Wage Rate Determinations: [https://www.nj.gov/labor/wagehour/wagerate/state\\_bldg\\_svc\\_wage\\_determination.html](https://www.nj.gov/labor/wagehour/wagerate/state_bldg_svc_wage_determination.html);
- E. State Holiday List: <http://www.state.nj.us/nj/about/facts/holidays/>.

## **1.4 ADDITIONAL INFORMATION**

### **1.4.1 BID AMENDMENTS: REVISIONS TO THIS BID SOLICITATION**

In the event that it becomes necessary to clarify or revise this Bid Solicitation, such clarification or revision will be by Bid Amendment. Any Bid Amendment to this Bid Solicitation will become part of this Bid Solicitation and part of any Blanket P.O. awarded as a result of this Bid Solicitation.

There are no designated dates for release of Bid Amendments. Those Vendors {Bidders} who are on the bid holder list either through commodity code registration in **NJSTART** or by acknowledging the bid in **NJSTART** should receive notification of any Bid Amendment(s). If a Vendor {Bidder} is not on the bid holder list to receive notifications related to a Bid Solicitation, Bid Amendments are still viewable on the "Summary" page of the Bid Solicitation in **NJSTART**.

**BID AMENDMENTS WILL BE ISSUED AS FILE ATTACHMENTS, AND ARE VIEWABLE ON THE "SUMMARY" PAGE OF THE BID SOLICITATION IN **NJSTART**.** Vendors {Bidders} may refer to the QRG "Submit a Quote" for additional instructions. QRGs are located on the [NJSTART Vendor Support Page](#).

It is the sole responsibility of the Vendor {Bidder} to be knowledgeable of all Bid Amendments related to this procurement. An interested Vendor {Bidder} should check the **NJSTART** "Open Bids" Tab on a daily basis to ensure review of the most updated information.

### **1.4.2 VENDOR {BIDDER} RESPONSIBILITY**

The Vendor {Bidder} assumes sole responsibility for the complete effort required in submitting a Quote in response to this Bid Solicitation. No special consideration will be given after Quotes are opened because of a Vendor's {Bidder's} failure to be knowledgeable as to all of the requirements of this Bid Solicitation.

### **1.4.3 COST LIABILITY**

The State assumes no responsibility and bears no liability for costs incurred by a Vendor {Bidder} in the preparation and submittal of a Quote in response to this Bid Solicitation.

### **1.4.4 CONTENTS OF QUOTE**

Quotes can be released to the public pursuant to N.J.A.C. 17:12-1.2(b) and (c), or under the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1.1 et seq., or the common law right to know.

After the opening of sealed Quotes, including Quotes submitted through the **NJSTART** electronic process, all information submitted by a Vendor {Bidder} in response to a Bid Solicitation is considered public information notwithstanding any disclaimers to the contrary submitted by a Vendor {Bidder}. Proprietary and confidential information may be exempt from public disclosure by OPRA and/or the common law. When the Bid Solicitation contains a negotiation component, the Quote will not be subject to public disclosure until a notice of intent to award a Blanket P.O. is announced.

As part of its Quote, a Vendor {Bidder} may designate any data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, explaining the basis for such assertion. Vendor {Bidder} must provide a detailed statement clearly identifying those sections of the Quote that it claims are exempt from production, and the legal and factual basis that supports said exemption(s) as a matter of law. Please include a redacted copy of the Quote indicating the sections identified as confidential. **The State will not honor any attempts by a Vendor {Bidder}**

**to designate its entire Quote as proprietary, confidential and/or to claim copyright protection for its entire Quote.**

The State reserves the right to make the determination as to what is proprietary or confidential, and will advise the Vendor {Bidder} accordingly. Any proprietary and/or confidential information in a Quote will be redacted by the State. Copyright law does not prohibit access to a record which is otherwise available under OPRA.

In the event of any challenge to the Vendor's {Bidder's} assertion of confidentiality with which the State does not concur, the Vendor {Bidder} shall be solely responsible for defending its designation, but in doing so, all costs and expenses associated therewith shall be the responsibility of the Vendor {Bidder}. The State assumes no such responsibility or liability.

A Vendor {Bidder} shall not designate any price lists and/or catalogs submitted as exempt from public disclosure as the same must be accessible to State Using Agencies and Cooperative Purchasing Program participants (if the Bid Solicitation has been extended to these participants) and thus must be made public to allow all eligible purchasing entities access to the pricing information.

In order not to delay consideration of the Quote or the State's response to a request for documents, the State requires that Vendor {Bidder} respond to any request regarding confidentiality markings within the timeframe designated in the State's correspondence regarding confidentiality. If no response is received by the designated date and time, the State will be permitted to release a copy of the Quote with the State making the determination regarding what may be proprietary or confidential.

**1.4.5 ANNOUNCEMENT OF QUOTE INFORMATION**

On the date and time Quotes are due under the Bid Solicitation, all information concerning the Quotes submitted may be publicly announced and shall be available for inspection and copying except as noted below:

- A. Information appropriately designated as proprietary and/or confidential shall not be available for inspection and copying; and
- B. Where negotiation is contemplated, only the names and addresses of the Vendors {Bidders} submitting Quotes will be announced, and the contents of the Quotes shall not be available for inspection and copying until the Notice of Intent to Award is issued by the Director.

**1.4.6 PRICE ALTERATION IN QUOTES**

Any price changes including hand written revisions or "white-outs" must be initialed. Failure to initial price changes shall preclude a Blanket P.O. award from being made to the Vendor {Bidder}.

**1.4.7 QUOTE ERRORS**

In accordance with N.J.A.C. 17:12-2.11 "Proposal errors," a Vendor {Bidder} may withdraw its Quote as described below.

**1.4.7.1 QUOTE WITHDRAWAL PRIOR TO QUOTE OPENING**

**NJSTART**: A Vendor {Bidder} may withdraw its Quote submission in **NJSTART** prior to the Quote opening; however, Vendors {Bidders} should note that while withdrawn **NJSTART** Quotes remain viewable by the Vendor {Bidder} on its Vendor Profile Homepage, they are removed from the Division's view and cannot be considered for Blanket P.O. award. The Vendor {Bidder} may submit

a revised Quote as long as the Quote is received prior to the announced date and time for Quote submission. Vendors {Bidders} may refer to the QRG "Submit a Quote" for additional instruction. QRGs are located on the [NJSTART Vendor Support Page](#).

**Hard Copy:** A Vendor {Bidder} may request that its hard copy Quote be withdrawn prior to the Quote opening. Such request must be made, in writing, to the Supervisor of the Proposal Review Unit at the address provided in Section 1.4.7.2 below. The Vendor {Bidder} may submit a revised Quote as long as the Quote is received prior to the announced date and time for Quote submission and at the place specified.

**1.4.7.2 QUOTE WITHDRAWAL AFTER QUOTE OPENING, BUT PRIOR TO BLANKET P.O. AWARD**

**NJSTART and Hard Copy:** If, after the Quote opening, but before Blanket P.O. award, a Vendor {Bidder} discovers an error in its Quote, the Vendor {Bidder} may make a written request to the Supervisor of the Proposal Review Unit to withdraw its Quote from consideration for award. If the Vendor's {Bidder's} request to withdraw is made in good faith, and the State will not be significantly prejudiced by granting the withdrawal of the Quote beyond the loss of the benefit of the bargain to the State of the withdrawing Vendor's {Bidder's} offer, the request shall be granted. Evidence of the Vendor's {Bidder's} good faith in making this request can be demonstrated by one (1) or more of the following factors: A mistake is so significant that to enforce the Blanket P.O. resulting from the Quote would be unconscionable; that the mistake relates to a material feature or term of the Blanket P.O.; and that the mistake occurred notwithstanding the Vendor's {Bidder's} exercise of reasonable care. After Quote opening, while pursuant to the provisions of this section a Vendor {Bidder} may request to withdraw its Quote and the Director may in his/her discretion allow said Vendor {Bidder} to withdraw it, the Division also may take notice of repeated or unusual requests to withdraw by a Vendor {Bidder} and take those prior requests to withdraw into consideration when evaluating the Vendor's {Bidder's} future Quotes.

All Quote withdrawal requests must include the Bid Solicitation identification number and the final Quote submission date and be sent to the following address:

Department of the Treasury  
Division of Purchase and Property  
PO Box 230  
33 West State Street – 9<sup>th</sup> Floor  
Trenton, New Jersey 08625-0039  
Attention: Supervisor, Proposal Review Unit

If during a Quote evaluation process, an obvious pricing error made by a potential Blanket P.O. awardee is found, the Director or his/her designee shall issue written notice to the Vendor {Bidder}. The Vendor {Bidder} will have up to five (5) business days after receipt of the notice to confirm its pricing. If the Vendor {Bidder} fails to respond, its Quote shall be considered withdrawn, and no further consideration shall be given to it.

**1.4.8 JOINT VENTURE**

If a Joint Venture is submitting a Quote, the agreement between the parties relating to such Joint Venture should be submitted with the Joint Venture's Quote. Authorized signatories from each party comprising the Joint Venture must sign the Offer and Acceptance Page. Each party to the Joint Venture must individually comply with all the forms and certification requirements in Sections 4.4.1 and 4.4.2 of this Bid Solicitation.

**1.4.9 RECIPROCITY FOR JURISDICTIONAL VENDOR {BIDDER} PREFERENCE**

In accordance with N.J.S.A. 52:32-1.4 and N.J.A.C. 17:12-2.13, the State of New Jersey will invoke reciprocal action against an out-of-State Vendor {Bidder} whose state or locality maintains a



preference practice for its in-state Vendors {Bidders}. The State of New Jersey will use the annual surveys compiled by the Council of State Governments, National Association of State Procurement Officials, or the National Institute of Governmental Purchasing or a State's statutes and regulations to identify States having preference laws, regulations, or practices and to invoke reciprocal actions. The State of New Jersey may obtain additional information as it deems appropriate to supplement the stated survey information.

A Vendor {Bidder} may submit information related to preference practices enacted for a State or Local entity outside the State of New Jersey. This information may be submitted in writing as part of the Quote response, including name of the locality having the preference practice, as well as identification of the county and state, and should include a copy of the appropriate documentation, i.e., resolution, regulation, law, notice to Vendor {Bidder}, etc. It is the responsibility of the Vendor {Bidder} to provide documentation with the Quote or submit it to the Director within five (5) business days after the deadline for Quote submission. Written evidence for a specific procurement that is not provided to the Director within five (5) business days of the public Quote submission date may not be considered in the evaluation of that procurement, but may be retained and considered in the evaluation of subsequent procurements.

#### **1.4.10 QUOTE ACCEPTANCES AND REJECTIONS**

N.J.A.C. 17:12-2.7(d), the Director's right to waive minor irregularities or omissions in a Quote and N.J.A.C. 17:12-2.2 which defines causes for Quote rejection, apply to all Quotes.

#### **1.4.11 ELECTRONIC SIGNATURES**

Vendors {Bidders} submitting Quotes through **NJSTART** may sign the forms listed in Section 4.4.1 (Forms, Registrations and Certifications Required with Quote) and Section 4.4.2 (Forms, Registrations and Certifications Required Before Blanket P.O. Award and That Should Be Submitted with the Quote) of this Bid Solicitation electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form to **NJSTART**.

Vendors {Bidders} submitting Quotes in hard copy format, must provide forms with original, physical signatures, otherwise its Quote may be deemed non-responsive.

**2.0 DEFINITIONS**

**2.1 CROSSWALK**

<b>NJSTART Term</b>	<b>Equivalent Existing New Jersey Term</b>
Bid/Bid Solicitation	RFP/Solicitation
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order (Blanket P.O.)	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor	Bidder/Contractor

**2.2 GENERAL DEFINITIONS**

The following definitions will be part of any Blanket P.O. awarded or order placed as a result of this Bid Solicitation.

**All-Inclusive Hourly Rate** – An hourly rate comprised of all direct and indirect costs including, but not limited to: labor costs, overhead, fee or profit, clerical support, travel expenses, per diem, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per diem expenses such as food.

**Best and Final Offer or BAFO** – Pricing timely submitted by a Vendor {Bidder} upon invitation by the Bureau after Quote opening, with or without prior discussion or negotiation.

**Bid or Bid Solicitation** – This series of documents, which establish the bidding and Blanket P.O. requirements and solicits Quotes to meet the needs of the Using Agencies as identified herein, and includes the Bid Solicitation, State of NJ Standard Terms and Conditions (SSTC), State-Supplied Price Sheet, attachments, and Bid Amendments.

**Bid Amendment** – Written clarification or revision to this Bid Solicitation issued by the Bureau. Bid Amendments, if any, will be issued prior to Quote opening.

**Business Day** – Any weekday, excluding Saturdays, Sundays, State legal holidays, and State-mandated closings unless otherwise indicated.

**Calendar Day** – Any day, including Saturdays, Sundays, State legal holidays, and State-mandated closings unless otherwise indicated.

**Change Order** – An amendment, alteration, or modification of the terms of a Blanket P.O. between the State and the Vendor(s) {Contractor(s)}. A Change Order is not effective until it is signed and approved in writing by the Director or Deputy Director, Division of Purchase and Property.

**Cooperative Purchasing Program** – The Division’s intrastate program that provides procurement-related assistance to New Jersey local governmental entities and boards of education, State and county colleges and other public entities having statutory authority to utilize select State Blanket P.O.s issued by the Division, pursuant to the provisions of N.J.S.A. 52:25-16.1 et seq.

**Days After Receipt of Order (ARO)** – The number of calendar days ‘After Receipt of Order’ in which the Using Agency will receive the ordered materials and/or services.

**Director** – Director, Division of Purchase and Property, Department of the Treasury, who by statutory authority is the Chief Contracting Officer for the State of New Jersey.

**Discount** – The standard price reduction applied by the Vendor {Bidder} to all items.

**Division** – The Division of Purchase and Property.

**Evaluation Committee** – A committee established or Division staff member assigned by the Director to review and evaluate Quotes submitted in response to this Bid Solicitation and recommend a Blanket P.O. award to the Director.

**Firm Fixed Price** – A price that is all-inclusive of direct cost and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs.

**Joint Venture** – A business undertaking by two (2) or more entities to share risk and responsibility for a specific project.

**Master Blanket Purchase Order (Blanket P.O.)** – The Blanket P.O. consists of the State of NJ Standard Terms and Conditions (SSTC), the Bid Solicitation, the responsive Quote submitted by a responsible Vendor {Bidder} as accepted by the State, the notice of award, any Best and Final Offer, any subsequent written document memorializing the agreement, any modifications to any of these documents approved by the State and any attachments, Bid Amendment or other supporting documents, or post-award documents including Change Orders agreed to by the State and the Vendor {Contractor}, in writing.

**May** – Denotes that which is permissible or recommended, not mandatory.

**Must** – Denotes that which is a mandatory requirement.

**No Bid** – The Vendor {Bidder} is not submitting a price Quote for an item on a price line.

**No Charge** – The Vendor {Bidder} will supply an item on a price line free of charge.

**Primary Form** – An electronic form contained within a Vendor's {Bidder's} **NJSTART** profile designated by the Vendor {Bidder} as the primary or principal version of the required form.

**Procurement Bureau (Bureau)** – The Division unit responsible for the preparation, advertisement, and issuance of Bid Solicitations, for the tabulation of Quotes and for recommending award(s) of Blanket P.O.(s) to the Director and the Deputy Director.

**Project** – The undertakings or services that are the subject of this Bid Solicitation.

**QRGs** – Quick Reference Guides.

**Quote** – Vendor's {Bidder's} timely response to the Bid Solicitation including, but not limited to, technical Quote, price Quote, and any licenses, forms, certifications, or other documentation required by the Bid Solicitation.

**Retainage** – The amount withheld from the Vendor {Contractor} payment that is retained and subsequently released upon satisfactory completion of performance milestones by the Vendor {Contractor}.

**Revision** – A response to a BAFO request or a requested clarification of the Vendors {Bidders} Quote.

**Shall** – Denotes that which is a mandatory requirement.

**Should** – Denotes that which is permissible or recommended, not mandatory.

**Small Business** – Pursuant to N.J.A.C. 17:13-1.2, “small business” means a business that meets the requirements and definitions of “small business” and has applied for and been approved by the New Jersey Division of Revenue and Enterprise Services, Small Business Registration and M/WBE Certification Services Unit as (i) independently owned and operated, (ii) incorporated or registered in and has its principal place of business in the State of New Jersey; (iii) has 100 or fewer full-time employees; and has gross revenues falling in one (1) of the three (3) following categories: For goods and services - (A) 0 to \$500,000 (Category I); (B) \$500,001 to \$5,000,000 (Category II); and (C) \$5,000,001 to \$12,000,000, or the applicable federal revenue standards established at 13 CFR 121.201, whichever is higher (Category III); For construction services: (A) 0 to \$3,000,000 (Category IV); (B) gross revenues that do not exceed 50 percent of the applicable annual revenue standards established at 13 CFR 121.201 (Category V); and (C) gross revenues that do not exceed the applicable annual revenue standards established at CFR 121.201, (Category VI).

**State** – The State of New Jersey.

**State Contract Manager or SCM** – The individual, as set forth in Section 8.0, responsible for the approval of all deliverables, i.e., tasks, sub-tasks or other work elements in the Scope of Work. The SCM cannot direct or approve a Change Order.

**State-Supplied Price Sheet** – The bidding document created by the State and attached to this Bid Solicitation on which the Vendor {Bidder} submits its proposal pricing as is referenced and described in Bid Solicitation Section 4.4.5.

**Subtasks** – Detailed activities that comprise the actual performance of a task.

**Subcontractor** – An entity having an arrangement with a Vendor {Contractor}, whereby the Vendor {Contractor} uses the products and/or services of that entity to fulfill some of its obligations under its State Blanket P.O., while retaining full responsibility for the performance of all [the Vendor’s {Contractor’s}] obligations under the Blanket P.O., including payment to the Subcontractor. The Subcontractor has no legal relationship with the State, only with the Vendor {Contractor}.

**Task** – A discrete unit of work to be performed.

**Unit Cost** – All-inclusive, firm fixed price charged by the Vendor {Bidder} for a single unit identified on a price line.

**Using Agency[ies]** – A State department or agency, a quasi-State governmental entity, or a Cooperative Purchasing Program participant, authorized to purchase products and/or services under a Blanket P.O. procured by the Division. This Blanket P.O. may be used by the Using Agencies or quasi-governmental agencies specifically identified in the Bid Solicitation. In addition, with the approval of the Director of the Division of Purchase and Property and the agreement of the Vendor {Contractor}, the Blanket P.O. may be used by any Using Agency or quasi-State governmental entity.

**Vendor {Bidder}** – An entity offering a Quote in response to the Division’s Bid Solicitation.

**Vendor {Contractor}** – The Vendor {Bidder} awarded a Blanket P.O. resulting from this Bid Solicitation.

### **2.3 BLANKET P.O.-SPECIFIC DEFINITIONS/ACRONYMS**

**Armed Security Guard** – A security guard licensed by the State of New Jersey, through the New Jersey State Police, to carry a Firearm in conjunction with the performance of security guard duties.

**Closed-Circuit Television (CCTV)** – Also known as video surveillance, is the use of video cameras to transmit a signal to a specific place, on a limited set of monitors.

**Communicable Disease** – A disease that is spread from one person to another through a variety of ways that include: contact with blood and bodily fluids, breathing in an airborne virus, or being bitten by an insect.

**Firearm** – A side arm carried by an Armed Security Guard in the course of security guard duties.

**Good Working Order** – The condition of a machine or mechanism when it is functioning properly according to its nature and purpose.

**Incident** – An actual or alleged event or situation that creates a significant risk of substantial or serious harm to the health, safety or well being of persons and/or property.

**Installation** – The entire campus, including indoors and outdoors, of a Using Agency to which the services specified by this Bid Solicitation are being provided.

**Mobile/Roving Security Guard** – A security guard that patrols by operating from, or by being set up in, a vehicle that travels from area to area as designated by the State Contract Manager.

**National Agency Check (NAC)** – A type of background check required in the United States for granting security Clearances.

**Physical Agility Test (PAT)** – Performance based standards that measure the security guards preparedness to successfully accomplish physically demanding tasks.

**Senior Coordinator** – The individual responsible for coordinating security requirements to include security guards and Supervisors across multiple agency buildings and/or campuses.

**Shift** – A work period of eight (8) consecutive hours. Also called a Tour of Duty.

**Standard Operating Procedure (SOP)** – Written procedures specifying how Armed and Unarmed Security Guards carry out routine operations.

**State House Complex (Complex)** – A set of buildings managed by the Division of Property Management and Construction consisting of the Executive State House, Legislative State House/Legislative Staff Building, State House Annex, and the State House Garage.

**Supervising Security Guard** – The Vendor {Bidder} personnel responsible for the scheduling and performance of security guards in their charge.

**Tour of Duty** – A work period of eight (8) consecutive hours. Also called a Shift.

**Two-Way Radio** – A wireless device that is used to send voice messages one-to-one, or one-to-many, over radio frequencies within a local area, city, or state.

**Unarmed Security Guard** – A security guard that performs security guard duties without carrying a Firearm.

**Use of Force** – The amount of effort required by a security guard under this Blanket P.O. to gain compliance from an unwilling subject.

### **3.0 SCOPE OF WORK**

The Vendor {Contractor} shall provide Armed, Unarmed, and/or Mobile/Roving Security Guards based on Using Agency requirements. The Vendor {Contractor} must be able to service all counties and locations within the State.

The Vendor {Contractor} understands that all security guard services under this Blanket P.O. are on an "as needed" basis for all present and future locations; and that the locations served, and the number of hours of security guard services required, will increase and/or decrease based on the Using Agency's needs.

### **3.1 SECURITY CLEARANCES**

The Vendor {Contractor} shall, at a minimum:

- A. As a condition of placement in any agency under this Blanket P.O. the Vendor {Contractor} and all security guards assigned to work under this Blanket P.O. must be in full compliance with the Security Officer Registration Act (SORA). This is an act concerning the regulation of security guards, N.J.S.A 45:19A-1 et seq. (supplementing Title 45 of the revised statutes and amending P.L. 1939, c. 369 and P.L. 1971, c. 342).
- B. Furnish to the Using Agency proof of SORA compliance of each security guard assigned to work under this Blanket P.O.
- C. Not permit any newly hired, re-hired, or transferred security guard to work under this Blanket P.O. until said security guard is in full compliance with the SORA. When new security guards are assigned, the SORA compliance information must be given to the State Contract Manager at least two (2) working days prior to their assignment, allowing the State Contract Manager the opportunity to interview the security guard, review the security guard's file, and conduct additional background checks if necessary. If the State Contract Manager decides to interview the Vendor's {Contractor's} security guards or conduct additional background checks, the Vendor {Contractor} shall not assign that security guard until they have received approval from the State Contract Manager. **Note: No security guard shall be permitted to work under this Blanket P.O. until approved by the State Contract Manager.**

#### **3.1.1 STATE HOUSE COMPLEX-SPECIFIC BACKGROUND CHECKS & REIMBURSEMENT**

The Vendor {Contractor} shall adhere to the procedure outlined in Attachment #1 – *State House Complex Procedure for Background Checks*, prior to assigning personnel at the State House Complex (Complex).

The Complex consists of the following locations:

- A. Executive State House – 125 West State Street, Trenton, NJ 08625;
- B. Legislative State House/Legislative Staff Building – 135 West State Street, Trenton, NJ 08625;
- C. State House Annex – 145 West State Street, Trenton, NJ 08625; and
- D. State House Garage – 165 West State Street, Trenton, NJ 08625.

**Note:** The *State House Complex Procedure for Background Checks* may be revised during the term of the Blanket P.O. The Vendor {Contractor} shall ensure that it adheres to the most up-to-date procedure for the Complex at all times.

Any Vendor {Contractor} personnel background check **requested by the Division of Property Management and Construction (DPMC) and/or the Complex Staff, for services to be provided**

**at the Complex**, will be reimbursed to the Vendor {Contractor} by DPMC/the Complex, as long as it is completed in accordance with the aforementioned procedure. Please note that the State Contract Manager will not accept the results of previously obtained background checks for workers assigned to the State House Complex unless the aforementioned procedure was followed.

**Note:** The Vendor {Contractor} will not be reimbursed for additional background checks required by other Using Agencies or by DPMC for any other on-complex site location.

### **3.2 TOURS OF DUTY**

Normal Tours of Duty (Shifts) shall consist of one (1) guard per eight (8) hour Shift unless requested otherwise by the State Contract Manager. Normal Shifts shall be eight (8) consecutive hours in duration; individual guards shall not be scheduled on consecutive Shifts. Starting and ending times of Shifts are subject to change by the State Contract Manager.

Vendor {Contractor} shall, at a minimum;

- A. Ensure that no security guard providing service under this Blanket P.O. shall be assigned to work more than eight (8) consecutive hours in any twenty-four (24) hour period. However, a security guard shall be required to remain at its post/on shift until it is relieved from its duties (reference subsection (D) below);
- B. Provide security coverage to meet each Using Agency's needs. **Note:** Each Using Agency's location's hours may vary and security coverage may be required on weekends and/or holidays, as determined by the Using Agency;
- C. Ensure that during their Shift, security guards shall remain on the site of their assigned facility except where exempted by SOP; and
- D. Ensure that security guards shall not be considered "off duty" unless relieved by the next Shift officer or other approved entity as designated by the State Contract Manager. Under no circumstances shall a facility be left unprotected.

### **3.3 STATE HOLIDAYS**

Please see the link below for a list of State Holidays:

<http://liberty.state.nj.us/nj/about/facts/holidays/>

If a holiday falls on a Saturday or Sunday, the preceding or succeeding day (Friday or Monday) will be the holiday for State employees.

Though the State observes the aforementioned holidays, each Using Agency's holiday schedule may vary. Each Using Agency will determine the holiday coverage to be provided by the Vendor {Contractor}, if needed and will so inform the Vendor {Contractor}.

### **3.4 SECURITY GUARD GENERAL REQUIREMENTS**

The following requirements shall apply to both Armed and Unarmed Security Guards:

- A. All security guards shall be legally eligible to work in the United States;
- B. All security guards shall have a company photo identification (I.D.) card which shall be carried with them and easily visible at all times while on Using Agency property;
- C. All security guards shall be bonded through the Vendor {Contractor} (If a bond is not available, a Crime Policy shall be acceptable);

- D. All security guards shall have working knowledge of applicable law to conduct prescribed guard services;
- E. All security guards shall be fluent in English, and capable of reading and writing, including the ability to write concise reports in English;
- F. All security guards shall have a valid driver's license for sites that require Mobile/Roving Security Guards to operate vehicles;
- G. All security guards shall be physically able to do their assigned work and shall be free from any Communicable Disease which shall be confirmed by a periodic physical examination. The State reserves the right to perform in house physical agility certifications;
- H. All security guards shall be regularly trained and tested to demonstrate competency through in-house training courses on all relevant duties, including but not limited to, active shooter training, CCTV operation, metal detector operation (including use of hand wand), emergency response procedures, fire alarms, injured or sick person(s), bomb threats, police assistance, or other disasters; and qualified to perform the work assigned to them;
- I. All security guards shall comply with the regulations in effect at the Using Agency they are providing security services for;
- J. All security guards shall be subject to the control of the Using Agency while on Using Agency property, but shall not identify themselves as State employees; and
- K. All security guards shall be required to maintain such security clearance as the Director of the Division of Purchase and Property and the State Contract Manager shall require.

### **3.5 RATE OF PAY**

The rate of pay for Armed and Unarmed Security Guards involved with court appearances or booking procedures shall be paid at the normal hourly rate of pay when events demand such services.

Security guards shall be paid for only those hours that guard service is performed. When security guard services are performed during holidays or beyond the listed Tour of Duty due to unforeseen or emergency circumstances, the security guard shall be paid at the normal hourly rate of pay.

Note: Overtime rates are not permitted under this Blanket P.O. Any hours worked outside the Tour of Duty will remain at the same rate.

### **3.6 FIREARMS**

The Vendor {Contractor} shall ensure that:

- A. Armed Security Guards shall have current and valid Firearm permits issued by the State of New Jersey. Such permits shall not be transferrable from one (1) security guard to another. As new Armed Security Guards are added, proof of permits for each new Armed Security Guard must be submitted by the Vendor {Contractor} to the State Contract Manager before the new Armed Security Guard can begin a Tour of Duty. Proof of valid permit shall remain on file at each site an Armed Security Guard is assigned with the State Contract Manager during the Blanket P.O. term.



- B. Weapons and ammunition utilized in the performance of services must be carried into and out of Using Agency facilities. Weapons shall not be stored on any Using Agency premises unless required by the Using Agency.
- C. Written proof shall be provided to the State Contract Manager that the Armed Security Guard has successfully completed a handgun safety course for proficiency with handguns in accordance with all Federal, State, and local laws, rules, and regulations before any Armed Security Guard can begin their first Tour of Duty.
- D. Documentation of the Armed Security Guard's qualification in a semiannual qualification course shall be provided to the State Contract Manager before any Armed Security Guard can begin a Tour of Duty.
- E. Firearms shall be carried by Armed Security Guards at all times while on duty. At no time shall the Firearm be concealed.

Note: Shotguns and rifles are prohibited under this Blanket P.O.

Armed security is a requirement at some agencies. In order to manage potential absences that would affect the needs of the agencies requiring armed security, there shall be a minimum of three (3) Armed Security Guards, with current and valid Firearms permits available at all times to provide security in the event of any Armed Security Guard absence. All guards must be familiar with the operation of the Using Agency to which they are assigned.

There shall be no security guards, posted at Using Agency locations, who have been convicted of domestic violence or any of the prohibited activities under 18 U.S.C. 922(g).

### **3.7 SUPERVISING SECURITY GUARD REQUIREMENTS**

Using Agencies may require a Supervising Security Guard to be on the premises to ensure that all security guards on duty are performing their assigned responsibilities as required by the Using Agency. Supervising Security Guards shall also take the lead in the performance of security guard duties. The Supervising Security Guards shall be required to provide evidence of supervisory training and experience in directing the activities of a guard force. Use of Supervising Security Guards will be at the discretion of each Using Agency.

All Supervising Security Guards shall have a minimum of four (4) years security guard experience and at least two (2) of those years shall be in a supervisory capacity.

### **3.8 SENIOR COORDINATOR (SC) REQUIREMENTS**

A Senior Coordinator may be required for certain projects or agencies to coordinate complex security coverage across multiple buildings and/or Installations, or a single building. The Senior Coordinator shall be responsible for the overall coordination of project or Using Agency specific security requirements to include at a minimum, security guards, Supervising Security Guard, and/or vehicles necessary to fulfill said requirements.

The Senior Coordinator shall also be capable of assisting with physical security assessments and recommendations to include, but not limited to: security guard placement, placement and additions of security cameras, issues with breach points, etc. The Senior Coordinator shall have at least two (2) years supervisory experience in coordinating and assessing security related details across multiple buildings and/or Installations.

**Note:** The use of a Senior Coordinator is at the sole discretion of each Using Agency. However, it is anticipated that one (1) or more Using Agencies will require the services of a full-time Senior

Coordinator. The use of a Senior Coordinator, on a full-time or part-time basis, at other Using Agencies may vary.

### **3.9 VENDOR {CONTRACTOR} RESPONSIBILITIES**

The Vendor {Contractor} shall ensure the following responsibilities are met:

- A. If during the course of the Blanket P.O. there is a change in Vendor's {Contractor's} information such as, but not limited to, address, contract manager, contact information, acquisition, etc, the Vendor {Contractor} must notify the State Contract Manager in writing of said changes within 15 calendar days of occurrence. Failure to do so may hold up payment of invoices, services or other contractual obligations.
- B. It is the responsibility of the Vendor {Contractor} to contact the State Contract Manager to verify the billing address of each new assignment prior to starting services to ensure payment for services.
- C. The Vendor {Contractor} and its security guards shall be in compliance with all Using Agency requirements. Upon request by the State Contract Manager, the Vendor {Contractor} and/or the security guard(s) shall complete and/or sign required forms, certifications, acknowledgements, etc. The Vendor {Contractor} shall provide copies of all Standard Operating Procedures to the State Contract Manager for review prior to the commencement of work under this Blanket P.O. The State reserves the right to modify these Standard Operating Procedures to comply with State law, regulation, or policy.
- D. When required by the State Contract Manager, the Vendor {Contractor} shall supply the guard(s) with hand carried, Two-Way Radios for the purpose of communication between security guards on duty at a specific location. The radio standards shall meet or exceed four (4) watts of power, four (4) channels, and operate at a minimum Ultra High Frequency (UHF) 438 Megahertz (MHz).
- E. The Vendor {Contractor} shall be capable of providing security guard services to all counties and locations within the State.
- F. The Vendor {Contractor} shall provide full uniformed security guard services for the surveillance and protection of various State locations against fire, theft, pilferage, malicious injury and destruction.
- G. The Vendor {Contractor} shall furnish security guards complete with uniforms and all necessary equipment, including firearms, vehicles, and Two-Way Radios as required by the State Contract Manager, to provide security services.
- H. During the term of this Blanket P.O., the Vendor {Contractor} shall provide a list of any substitute security guards to the State Contract Manager. Substitutes shall meet all of the experience and general requirements as noted in Section 3.4 of this Bid Solicitation. Additionally security guards posted in DMAVA locations shall also meet the requirements in Sections 3.9, 3.11, 3.12, and 3.13.
- I. Without limiting the responsibility of the Vendor {Contractor} for the proper conduct of the security guards and the protection of people and property, when on State property, security guards shall be bound by State policies and rules, and such other special written instructions as may be agreed upon between the State Contract Manager and the Vendor {Contractor} from time to time.
- J. The Vendor {Contractor} further agrees that upon request by the State Contract Manager, it shall remove from services any security guard who, in the opinion of the State Contract

Manager, has violated the requirements of the Bid Solicitation, the facility, or any applicable rules and regulations, is not qualified, is not needed to perform the work assigned, or whose actions are not in accordance with accepted rules or standards, especially of morality or honesty.

If the Vendor's {Contractor's} security guard is removed from a State agency for improper conduct or is not qualified to perform the minimum work requirements, said security guard shall not be placed at any other State agency. The Vendor {Contractor} is responsible for placing only qualified, professional, security guards at State agencies; the State will not reimburse the Vendor {Contractor} for any hours billed for unqualified security guards.

### **3.9.1 TRAINING REQUIREMENTS**

The Vendor {Contractor} shall provide copies of all training plans and SOPs to the SCM for review two (2) weeks prior to the commencement of work under this Blanket P.O. The State reserves the right to modify these plans and/or Standard Operating Procedures to comply with State law, regulation, or policy.

The Vendor {Contractor} shall be required to provide regular physical and written testing of its employees assigned to this Blanket P.O. to demonstrate competency and qualification to complete the minimum work requirements. Proof of testing may be required by the SCM and shall be submitted by the Vendor {Contractor} within five (5) business days of request.

### **3.10 SECURITY GUARD DUTIES**

All security guards assigned under this Blanket P.O. must be able to perform, at a minimum, all of the duties listed below. This list is not exhaustive and responsibilities may be added or taken away as determined necessary by the State Contract Manager and the needs of the Using Agency.

- A. Patrol area(s) as designated by the State Contract Manager;
- B. Respond to the "Panic" button in court rooms, hearing rooms or any other contained area(s);
- C. Punch time clock stations as required and at designated time intervals set by the State Contract Manager. The Using Agency shall supply clocks and keys if required;
- D. Maintain contact with the appropriate law enforcement agencies at designated time intervals during Tour of Duty, as directed by the State Contract Manager;
- E. Maintain Tour of Duty logs as required by the Using Agency;
- F. Call for local law enforcement assistance or State Police assistance prior to investigating actual or indicated violations at the Installation. In the event that a Supervising Security Guard is on duty, it shall be the responsibility of the Supervising Security Guard to determine if, and when, police will be called to assist the guard force. The Supervising Security Guard shall make the call to summon police whenever necessary;
- G. Prepare reports as necessary and as frequently as is required by the Using Agency;
- H. Report and initiate appropriate alarms for any fire or disorder within, or adjacent to the facility;
- I. Cooperate with all local police, State Police, and others who have proof of identification and validity of purpose for any Incidents on State property to which they are responding;
- J. Maintain visibility while on duty;

- K. Deny unauthorized State and/or Vendor {Contractor} personnel access into any restricted area(s);
- L. The Supervising Security Guard and/or facility site manager shall notify police of any signs of suspicious activities in accordance with Standard Operating Procedures;
- M. Intercede when needed in response to a potentially violent or disorderly act. However, at no time should the security guard put his or her safety in jeopardy;
- N. Enforce "no smoking" regulations;
- O. Wear the required uniform while on duty;
- P. Be involved in closing operations including, but not limited to: securing offices, restrooms, and other parts of the facility, as required. The security guard shall not leave the premises until all Using Agency employees have departed, unless otherwise directed by the Using Agency;
- Q. Have knowledge of the work functions of the agency in order to answer general questions reasonably;
- R. Stop disruptive activities such as children running through the facility or dogs wandering through;
- S. Check restrooms periodically for unusual occurrences;
- T. Remain at the facility or Installation until properly relieved;
- U. Have a working knowledge of intrusion devices, system locations, and the significance of control board signal indicators or alarm activators, and/or alarm sounding within the Installation;
- V. Have working knowledge of fire alarm system locations, fire hydrants, fire extinguishers, and proper use of same;
- W. Security guards shall not resort to physical force against any person, except in self-defense;
- X. Security guards shall not use dogs (K-9) to assist in furnishing security guard services;
- Y. Security guards shall follow Incident procedures set forth by the Vendor {Contractor}; and
- Z. Security guards shall escort employees to and from the building and/or their vehicle when requested by the State Contract Manager or an authorized Using Agency Representative.

### **3.11 DEPARTMENT OF MILITARY AND VETERANS AFFAIRS (DMAVA) REQUIREMENTS**

The Vendor {Contractor} shall ensure that the following requirements are adhered to by all security guards posted at any DMAVA locations:

- A. Must meet Army Regulation (AR) 190-56 standards;
- B. Must obtain a favorable National Agency Check (NAC);

- C. Ensure that no security guards posted at DMAVA locations have been convicted of domestic violence or any of the prohibited activities under 18 U.S.C. 922(g); and
- D. All security guards posted at DMAVA locations shall meet all of the requirements listed in Section 3.4 of this Bid Solicitation.

**3.11.1 DMAVA PHYSICAL AGILITY STANDARDS**

DMAVA has established initial hire, and annual physical agility certification requirements that measure the security guard's ability to accomplish the essential functions of the position for which hired. The Physical Agility Tests (PAT) include performance based standards that measure the security guard's preparedness to successfully accomplish physically demanding tasks. Acceptance standards shall include anaerobic/aerobic endurance, agility, and strength. This test will be based on State requirements for similar positions per AR 190-56. The tests will be conducted annually by DMAVA with a minimum of four (4) months separating each PAT. The Vendor {Contractor} shall be provided job descriptions, and performance plans/standards shall contain the PAT requirement for security guards that will be placed at DMAVA locations.

**3.11.2 DMAVA CERTIFICATE OF MEDICAL EXAMINATION**

The Vendor {Contractor} shall submit a completed Certificate of Medical Examination form for each security guard assigned to DMAVA locations before a new Armed or Unarmed Security Guard can begin Tour of Duty.

**3.11.3 DMAVA SECURITY CLEARANCE**

DMAVA reserves the right to conduct background checks on security guards assigned to DMAVA locations. These background checks will be at no additional cost to the Vendor {Contractor}.

**3.12 SPECIFIC SERVICES**

During the period of the Blanket P.O. or the extension thereof, the State reserves the right to add or delete specific services and/or locations in any county at existing Blanket P.O. prices for said county. By submitting a Quote, the Vendor {Contractor} agrees to provide security guard services to any location within the State on a temporary basis, as necessary, whenever requested by the Using Agency and/or SCM.

The specific number of guards, types of guards (Armed or Unarmed), guards' principal posts, and Tours of Duty shall be agreed upon in writing between the Vendor {Contractor} and SCM. As changes occur, a revised written agreement must be approved by the SCM.

**3.13 MOBILE/ROVING SECURITY GUARDS**

The Vendor {Contractor} shall provide, upon request by a State Contract Manager, Mobile/Roving Security services which shall include Armed or Unarmed Security Guards. These security guards shall provide roving security via an automobile provided by the Vendor {Contractor}. Mobile/Roving Security Guards shall provide surveillance and protection at State locations against fire, theft, pilferage, malicious injury and destruction. Mobile/Roving Security Guards shall have Two-Way Radios in order to maintain communications with other security guards and supervisory staff as necessary.

The Vendor {Contractor} must supply vehicles in Good Working Order that are clearly identified as a security vehicle. Note: There are no requirements on the make or model of the vehicle. All direct and indirect costs associated with the vehicle, including but not limited to, maintenance, gasoline, insurance, and leasing or loan payments, shall be the sole responsibility of the Vendor {Contractor} and included in the all-inclusive hourly rate.

### **3.14 STATE BUILDING SERVICE CONTRACTS WAGE**

The [New Jersey State Building Service Contracts Act](#), N.J.S.A. 34:11-56.58 et seq., establishes prevailing wage levels for the employees of contractors and subcontractors furnishing building services in State-owned and State-leased buildings. The wage and benefit rates are based on the determination made by the U.S. General Services Administration pursuant to the federal "Service Contract Act" and are available on the federal Wage Determinations Online website at [www.wdol.gov](http://www.wdol.gov). If it is found that any worker employed by the Vendor {Contractor} or any subcontractor under the Blanket P.O. has been paid a rate of wages less than the prevailing wage required to be paid under the Building Service Contracts Act, the State may terminate the Vendor {Contractor} and/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 may prosecute the work to completion and the contractor and his sureties shall be liable to the State for any excess costs occasioned by the termination.

### **3.15 BLANKET P.O. PRICE INCREASE (STATE BUILDING SERVICE CONTRACTS PREVAILING WAGE)**

The Vendor {Contractor} may apply to the Director in writing, on the anniversary of the effective date of the Blanket P.O. for a price increase. The price increase will be available only for an increase in the prevailing wages of trades and occupations covered under this Blanket P.O. during the prior year. The Vendor {Contractor} must substantiate with documentation, the need for the increase and submit it to the Director for review and approval/determination of the amount, if any, of the requested increase, which shall be available for the upcoming Blanket P.O. year. No retroactive increases will be approved by the Director.

## **4.0 QUOTE PREPARATION AND SUBMISSION**

Failure to submit information as indicated below may result in your Quote being deemed non-responsive.

### **4.1 GENERAL**

A Vendor {Bidder} may submit additional terms as part of its Quote and Quotes including Vendor {Bidder} proposed terms and conditions may be accepted, but Vendor {Bidder} proposed terms or conditions that conflict with those contained in the Bid Solicitation, as defined in Section 2.0 of this Bid Solicitation, or that diminish the State's rights under any Blanket P.O. resulting from the Bid Solicitation, may render a Quote non-responsive. It is incumbent upon the Vendor {Bidder} to identify and remove its conflicting proposed terms and conditions prior to Quote submission. Where additional terms are submitted they may be accepted, rejected, or negotiated, in whole or in part, at the State's sole discretion where the terms do not conflict with material terms of the Bid Solicitation or do not diminish the State's rights under the Blanket P.O. resulting from the Bid Solicitation.

In the event that a Vendor {Bidder} intends to propose terms and conditions that conflict with the Bid Solicitation, those Vendor {Bidder} proposed terms and conditions shall only be considered if submitted and agreed to pursuant to the electronic question and answer procedure set forth in Section 1.3.1 of this Bid Solicitation. Vendors {Bidders} shall not submit exceptions in the Quote or on the "Terms and Conditions" Tab through **NJSTART**.

After award of the Blanket P.O., if a conflict arises between a Vendor's {Bidder's} additional terms included in the Quote and a term or condition of the Bid Solicitation, the term or condition of the Bid Solicitation will prevail.

Use of URLs in a Quote should be kept to a minimum and shall not be used to satisfy any material term of a Bid Solicitation. If a preprinted or other document included as part of the Quote contains a URL, a printed copy of the URL page shall be provided and will be considered as part of the Quote.

<p>The forms discussed herein and required for submission of a Quote in response to this Bid Solicitation are available on the <a href="http://www.state.nj.us/treasury/purchase/forms.shtml">Division's website (http://www.state.nj.us/treasury/purchase/forms.shtml)</a> unless noted otherwise.</p>
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### **4.2 QUOTE DELIVERY AND IDENTIFICATION**

A Quote must arrive at the Division in accordance with this Bid Solicitation's instructions within the time frames noted on the Bid Solicitation cover sheet and on the "Summary" page of the Bid Solicitation in **NJSTART**, or as indicated on the posted Bid Amendment if the Quote Opening Date has been changed. Vendors {Bidders} submitting electronic Quotes via **NJSTART** are cautioned to allow adequate time to ensure timely uploads of all Quote documents to mitigate unforeseen delays or issues. Vendors {Bidders} submitting hard copy Quotes are cautioned to allow adequate delivery time to ensure timely delivery of Quotes. **State regulation mandates that late Quotes, regardless of submission method, are ineligible for consideration.**

### **4.3 NJSTART ELECTRONIC SUBMISSION VS. HARD COPY SUBMISSION INSTRUCTION**

#### **4.3.1 NJSTART SUBMISSION OF QUOTE**

Vendors {Bidders} may refer to the "Vendor Registration" and "Submit a Quote" QRGs for additional instructions detailing how to enroll in **NJSTART** and submit a **NJSTART** electronic Quote. QRGs are located on the [NJSTART Vendor Support Page](#). If the Vendor {Bidder} submits both a

**NJSTART** and a hard copy of the Vendor's {Bidder's} Quote, the **NJSTART** Quote will prevail in the event of a discrepancy between the electronic and paper versions.

When submitting a **NJSTART** Quote, do not use any symbols (i.e., #, @, \$, &, \*) in the filename. In addition, the Vendor {Bidder} should name each uploaded electronic file and folder as follows with the information in the brackets [] below as follows:

[Vendor {Bidder} name][Volume #][Bid Solicitation number]. Example: vendornameXXDPPXXXXX.  
**DO NOT UPLOAD .ZIP FILES.**

If the Vendor {Bidder} submits a Quote electronically through **NJSTART**, the Vendor {Bidder} should select the "Confidential" option in **NJSTART** for attachments on the "Attachments" Tab to request that the documents not be displayed publicly through **NJSTART**.

Note: Marking an attachment as "Confidential" in **NJSTART** shall not constitute the Vendor's {Bidder's} designation of the attachment as exempt from public disclosure under OPRA and/or the common law as outlined in Section 1.4.4.

If a Vendor {Bidder} has designated any data or materials it asserts are exempt from public disclosure under OPRA and/or the common law, the Vendor {Bidder} should include a redacted copy of the Quote indicating the sections identified as confidential.

#### **4.3.2 HARD COPY SUBMISSION**

If the Vendor {Bidder} is submitting a hard copy Quote, the Vendor {Bidder} must submit the following:

- A. **Five (5) complete Quotes, comprising all volumes and including original, physical signature**, clearly marked as the "ORIGINAL" Quote;
- B. **One (1) complete and exact ELECTRONIC copy** of the original Quote in PDF file format on CD, DVD, or USB Drive. These should be cover to cover copies, and should not be password protected. **THE STATE-SUPPLIED PRICE SHEET (VOLUME 3) SHALL NOT BE INCLUDED ON THIS ELECTRONIC COPY; and**
- C. **One (1) complete and exact ELECTRONIC copy** of the original State-Supplied Price Sheet (Volume 3) in Microsoft Excel file format on CD, DVD, or USB Drive . This should be a cover to cover copy, and should not be password protected.

**THE EXTERIOR OF ALL QUOTE PACKAGES SHALL BE LABELED WITH THE BID SOLICITATION IDENTIFICATION NUMBER AND THE FINAL QUOTE SUBMISSION DATE OR RISK NOT BEING RECEIVED IN TIME.**

Copies are necessary in the evaluation of the Quote and for record retention purposes. A Vendor {Bidder} failing to provide the requested number of copies will be charged the cost incurred by the State in producing the requested number of copies. The Vendor {Bidder} should make and retain a copy of its Quote.

Hard copy Quote must be submitted to the physical location noted below:

PROPOSAL RECEIVING ROOM – 9TH FLOOR  
DIVISION OF PURCHASE AND PROPERTY  
DEPARTMENT OF THE TREASURY  
33 WEST STATE STREET, P.O. BOX 230  
TRENTON, NJ 08625-0230



Directions to the Division are available on the web at <http://www.state.nj.us/treasury/purchase/directions.shtml>.

**QUOTES NOT RECEIVED PRIOR TO THE QUOTE OPENING DEADLINE SHALL BE REJECTED. THE DATE AND TIME OF THE QUOTE OPENING IS INDICATED ON THE BID SOLICITATION COVER SHEET AND ON THE "SUMMARY" TAB OF THE BID SOLICITATION WEBPAGE WITHIN [NJSTART](#).**

**IF THE QUOTE OPENING DEADLINE HAS BEEN REVISED, THE NEW QUOTE OPENING DEADLINE SHALL BE SHOWN ON THE POSTED BID AMENDMENT AND ON THE "SUMMARY" TAB OF THE BID SOLICITATION WEBPAGE WITHIN [NJSTART](#).**

Note: A Vendor {Bidder} using U.S. Postal Service regular or express mail services should allow additional time since the U.S. Postal Service does not deliver directly to the Proposal Receiving Room. A Vendor {Bidder} should make every effort to submit its Quote well ahead of the Quote submission deadline to mitigate unforeseen delays or issues. The Vendor {Bidder} is solely responsible for the timely submission of its Quote in response to this Bid Solicitation.

#### **4.4 QUOTE CONTENT**

The Quote should be submitted in three (3) volumes with the content of each volume as indicated below.

- A. Volume 1  
Section 1 - Forms (Sections 4.4.1 and 4.4.2).

Note: In general, Volume 1 applies to hard copy submissions; however, there may be instances where Bid Solicitation specific forms are required through [NJSTART](#) electronic submission as well.

- B. Volume 2  
Section 2 - Technical Quote (Section 4.4.3);  
Section 3 - Organizational Support and Experience (Section 4.4.4); and  
Section 3A - Any other miscellaneous documents to be included by the Vendor {Bidder}.

- C. Volume 3  
Section 4 - State-Supplied Price Sheet (Section 4.4.5).

Note: Vendors {Bidders} submitting Quotes through [NJSTART](#) must complete the State-Supplied Price Sheet (Volume 3) accompanying this Bid Solicitation and upload it as an attachment on the "Attachments" Tab (See Section 4.4.5 of this Bid Solicitation).

The Vendor {Bidder} must enter a Unit Cost of \$1.00 for each price line item on the "Items" Tab in [NJSTART](#). The Vendor {Bidder} is instructed to do so only as a mechanism to comply with Bid Solicitation Section 6.8 and prevent all pricing from being publicly displayed in [NJSTART](#).

In the event that a Vendor {Bidder} uploads a State-Supplied Price Sheet and completes the Items Tab in [NJSTART](#) (instead of entering a Unit Cost of \$1.00 as instructed), the State-Supplied Price Sheet attachment will govern.

#### **4.4.1 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED WITH QUOTE**

Vendors {Bidders} should refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation through [NJSTART](#). Vendors {Bidders} may also refer to the QRG "Vendor Categories and Certifications" for additional instructions on completing shortened versions of required forms by completing certifications on the

“Maintain Terms and Categories” Tab within its profile in [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

In the event that a Vendor {Bidder} fails to attach a required form, or the attached form is deemed deficient, the Division may access the Primary Form to be considered as part of the Quote.

Vendors {Bidders} submitting forms through hard copy must complete the full version of the form and may refer to instructions included within the forms on the [Division's website](#).

Vendors {Bidders} are under a continuing obligation to report updates to the information contained in its required forms whether submitting through [NJSTART](#) or as a hard copy.

Unless otherwise specified, forms must contain an original, physical signature, or an electronic signature pursuant to Section 1.4.11 of this Bid Solicitation.

#### **4.4.1.1 OFFER AND ACCEPTANCE PAGE**

The Vendor {Bidder} shall complete and submit the Offer and Acceptance Page accompanying this Bid Solicitation prior to the initiation of negotiation. The Vendor {Bidder} should submit the Offer and Acceptance Page with the Quote. All information requested on the Offer and Acceptance Page must be submitted.

If the Offer and Acceptance Page is not submitted with the Quote or is incomplete, the State will require the Vendor {Bidder} to submit the Offer and Acceptance Page. If the Vendor {Bidder} fails to comply with the requirement within seven (7) business days of the demand, the State may deem the Quote non-responsive.

The Offer and Acceptance Page must be signed by an authorized representative of the Vendor {Bidder}. If the Vendor {Bidder} is a limited partnership, the Offer and Acceptance Page must be signed by a general partner. If the Vendor {Bidder} is a joint venture, the Offer and Acceptance Page must be signed by a principal of each party to the joint venture.

#### **4.4.1.1.1 MACBRIDE PRINCIPLES CERTIFICATION**

The Vendor {Bidder} must certify pursuant to [N.J.S.A. 52:34-12.2](#) that it is in compliance with the MacBride principles of nondiscrimination in employment as set forth in [N.J.S.A. 52:18A-89.5](#) and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of its compliance with those principles. See Section 2.5 of the SSTC and [N.J.S.A. 52:34-12.2](#) for additional information about the MacBride principles.

By signing the Bid Solicitation Offer and Acceptance Page, the Vendor {Bidder} is automatically certifying that either:

- A. The Vendor {Bidder} has no operations in Northern Ireland; or
- B. The Vendor {Bidder} has business operations in Northern Ireland and is committed to compliance with the MacBride principles.

A Vendor {Bidder} electing not to certify to the MacBride Principles must nonetheless sign the Bid Solicitation Offer and Acceptance Page AND must include, as part of its Quote, a statement indicating its refusal to comply with the provisions of this Act.

**4.4.1.1.2 NON-COLLUSION**

By submitting a Quote and signing the Bid Solicitation Offer and Acceptance Page, the Vendor {Bidder} certifies as follows:

- A. The price(s) and amount of its Quote have been arrived at independently and without consultation, communication or agreement with any other Vendor {Contractor, Bidder} or any other party;
- B. Neither the price(s) nor the amount of its Quote, and neither the approximate price(s) nor approximate amount of this Quote, have been disclosed to any other firm or person who is a Vendor {Bidder} or potential Vendor {Bidder}, and they will not be disclosed before the Quote submission;
- C. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this Blanket P.O., or to submit a Quote higher than this Quote, or to submit any intentionally high or noncompetitive Quote or other form of complementary Quote;
- D. The Quote of the firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Quote; and
- E. The Vendor {Bidder}, its affiliates, subsidiaries, officers, directors, and employees are not, to Vendor's {Bidder's} knowledge, currently under investigation by any governmental agency for alleged conspiracy or collusion with respect to bidding on any Blanket P.O./public contract and have not in the last five (5) years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction involving conspiracy or collusion with respect to bidding on any Blanket P.O./public contract.

**4.4.1.1.3 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION**

The Treasurer has established a business ethics guide to be followed by Vendors {Bidders/Contractors} in its dealings with the State. The guide provides further information about compliance with Section 2.7 of the SSTC. The guide can be found at:

[http://www.state.nj.us/treasury/purchase/ethics\\_guide.shtml](http://www.state.nj.us/treasury/purchase/ethics_guide.shtml)

By signing the Bid Solicitation Offer and Acceptance Page, the Vendor {Bidder} is automatically certifying that it has complied with all applicable laws and regulations governing the provision of State goods and services, including the Conflicts of Interest Law, N.J.S.A. 52:13D-12 to 28.

**4.4.1.2 NJ STANDARD BID SOLICITATION FORMS REQUIRED WITH THE QUOTE**

Vendor's {Bidder's} failure to complete, sign and submit the forms in Section 4.4.1.2 shall be cause to reject its Quote as non-responsive.

**4.4.1.2.1 OWNERSHIP DISCLOSURE FORM**

Pursuant to N.J.S.A. 52:25-24.2, in the event the Vendor {Bidder} is a corporation, partnership or limited liability company, the Vendor {Bidder} must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Vendor's {Bidder's} failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. to said Vendor {Bidder} unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission

deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

In the alternative, to comply with this section, a Vendor {Bidder} with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

Vendors {Bidders} using **NJSTART** to submit a Quote shall make the appropriate certification on the “Maintain Terms and Categories” Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Ownership Disclosure Form. Vendors {Bidders} not using **NJSTART** to submit a Quote must complete the full Ownership Disclosure Form located on the [Division’s website](#).

Vendors {Bidders} may refer to the QRGs “Vendor Forms” and “Attaching Files” for instructions on submitting the forms required by this section of the Bid Solicitation through **NJSTART**. Vendors {Bidders} may also refer to the QRG “Vendor Categories and Certifications” for additional instructions on completing shortened versions of required forms by completing certifications on the “Maintain Terms and Categories” Tab within its profile in **NJSTART**. QRGs are located on the [NJSTART Vendor Support Page](#).

Vendors {Bidders} utilizing **NJSTART** should designate one (1) version of the Ownership Disclosure Form as the Primary Form. In the event that a Vendor {Bidder} fails to attach an Ownership Disclosure Form, or the attached Ownership Disclosure Form is deemed deficient, the Division may access the Primary Form and consider it as part of the Quote. Note: The Primary Form must have a Date Created within six (6) months of the Quote submission deadline to be considered valid.

#### **4.4.1.2.2 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM**

Pursuant to N.J.S.A. 52:32-58, the Vendor {Bidder} must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Vendor {Bidder}, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury’s List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Vendor {Bidder}, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Vendor {Bidder} is unable to so certify, the Vendor {Bidder} shall provide a detailed and precise description of such activities as directed on the form. A Vendor’s {Bidder’s} failure to submit the completed and signed form with its Quote will result in the rejection of the Quote as non-responsive and preclude the award of a Blanket P.O. to said Vendor {Bidder}.

Vendors {Bidders} using **NJSTART** to submit a Quote shall make the appropriate certification on the “Maintain Terms and Categories” Tab within its profile by checking the applicable box and, if required, completing and attaching the shortened Disclosure of Investment Activities in Iran form. Vendors {Bidders} not using **NJSTART** to submit a Quote must complete the full Disclosure of Investment Activities in Iran form located on the [Division’s website](#).

Vendors {Bidders} may refer to the QRGs “Vendor Forms” and “Attaching Files” for instructions on submitting the forms required by this section of the Bid Solicitation through **NJSTART**. Vendors {Bidders} may also refer to the QRG “Vendor Categories and Certifications” for additional instructions on completing shortened versions of required forms by completing certifications on the

“Maintain Terms and Categories” Tab within its profile in [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

Vendors {Bidders} utilizing [NJSTART](#) should designate the most current version of the Disclosure of Investment Activities in Iran form as the Primary Form. In the event that a Vendor {Bidder} fails to attach a Disclosure of Investment Activities in Iran form, or the attached Disclosure of Investment Activities in Iran form is deemed deficient, the Division may access the Primary Form, as designed in the Vendor {Bidder} profile, to be considered as part of the Quote.

**4.4.1.3 SUBCONTRACTOR UTILIZATION PLAN**

Not applicable to this procurement.

**4.4.1.4 SMALL BUSINESS REGISTRATION FOR SET-ASIDE BLANKET P.O.**

Not applicable to this procurement.

**4.4.1.5 SMALL BUSINESS SUBCONTRACTING SET-ASIDE BLANKET P.O.**

Not applicable to this procurement.

**4.4.1.6 BID SECURITY**

Not applicable to this procurement.

**4.4.2 FORMS, REGISTRATIONS AND CERTIFICATIONS REQUIRED BEFORE BLANKET P.O. AWARD AND THAT SHOULD BE SUBMITTED WITH THE QUOTE**

Unless otherwise specified, forms must contain an original, physical signature, or an electronic signature pursuant to Section 1.4.11 of this Bid Solicitation.

**4.4.2.1 BUSINESS REGISTRATION**

In accordance with [N.J.S.A. 52:32-44\(b\)](#), a Vendor {Bidder} and its named Subcontractors must have a valid Business Registration Certificate (“BRC”) issued by the Department of the Treasury, Division of Revenue and Enterprise Services prior to the award of a Blanket P.O. To facilitate the Quote evaluation and Blanket P.O. award process, the Vendor {Bidder} should submit a copy of its valid BRC and those of any named Subcontractors with its Quote. See Section 2.1 of the SSTC.

Any Vendor {Bidder}, inclusive of any named Subcontractors, not having a valid business registration at the time of the Quote opening, or whose BRC was revoked prior to the submission of the Quote, should proceed immediately to register its business or seek reinstatement of a revoked BRC. Vendors {Bidders} should verify its BRC status on the “Maintain Terms and Categories” Tab within its profile in [NJSTART](#). In the event of an issue with a Vendor’s {Bidder’s} BRC, [NJSTART](#) provides a link to take corrective action.

The Vendor {Bidder} is cautioned that it may require a significant amount of time to secure the reinstatement of a revoked BRC. The process can require actions by both the Division of Revenue and Enterprise Services and the Division of Taxation. For this reason, a Vendor’s {Bidder’s} early attention to this requirement is highly recommended. The Vendor {Bidder} and its named Subcontractors may register with the Division of Revenue and Enterprise Services, obtain a copy of an existing BRC or obtain information necessary to seek re-instatement of a revoked BRC online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

A Vendor {Bidder} otherwise identified by the Division as a responsive and responsible Vendor {Bidder}, inclusive of any named Subcontractors, but that was not business registered at the time

of submission of its Quote must be so registered and in possession of a valid BRC by a deadline to be specified in writing by the Division. A Vendor {Bidder} failing to comply with this requirement by the deadline specified by the Division will be deemed ineligible for Blanket P.O. award. Under any circumstance, the Division will rely upon information available from computerized systems maintained by the State as a basis to independently verify compliance with the requirement for business registration.

A Vendor {Bidder} receiving a Blanket P.O. award as a result of this procurement and any Subcontractors named by that Vendor {Bidder} will be required to maintain a valid business registration with the Division of Revenue and Enterprise Services for the duration of the executed Blanket P.O., inclusive of any Blanket P.O. extensions.

#### **4.4.2.2 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING BIDDER FORM**

The Vendor {Bidder} should submit the Disclosure of Investigations and Other Actions Involving Bidder Form with its Quote, to provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Vendor {Bidder} does not submit the form with the Quote, the Vendor {Bidder} must comply within seven (7) business days of the State's request or the State may deem the Quote non-responsive.

Vendors {Bidders} using [NJSTART](#) to submit a Quote shall make the appropriate certification on the "Maintain Terms and Categories" Tab within its profile by checking the applicable box and, if required, complete and attach the shortened [NJSTART](#) form. Vendors {Bidders} not using [NJSTART](#) to submit a Quote must complete the full version of the form located on the [Division's website](#).

Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation through [NJSTART](#). Vendors {Bidders} may also refer to the QRG "Vendor Categories and Certifications" for additional instructions on completing shortened versions of required forms by completing certifications on the "Maintain Terms and Categories" Tab within its profile in [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

#### **4.4.2.3 SOURCE DISCLOSURE**

Pursuant to [N.J.S.A. 52:34-13.2](#), prior to an award of Blanket P.O., the Vendor {Bidder} is required to submit a completed Source Disclosure Form. The Vendor's {Bidder's} inclusion of the completed Source Disclosure Form with the Quote is requested and advised. See Bid Solicitation Section 7.1.2 for additional information concerning this requirement.

The Source Disclosure Form is located on the [Division's website](#). The form is also available in [NJSTART](#). Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation through [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

#### **4.4.3 TECHNICAL QUOTE**

In this section, the Vendor {Bidder} shall describe its approach and plans for accomplishing the work outlined in the Scope of Work section, i.e., Section 3.0. The Vendor {Bidder} must set forth its understanding of the requirements of this Bid Solicitation and its approach to successfully complete the Blanket P.O. The Vendor {Bidder} should include the level of detail it determines necessary to assist the evaluation committee in its review of the Vendor's {Bidder's} Quote.



Vendors {Bidders} may refer to the QRG “Submit a Quote” for instructions detailing how to submit a [NJSTART](#) electronic Quote. QRGs are located on the [NJSTART Vendor Support Page](#).

#### **4.4.3.1 MANAGEMENT OVERVIEW**

The Vendor {Bidder} shall set forth its overall technical approach and plans to meet the requirements of the Bid Solicitation in a narrative format. This narrative should demonstrate to the State that the Vendor {Bidder} understands the objectives that the Blanket P.O. is intended to meet, the nature of the required work, and the level of effort necessary to successfully complete the Blanket P.O. This narrative should demonstrate to the State that the Vendor’s {Bidder’s} general approach and plans to undertake and complete the Blanket P.O. are appropriate to the tasks and subtasks involved.

Mere reiterations of Bid Solicitation tasks and subtasks are strongly discouraged, as they do not provide insight into the Vendor’s {Bidder’s} approach to complete the Blanket P.O. The Vendor’s {Bidder’s} response to this section should be designed to demonstrate to the State that the Vendor’s {Bidder’s} detailed plans and approach proposed to complete the Scope of Work are realistic, attainable and appropriate and that the Vendor’s {Bidder’s} Quote will lead to successful Blanket P.O. completion.

#### **4.4.3.2 BLANKET P.O. MANAGEMENT**

The Vendor {Bidder} should describe its specific plans to manage, control and supervise the Blanket P.O. to ensure satisfactory Blanket P.O. completion according to the required schedule. The plan should include the Vendor’s {Bidder’s} approach to communicate with the State Contract Manager including, but not limited to, status meetings, status reports, etc.

#### **4.4.3.3 BLANKET P.O. SCHEDULE AND PLANS**

##### **4.4.3.3.1 BLANKET P.O. SCHEDULE**

The Vendor {Bidder} should include a draft Blanket P.O. schedule. If key dates are a part of this Bid Solicitation, the Vendor’s {Bidder’s} schedule should incorporate such key dates and should identify the completion date for each task and sub-task required by the Scope of Work. Such schedule should also identify the associated deliverable item(s) to be submitted as evidence of completion of each task and/or subtask.

The Vendor {Bidder} should identify the Blanket P.O. scheduling and control methodology to be used and should provide the rationale for choosing such methodology. The use of Gantt, PERT or other charts is at the option of the Vendor {Bidder}.

##### **4.4.3.3.2 MOBILIZATION PLAN**

It is essential that the State have quick use of the functionality this Blanket P.O. is to provide. Therefore, each Vendor {Bidder} should include as part of its Quote a mobilization plan, beginning with the date of notification of Blanket P.O. award and lasting no longer than four (4) weeks.

Such mobilization plan should include the following elements:

- A. A detailed timetable for the mobilization period four (4) weeks. This timetable should be designed to demonstrate how the Vendor {Bidder} will have the personnel and equipment it needs to begin work on the Blanket P.O. up and operational from the date of notification of award;
- B. The Vendor’s {Bidder’s} plan for the deployment and use of management, supervisory or other key personnel during the mobilization period. The plan should show all management,

supervisory and key personnel that will be assigned to manage, supervise and monitor the Vendor's {Bidder's} mobilization of the Blanket P.O. within the period of four (4) weeks;

- C. **NOTE:** The Vendor {Bidder} should clearly identify management, supervisory or other key staff that will be assigned only during the mobilization;
- D. The Vendor's {Bidder's} plan for recruitment of staff required to provide all services required by the Bid Solicitation on the Blanket P.O. start date at the end of the mobilization period covering four (4) weeks; and
- E. The Vendor's {Bidder's} plan for the purchase and distribution of equipment, inventory, supplies, materials, etc. that will be required to begin work on the Blanket P.O. on the required start date.

#### **4.4.3.3 ADDITIONAL PLANS**

The Vendor {Bidder} should provide the following as part of its Quote:

- A. **TRAINING PLAN** - The Vendor {Bidder} should provide its formal training plan for both Armed and Unarmed Security Guards. The training plan should detail expectations and requirements for successful performance as both an Armed and Unarmed Security Guard, in addition to detailing retraining procedures.

#### **4.4.3.4 PHYSICAL QUALIFICATION STANDARDS**

The Vendor {Bidder} should provide, as part of its technical Quote, its formal physical qualification standards of its security officers. These standards should include how often security officers are tested for physical fitness, and provide details of the events comprising the physical fitness performance tests, as well as, how individual performance is measured. The Vendor {Bidder} should also include details of all alternate tests as applicable.

#### **4.4.3.5 STANDARD OPERATING PROCEDURES**

The Vendor {Bidder} should provide, as part of its technical Quote, its Standard Operating Procedures for both Armed and Unarmed Security Guards. The Standard Operating Procedures should minimally include standards for Use of Force, calling law enforcement, and de-escalating Incidents.

#### **4.4.4 ORGANIZATIONAL SUPPORT AND EXPERIENCE**

The Vendor {Bidder} should include information relating to its organization, personnel, and experience, including, but not limited to, references, together with contact names and telephone numbers, evidencing the Vendor's {Bidder's} qualifications, and capabilities to perform the services required by this Bid Solicitation.

The Vendor {Bidder} should include the level of detail it determines necessary to assist the evaluation committee in its review of Vendor's {Bidder's} Quote.

##### **4.4.4.1 LOCATION**

The Vendor {Bidder} should include the address of the Vendor's {Bidder's} office where responsibility for managing the Blanket P.O. will take place. The Vendor {Bidder} should include the telephone number and name of the individual to contact.



#### **4.4.4.2 ORGANIZATION CHARTS**

- A. **Blanket P.O. -Specific Chart.** The Vendor {Bidder} should include a Blanket P.O. organization chart, with names showing management, supervisory and other key personnel (including Subcontractor management, supervisory, or other key personnel) to be assigned to the Blanket P.O. The chart should include the labor category and title of each such individual; and
- B. **Chart for Entire Firm.** The Vendor {Bidder} should include an organization chart showing the Vendor's {Bidder's} entire organizational structure. This chart should show the relationship of the individuals assigned to the Blanket P.O. to the Vendor's {Bidder's} overall organizational structure.

#### **4.4.4.3 RESUMES**

Detailed resumes should be submitted for all management, supervisory, and key personnel to be assigned to the Blanket P.O. Resumes should emphasize relevant qualifications and experience of these individuals in successfully completing Blanket P.O.s of a similar size and scope to those required by this Bid Solicitation. Resumes should include the following:

- A. The individual's previous experience in completing each similar Blanket P.O.;
- B. Beginning and ending dates for each similar Blanket P.O.;
- C. A description of the Blanket P.O. demonstrating how the individual's work on the completed Blanket P.O. relates to the individual's ability to contribute to successfully providing the services required by this Bid Solicitation; and
- D. With respect to each similar Blanket P.O., the name and address of each reference together with a person to contact for a reference check and a telephone number.

The Vendor {Bidder} 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. When a Vendor {Bidder} submits resumes pursuant to this paragraph, the Vendor {Bidder} shall redact the social security numbers, home addresses, personal telephone numbers, and any other personally identifying information other than the individual's name from the resume.

#### **4.4.4.4 BACKUP STAFF**

The Vendor {Bidder} should include a list of backup staff that may be called upon to assist or replace primary individuals assigned. Backup staff must be clearly identified as backup staff.

In the event the Vendor {Bidder} must hire management, supervisory and/or key personnel if awarded the Blanket P.O., the Vendor {Bidder} should include, as part of its recruitment plan, a plan to secure backup staff in the event personnel initially recruited need assistance or need to be replaced during the Blanket P.O. term.

#### **4.4.4.5 EXPERIENCE WITH CONTRACTS OF SIMILAR SIZE AND SCOPE**

The Vendor {Bidder} should provide a comprehensive listing of contracts of similar size and scope that it has successfully completed, as evidence of the Vendor's {Bidder's} ability to successfully complete services similar to those required by this Bid Solicitation. Emphasis should be placed on contracts that are similar in size and scope to the work required by this Bid Solicitation. A description of all such contracts should be included and should show how such contracts relate to the ability of the firm to complete the services required by this Bid Solicitation. For each such

contract listed, the Vendor {Bidder} should provide two (2) names and telephone numbers of individuals for contracting party. Beginning and ending dates should also be given for each contract.

The Vendor {Bidder} must provide details of any negative actions taken by other contracting entities against them in the course of performing these projects including, but not limited to, receipt of letters of potential default, default, cure notices, termination of services for cause, or other similar notifications/processes. Additionally, the Vendor {Bidder} should provide details, including any negative audits, reports, or findings by any governmental agency for which the Vendor {Bidder} is/was the Vendor {Contractor} on any contracts of similar scope. In the event a Vendor {Bidder} neglects to include this information in its Quote, the Vendor's {Bidder's} omission of necessary disclosure information may be cause for rejection of the Vendor's {Bidder's} Quote by the State.

The Vendor {Bidder} 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 Vendor's {Bidder's} Quote. The Vendor {Bidder} must provide a detailed description of services to be provided by each Subcontractor.

#### **4.4.4.6 FINANCIAL CAPABILITY OF THE VENDOR {BIDDER}**

The Vendor {Bidder} should provide sufficient financial information to enable the State to assess the financial strength and creditworthiness of the Vendor {Bidder} and its ability to undertake and successfully complete the Blanket P.O. In order to provide the State with the ability to evaluate the Vendor's {Bidder's} financial capacity and capability to undertake and successfully complete the Blanket P.O., the Vendor {Bidder} should submit the following:

- A. For publically traded companies the Vendor {Bidder} should provide copies or the electronic location of the annual reports filed for the two most recent years; or
- B. For privately held companies the Vendor {Bidder} should provide the certified financial statement (audited or reviewed) in accordance with applicable standards by an independent Certified Public Accountant which include a balance sheet, income statement, and statement of cash flow, and all applicable notes for the most recent calendar year or the Vendor's {Bidder's} most recent fiscal year.

If the information is not supplied with the Quote, the State may still require the Vendor {Bidder} to submit it. If the Vendor {Bidder} fails to comply with the request within seven (7) business days, the State may deem the Quote non-responsive.

A Vendor {Bidder} may designate specific financial information as not subject to disclosure when the Vendor {Bidder} has a good faith legal/factual basis for such assertion. A Vendor {Bidder} may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with the Quote.

The State reserves the right to make the determination to accept the assertion and shall so advise the Vendor {Bidder}.

#### **4.4.5 STATE-SUPPLIED PRICE SHEET**

The Vendor {Bidder} must submit its pricing using the State-Supplied Price Sheet accompanying this Bid Solicitation and located on the "Attachments" Tab.

Vendors {Bidders} may refer to the QRG "Submit a Quote" for instructions detailing how to submit a **NJSTART** electronic Quote. QRGs are located on the [NJSTART Vendor Support Page](#).

#### **4.4.5.1 NJSTART PRICING SUBMISSION INSTRUCTIONS**

If the Vendor {Bidder} is submitting a **NJSTART** Quote, the Vendor {Bidder} must enter a Unit Cost of \$1.00 for each price line item on the "Items" Tab in **NJSTART**. The Vendor {Bidder} is instructed to do so only as a mechanism to comply with Bid Solicitation Section 6.8 and prevent all pricing from being publicly displayed in **NJSTART**.

#### **4.4.5.2 STATE-SUPPLIED PRICE SHEET INSTRUCTIONS**

Vendors {Bidders} must complete the Unit Cost field for each price line in each county on the Price Schedule. Each Vendor {Bidder} is required to hold its prices firm through issuance of Blanket P.O.

Pricing submitted by the Vendors {Bidders} shall be all-inclusive (Reference Section 2.2 of the Bid Solicitation). No additional fees or costs will be paid by the State unless there is a change in the scope of work, approved in writing by the Director. The State will not accept any assumptions with regard to all-inclusive pricing. The Vendor {Bidder} MUST provide a unit cost for each Price Line in each county or its Quote will be considered non-responsive.

In the event that a Vendor {Bidder} using **NJSTART** to submit a Quote uploads a State-Supplied Price Sheet and completes the "Items" Tab in **NJSTART** (instead of entering a Unit Cost of \$1.00 as instructed), the State-Supplied Price Sheet will govern.

#### **4.4.5.3 USE OF "NO BID" VERSUS "NO CHARGE" ON THE STATE-SUPPLIED PRICE SHEET**

If the Vendor {Bidder} is not submitting a price for an item on a price line, the Vendor {Bidder} must indicate "No Bid" on the State-Supplied Price Sheet accompanying this Bid Solicitation. If the Vendor {Bidder} will supply an item on a price line free of charge, the Vendor {Bidder} must indicate "No Charge" on the State-Supplied Price Sheet accompanying this Bid Solicitation. The use of any other identifier may result in the Vendor's {Bidder's} Quote being deemed non-responsive.

#### **4.4.5.4 DELIVERY TIME AND COSTS**

Unless otherwise noted elsewhere in the Bid Solicitation, all delivery times are 30 calendar days after receipt of order (ARO) and prices for items in Quotes shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days ARO/F.O.B.). Quotes submitted other than 30 calendar days ARO/F.O.B. may be deemed non-responsive. The Vendor {Contractor} shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's Using Agency or designated purchaser. 30 calendar days ARO/F.O.B. does not cover "spotting" but does include delivery on the receiving platform of the Using Agency at any destination in the State of New Jersey unless otherwise specified.

No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the Vendor's {Contractor's} convenience when a single shipment is ordered.

The weights and measures of the State's Using Agency receiving the shipment shall govern.

#### **4.4.5.5 COLLECT ON DELIVERY (C.O.D.) TERMS**

C.O.D. terms are not acceptable as part of a Quote and shall be deemed non-responsive.

#### **4.4.5.6 CASH DISCOUNTS**

The Vendor {Bidder} is encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the price rankings of Quotes.

Should the Vendor {Bidder} choose to offer cash discounts the following shall apply:

- A. Discount periods shall be calculated starting from the next business day after the Using Agency has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest; and
- B. The date on the check issued by the State in payment of that invoice shall be deemed the date of the State's response to that invoice.

**4.4.6 COOPERATIVE PURCHASING PROGRAM**

The Vendor {Bidder} should complete the Cooperative Purchasing Form indicating willingness or unwillingness to extend State Blanket P.O. pricing and terms to Cooperative Purchasing Program participants. The Cooperative Purchasing Form is located on the [Division's website](#).

## **5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS APPLICABLE TO THE BLANKET P.O.**

### **5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS**

This Blanket P.O. awarded, and the entire agreement between the parties, as a result of this Bid Solicitation shall consist of this Bid Solicitation, SSTC, Bid Amendment to this Bid Solicitation, the Vendor's {Contractor's} Quote, any Best and Final Offer, and the Division's Notice of Award.

In the event of a conflict in the terms and conditions among the documents comprising this Blanket P.O., the order of precedence, for purposes of interpretation thereof, listed from highest ranking to lowest ranking, shall be:

- A. Executed Offer and Acceptance Page;
- B. Bid Solicitation Section 5, as may be amended by Bid Amendment;
- C. The State of NJ Standard Terms and Conditions (SSTC) accompanying this Bid Solicitation;
- D. All remaining sections of the Bid Solicitation, as may be amended by Bid Amendment;
- E. The Vendor's {Contractor's} final submitted Best and Final Offer; and
- F. The Vendor's {Contractor's} Quote as accepted by the State.

**Note:** In the event of conflicting information between the Bid Solicitation and fields contained in **NJSTART**, the Bid Solicitation will govern and **NJSTART** will be updated via Bid Amendment or Change Order.

### **5.2 BLANKET P.O. TERM AND EXTENSION OPTION**

The base term of this Blanket P.O. shall be for a period of **three (3) years**. The anticipated "Blanket P.O. Effective Date" is provided on the "Summary" page the Bid Solicitation in **NJSTART**. If delays in the procurement process result in a change to the anticipated Blanket P.O. Effective Date, the Vendor {Bidder} agrees to accept a Blanket P.O. for the full term of this Blanket P.O.

This Blanket P.O. may be extended up to **two (2) years** with no single extension exceeding one (1) year, by the mutual written consent of the Vendor {Contractor} and the Director at the same terms, conditions, and pricing at the rates in effect in the last year of this Blanket P.O. or rates more favorable to the State.

### **5.3 BLANKET P.O. TRANSITION**

In the event that a new Blanket P.O. has not been awarded prior to this Blanket P.O. expiration date, including any extensions exercised, and the State exercises this Blanket P.O. transition, the Vendor {Contractor} shall continue this Blanket P.O. under the same terms, conditions, and pricing until a new Blanket P.O. can be completely operational. At no time shall this transition period extend more than **180 days** beyond the expiration date of this Blanket P.O., including any extensions exercised.

### **5.4 CHANGE ORDER**

Any changes or modifications to the terms of this Blanket P.O. shall be valid only when they have been reduced to writing and signed by the Vendor {Contractor} and the Director.

## **5.5 VENDOR {CONTRACTOR} RESPONSIBILITIES**

The Vendor {Contractor} shall have sole responsibility for the complete effort specified in this Blanket P.O. Payment will be made only to the Vendor {Contractor}. The Vendor {Contractor} shall have sole responsibility for all payments due any Subcontractor.

The Vendor {Contractor} is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under this Blanket P.O. The Vendor {Contractor} shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this Blanket P.O. shall not in any way relieve the Vendor {Contractor} of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the Vendor's {Contractor's} performance of this Blanket P.O.

## **5.6 SUBSTITUTION OF STAFF**

If it becomes necessary for the Vendor {Contractor} to substitute any management, supervisory or key personnel, the Vendor {Contractor} shall identify the substitute personnel and the work to be performed. The Vendor {Contractor} must provide detailed justification documenting the necessity for the substitution. Resumes must be submitted evidencing that the individual(s) proposed as substitute(s) have qualifications and experience equal to or better than the individual(s) originally proposed or currently assigned.

The Vendor {Contractor} shall forward a request to substitute staff to the State Contract Manager for consideration and approval. No substitute personnel are authorized to begin work until the Vendor {Contractor} has received written approval to proceed from the State Contract Manager.

## **5.7 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)**

Not applicable to this procurement.

## **5.8 OWNERSHIP OF MATERIAL**

### **A. State Ownership of Data**

All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of this Blanket P.O., including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, 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 Blanket P.O. shall be and remain the property of the State of New Jersey and shall be delivered to the State of New Jersey upon 30 days' notice by the State.

### **B. Intellectual Property Rights in Deliverables – Excluding Software**

1. If the Vendor {Bidder} anticipates using pre-existing intellectual property ("Background IP") within the deliverables called for under the Blanket P.O., the Background IP must be identified in the Quote. If the Vendor {Bidder} identifies such Background IP in its Quote, then the Background IP owned by the Vendor {Bidder} on the date of this Blanket P.O. and any modifications or adaptations thereto remain the property of the Vendor {Bidder}.
2. If in the course of performance of the Blanket P.O., Vendor {Contractor} encounters a need to incorporate Background IP into a deliverable, but the Background IP was not identified in the Quote, the Vendor {Contractor} must notify the State Contract Manager in writing, identifying the specific Background IP to be incorporated into the deliverable, and requesting approval thereof. Where approval is granted in writing, the Background IP owned by the Vendor {Contractor} as well as any modifications or adaptations thereto

remain the property of the Vendor {Contractor}. If approval is not granted, the parties will negotiate mutually acceptable intellectual property rights to accomplish the State's goals for the affected deliverable(s).

3. The Vendor {Bidder/Contractor} grants the State a nonexclusive, irrevocable, royalty free license to use the Vendor's {Bidder's/Contractor's} Background IP delivered to the State for the purposes contemplated by this Blanket P.O.
4. Vendor {Bidder/Contractor} software computer programs and other methodologies used by Vendor {Bidder/Contractor} in the preparation of deliverables called for under the Blanket P.O., but not incorporated into the deliverable itself do not need to be identified as Background IP, and the Vendor {Contractor} retains all ownership therein, as applicable.

C. Intellectual Property Rights in Software Deliverables

1. Where the Blanket P.O. requires the development and delivery of software computer programs, the State requires only the rights necessary to accomplish the purposes of the software as set forth in the Bid Solicitation. Accordingly, unless the Bid Solicitation requires Vendors {Contractors} to provide full ownership of the software computer programs, the Vendor {Bidder} proposing commercial off the shelf software, or customized/configured commercial off the shelf software (collectively "COTS") may license the COTS to the State on the same terms customarily provided to the public, provided that the license customarily provided to the public is:
  - a. included within the Quote; and
  - b. sufficient to meet the State's needs as set forth in the Bid Solicitation.
2. A license customarily provided to the public will necessarily include terms and conditions that conflict with the Bid Solicitation. Accordingly, where a license agreement is included with the Quote pursuant to the terms of this section, the Vendor {Bidder} by including the license agreement with its Quote, expressly agrees that terms within the Vendor's {Bidder's} license agreement regarding indemnification, limitation of liability, choice of law, governing law, and confidentiality which conflict with the terms of the Blanket P.O. and are void and have no effect. The State expressly reserves the right to negotiate all other terms and conditions of the license agreement.
3. Where the Bid Solicitation advises that the State seeks full ownership of the computer software program, the work shall be considered "work for hire", i.e., the State, not the Vendor {Contractor} or Subcontractor, shall have full and complete ownership of all software computer programs and/or source codes developed for or are a result of the services required under this Blanket P.O. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Blanket P.O., Vendor {Contractor} or Subcontractor hereby assigns to the State all right, title and interest in and to any such material, and the State shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

**5.9 SECURITY AND CONFIDENTIALITY**

**5.9.1 DATA CONFIDENTIALITY**

All financial, statistical, personnel, customer and/or technical data supplied by the State to the Vendor {Contractor} are confidential (State Confidential Information). The Vendor {Contractor} must secure all data from manipulation, sabotage, theft or breach of confidentiality. The Vendor {Contractor} is prohibited from releasing any financial, statistical, personnel, customer and/or technical data supplied by the State that is deemed confidential. Any use, sale, or offering of this data in any form by the Vendor {Contractor}, or any individual or entity in the Vendor's {Contractor's} charge or employ, will be considered a violation of this Blanket P.O. and may result in Blanket P.O. termination and the Vendor's {Contractor's} suspension or debarment from State contracting. In

addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

The Vendor {Contractor} shall assume total financial liability incurred by the Vendor {Contractor} associated with any breach of confidentiality.

When requested, the Vendor {Contractor} and all project staff including its Subcontractor(s) must complete and sign confidentiality and non-disclosure agreements provided by the State. The Vendor {Contractor} may be required to view yearly security awareness and confidentiality training modules provided by the State. Where required, it shall be the Vendor's {Contractor's} responsibility to ensure that any new staff sign the confidentiality agreement and complete the security awareness and confidentiality training modules within one (1) month of the employees' start date.

The State reserves the right to obtain, or require the Vendor {Contractor} to obtain, criminal history background checks from the New Jersey State Police for all Vendor {Contractor} and project staff (to protect the State of New Jersey from losses resulting from Vendor {Contractor} employee theft, fraud or dishonesty). If the State exercises this right, the results of the background check(s) must be made available to the State for consideration before the employee is assigned to work on the State's project. Prospective employees with positive criminal backgrounds for cyber-crimes will not be approved to work on State Projects. Refer to the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-12, An Introduction to Computer Security: The NIST Handbook, Section 10.1.3, Filling the Position – Screening and Selecting.

#### **5.9.1.1 VENDOR'S {CONTRACTOR'S} CONFIDENTIAL INFORMATION**

- A. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;
- B. By virtue of this Blanket P.O., the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Blanket P.O. Vendor's {Contractor's} Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure and anything identified in Vendor's {Contractor's} Quote as Background IP ("Vendor {Contractor} Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Blanket P.O. are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;
- C. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;
- D. The State agrees to hold Vendor's {Contractor's} Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;
- E. In the event that the State receives a request for Vendor {Contractor} Confidential Information related to this Blanket P.O. pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Vendor {Contractor} with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Vendor {Contractor} shall take any action it deems appropriate to protect its documents and/or information;



- F. In addition, in the event Vendor {Contractor} receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Vendor {Contractor} shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Vendor's {Contractor's} intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and
  
- G. Notwithstanding the requirements of nondisclosure described in these Sections 5.9.1 and 5.9.1.1, either party may release the other party's Confidential Information:
  - (i) if directed to do so by a court or arbitrator of competent jurisdiction; or
  - (ii) pursuant to a lawfully issued subpoena or other lawful document request:
    - (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Vendor {Contractor} does not exercise its rights as described in Section 5.9.1.1(E), or if Vendor {Contractor} is unsuccessful in defending its rights as described in Section 5.9.1.1(E); or
    - (b) in the case of Vendor {Contractor}, if Vendor {Contractor} determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.9.1.1(F), or if the State is unsuccessful in defending its rights as described in Section 5.9.1.1(F).

**5.10 NEWS RELEASES**

The Vendor {Contractor} is not permitted to issue news releases pertaining to any aspect of the services being provided under this Blanket P.O. without the prior written consent of the Director.

**5.11 ADVERTISING**

The Vendor {Contractor} shall not use the State's name, logos, images, or any data or results arising from this Blanket P.O. as a part of any commercial advertising without first obtaining the prior written consent of the Director.

**5.12 LICENSES AND PERMITS**

The Vendor {Contractor} shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this Blanket P.O. Notwithstanding the requirements of the Bid Solicitation, the Vendor {Contractor} shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Blanket P.O. award. All costs associated with any such licenses, permits, and authorizations must be considered by the Vendor {Bidder} in its Quote.

**5.13 CLAIMS AND REMEDIES**

**5.13.1 CLAIMS**

All claims asserted against the State by the Vendor {Contractor} shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

**5.13.2 REMEDIES**

Nothing in this Blanket P.O. shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.

**5.13.3 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL BLANKET P.O. REQUIREMENTS**

In the event that the Vendor {Contractor} fails to comply with any material Blanket P.O. requirements, the Director may take steps to terminate this Blanket P.O. in accordance with the SSTC, authorize the delivery of Blanket P.O. items by any available means, with the difference between the price paid and the defaulting Vendor's {Contractor's} price either being deducted from any monies due the defaulting Vendor {Contractor} or being an obligation owed the State by the defaulting Vendor {Contractor}, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

**5.14 LIQUIDATED DAMAGES**

Not applicable to this procurement.

**5.15 RETAINAGE**

Not applicable to this procurement.

**5.16 ADDITIONAL WORK AND/OR SPECIAL PROJECTS**

The Vendor {Contractor} shall not begin performing any additional work or special projects without first obtaining the State Contract Manager's recommendation and the Director's written approval.

In the event of additional work and/or special projects, the Vendor {Contractor} must present a written Quote to perform the additional work to the State Contract Manager. The Quote should provide justification for the necessity of the additional work. The relationship between the additional work and the base Blanket P.O. work must be clearly established by the Vendor {Contractor} in its Quote.

The Vendor's {Contractor's} written Quote must provide a detailed description of the work to be performed broken down by task and subtask. The Quote should also contain details on the level of effort, including hours, labor categories, etc., necessary to complete the additional work.

The written Quote must detail the cost necessary to complete the additional work in a manner consistent with this Blanket P.O. The written price schedule must be based upon the hourly rates, unit costs or other cost elements submitted by the Vendor {Contractor} in the Vendor's {Contractor's} original Quote submitted in response to this Bid Solicitation. Whenever possible, the price schedule should be a firm, fixed price to perform the required work. The firm, fixed price should specifically reference and be tied directly to costs submitted by the Vendor {Contractor} in its original Quote. A payment schedule, tied to successful completion of tasks and subtasks, must be included.

Upon receipt and approval of the Vendor's {Contractor's} written Quote, the State Contract Manager shall forward same to the Director for the Director's written approval. Complete documentation from the Using Agency, confirming the need for the additional work, must be submitted. Documentation forwarded by the State Contract Manager to the Director must include all other required State approvals, such as those that may be required from the State of New Jersey's Office of Management and Budget and Office of Information Technology.

In the event the Vendor {Contractor} proceeds with additional work and/or special projects without the Director's written approval, it shall be at the Vendor's {Contractor's} sole risk. The State shall be under no obligation to pay for work performed without the Director's written approval.

## **5.17 MODIFICATIONS AND CHANGES TO THE STATE OF NJ STANDARD TERMS AND CONDITIONS (SSTC)**

The indemnification provisions set forth in the SSTC, Section 4.1 shall prevail.

### **5.17.1 INSURANCE - PROFESSIONAL LIABILITY INSURANCE**

Section 4.2 of the SSTC regarding insurance is modified with the addition of the following section regarding Professional Liability Insurance.

- D. Professional Liability Insurance: The Vendor {Contractor} shall carry Errors and Omissions, Professional Liability Insurance, and/or Professional Liability Malpractice Insurance sufficient to protect the Vendor {Contractor} from any liability arising out the professional obligations performed pursuant to the requirements of this Blanket P.O. The insurance shall be in the amount of not less than \$2,000,000 and in such policy forms as shall be approved by the State. If the Vendor {Contractor} has claims-made coverage and subsequently changes carriers during the term of this Blanket P.O., it shall obtain from its new Errors and Omissions, Professional Liability Insurance, and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

### **5.17.2 AUTO AND GENERAL LIABILITY INSURANCE**

Section 4.2 of the SSTC regarding insurance is modified with the increase of the minimum limit of liability from \$1,000,000 to \$2,000,000, as specified below.

- A. Occurrence Form Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$2,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall include the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage; and
- B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$2,000,000 per occurrence as a combined single limit. The State must be included as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property.

## **5.18 ACCESSIBILITY COMPLIANCE**

The Vendor {Contractor} shall abide by the State's website standards and guidelines which include the mandatory accessibility information for Section 508 compliance for any web based systems. The standards can be located at the following links:

- A. [http://nj.gov/it/ps/07-12-NJOIT\\_web\\_accessibility\\_policy.pdf](http://nj.gov/it/ps/07-12-NJOIT_web_accessibility_policy.pdf); and
- B. [http://www.state.nj.us/it/ps/Web\\_Site\\_Standards\\_Guidelines.pdf](http://www.state.nj.us/it/ps/Web_Site_Standards_Guidelines.pdf).

## **5.19 BLANKET P.O. ACTIVITY REPORT**

The Vendor {Contractor} must provide, on a biannual basis, a record of all purchases made under this Blanket P.O. resulting from this Bid Solicitation. This reporting requirement includes sales to

State Using Agencies, political sub-divisions thereof and, if permitted under the terms of this Blanket P.O., sales to counties, municipalities, school districts, volunteer fire departments, first aid squads and rescue squads, independent institutions of higher education, state and county colleges and quasi-State agencies. Quasi-State agencies include any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

This information must be provided in Microsoft Excel such that an analysis can be made to determine the following:

- A. Vendor's {Contractor's} total sales volume, with line item detail, to each purchaser under this Blanket P.O.;
- B. Subtotals by product, including, if applicable, catalog number and description, price list with appropriate page reference, and/or Blanket P.O. discount applied; and
- C. Total dollars paid to Subcontractors.

Submission of purchase orders, confirmations, and/or invoices do not fulfill this Blanket P.O. requirement for information. Failure to report this mandated information may be a factor in future award decisions.

The Vendor {Contractor} must submit the required information in Microsoft Excel format to [NJSupplierReports@treas.nj.gov](mailto:NJSupplierReports@treas.nj.gov).

Reports are due:

January 1<sup>st</sup> through June 30<sup>th</sup> – due by July 30<sup>th</sup>; and  
July 1<sup>st</sup> through December 31<sup>st</sup> – due by January 30<sup>th</sup>.

## **5.20 ELECTRONIC PAYMENTS**

With the award of this Blanket P.O., the successful Vendor(s) {Contractor(s)} will be required to receive its payment(s) electronically. In order to receive your payments via automatic deposit from the State of New Jersey, complete and return the "Credit Authorization Agreement for Automatic Deposits (ACH Credits)" Form with an **original voided check or bank letter**. The form must include ABA number (routing or transit number), bank account number, and if the bank account is a checking or savings account. The form and instructions are located on the Office of Management & Budget's website at: <http://www.state.nj.us/treasury/omb/forms/index.shtml>. The completed form along with the required voided check or bank letter should be mailed or faxed to: Department of the Treasury, Office of Management and Budget, PO Box 221, 6<sup>th</sup> Floor – Room 674, Trenton, N.J. 08625-0221; fax: (609)-984-5210. To assist in identifying payments, the State offers Vendors {Contractors} access to the Vendor Payment Inquiry web application (VPI) which offers check stub information online. Contact the State of New Jersey at [AAIUNIT@treas.nj.gov](mailto:AAIUNIT@treas.nj.gov) to request access to this application.

## **5.21 PROGRAM EFFICIENCY ASSESSMENT FOR STATE USING AGENCIES**

The Program Efficiency Assessment shall not be charged against the winning Vendor {Contractor} and therefore is not to be included in the Vendor's {Bidder's} pricing. The State Using Agencies shall be charged an assessment equal to one-quarter of one (1) percent (0.25%) of the value of all transactions under this Blanket P.O. This assessment is authorized by N.J.S.A. 52:27B-56 and N.J.A.C. 17:12-1.5, to maintain the State's procurement system at a level to meet industry standards of efficiency.

For purposes of this section, "transaction" is defined as the payment or remuneration to the Vendor {Contractor} for services rendered or products provided to the State pursuant to the terms of this

Blanket P.O., including but not limited to the following: purchase orders, invoices, hourly rates, firm fixed price, commission payments, progress payments and contingency payments.

**5.22 FORCE MAJEURE**

Neither the Vendor {Bidder} or Using Agency shall be responsible to the other party for nonperformance or delay in performance of any terms or conditions of this Agreement due to acts of God and nature, acts of government, wars, riots, terrorist attacks, or other causes beyond the reasonable control of the parties, provided that the affected party notifies the other party promptly of the cause for delay or nonperformance and its expected duration.

## **6.0 QUOTE EVALUATION**

### **6.1 RIGHT TO WAIVE**

Pursuant to N.J.A.C. 17:12-2.7(d) the Director may waive minor irregularities or omissions in a Quote. The Director also reserves the right to waive a requirement provided that the requirement does not materially affect the procurement or the State's interests associated with the procurement.

### **6.2 DIRECTOR'S RIGHT OF FINAL QUOTE ACCEPTANCE**

The Director reserves the right to reject any or all Quotes, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Director shall have authority to award orders or Blanket P.O.s in accordance with N.J.S.A. 52:34-12. Tie Quotes will be awarded by the Director in accordance with N.J.A.C. 17:12-2.10.

### **6.3 STATE'S RIGHT TO INSPECT VENDOR (BIDDER) FACILITIES**

The State reserves the right to inspect the Vendor's {Bidder's} establishment before making an award, for the purposes of ascertaining whether the Vendor {Bidder} has the necessary facilities for performing the Blanket P.O.

The State may also consult with clients of the Vendor {Bidder} during the evaluation of Quotes. Such consultation is intended to assist the State in making a Blanket P.O. award that is most advantageous to the State.

### **6.4 CLARIFICATION OF QUOTE / STATE'S RIGHT TO REQUEST FURTHER INFORMATION**

After the submission of Quotes, unless requested by the State as noted below, Vendor {Bidder} contact with the State is not permitted.

After the Quotes are reviewed, one (1), some, or all of the Vendors {Bidders} may be asked to clarify certain aspects of its Quote. A request for clarification may be made in order to resolve minor ambiguities, irregularities, informalities, or clerical errors. Clarifications cannot correct any deficiencies or material omissions, or revise or modify a Quote.

Further, the Director reserves the right to request a Vendor {Bidder} to explain, in detail, how the Quote price was determined.

### **6.5 QUOTE EVALUATION COMMITTEE**

Quotes may be evaluated by an Evaluation Committee composed of members of affected departments and agencies together with representative(s) from the Division. Representatives from other governmental agencies may also serve on the Evaluation Committee. On occasion, the Evaluation Committee may choose to make use of the expertise of outside consultant(s) in an advisory role.

### **6.6 ORAL PRESENTATION**

After the Quotes are reviewed, one (1), some or all of the Vendors {Bidders} may be required to give an oral presentation to the State concerning its Quote.

A Vendor {Bidder} may not attend the oral presentations of its competitors.

It is within the State's discretion whether to require the Vendor {Bidder} to give an oral presentation or require the Vendor {Bidder} to submit written responses to questions regarding its Quote. Action by the State in this regard should not be construed to imply acceptance or rejection of a Quote.

The Division will be the sole point of contact regarding any request for an oral presentation or clarification.

## **6.7 EVALUATION CRITERIA**

The following evaluation criteria categories, not necessarily listed in order of significance, will be used to evaluate Quotes received in response to this Bid Solicitation. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the evaluation process.

### **6.7.1 TECHNICAL EVALUATION CRITERIA**

Each criterion will be scored and each score multiplied by a predetermined weight to develop the Technical Evaluation Score.

- A. Personnel: The qualifications and experience of the Vendor's {Bidder's} management, supervisory, and key personnel assigned to the Blanket P.O., including the candidates recommended for each of the positions/roles required;
- B. Experience of firm: The Vendor's {Bidder's} documented experience in successfully completing Blanket P.O. of a similar size and scope in relation to the work required by this Bid Solicitation; and
- C. Ability of firm to complete the Scope of Work based on its Technical Quote: The Vendor's {Bidder's} demonstration in the Quote that the Vendor {Bidder} understands the requirements of the Scope of Work and presents an approach that would permit successful performance of the technical requirements of the Blanket P.O.

### **6.7.2 VENDOR'S {BIDDER'S} STATE-SUPPLIED PRICE SHEET**

The Bureau will utilize a weighted consumption model to evaluate pricing. The pricing model will be date-stamped and entered into the record before Quote opening.

### **6.7.3 QUOTE DISCREPANCIES**

In evaluating Quotes, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and totals of unit prices 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 unit prices. Discrepancies between the indicated total of multiplied unit prices and units of work 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.

In the event that a Vendor {Bidder} using **NJSTART** to submit a Quote uploads a State-Supplied Price Sheet and completes the "Items" Tab in **NJSTART** (instead of entering a Unit Cost of \$1.00 as instructed), the State-Supplied Price Sheet will govern.

### **6.7.4 EVALUATION OF THE QUOTES**

After the Evaluation Committee completes its evaluation, it recommends to the Director for award the responsible Vendor {Bidder} whose Quote, conforming to this Bid Solicitation, is most advantageous to the State, price and other factors considered. The Evaluation Committee considers and assesses price, technical criteria, and other factors during the evaluation process and makes a recommendation to the Director. The Director may accept, reject or modify the recommendation of the Evaluation Committee. Whether or not there has been a negotiation

process as outlined in Section 6.8 below, the Director reserves the right to negotiate price reductions with the selected Vendor {Bidder}.

#### **6.8 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)**

In accordance with N.J.S.A. 52:34-12(f) and N.J.A.C. 17:12-2-7, after evaluating Quotes, the Bureau may establish a competitive range and enter into negotiations with one (1) Vendor {Bidder} or multiple Vendors {Bidders} within this competitive range. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and cost. Multiple rounds of negotiations may be conducted with one (1) Vendor {Bidder} or multiple Vendors {Bidders}. Negotiations will be structured by the Bureau to safeguard information and ensure that all Vendors {Bidders} are treated fairly.

Similarly, the Bureau may invite one (1) Vendor {Bidder} or multiple Vendors {Bidders} to submit a Best and Final Offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that does not result in more advantageous pricing to the State will not be considered, and the State will evaluate the Vendor's {Bidder's} most advantageous previously submitted pricing.

If required, after review of the BAFO(s), clarification may be sought from the Vendor(s) {Bidder(s)}. The Division may conduct more than one (1) round of negotiation and/or BAFO in order to attain the best value for the State.

After evaluation of Quotes and as applicable, negotiation(s), and/or BAFO(s), the Bureau will recommend, to the Director, the responsible Vendor {Bidder} whose Quote, conforming to the Bid Solicitation, is/are most advantageous to the State, price, and other factors considered. The Director may accept, reject or modify the recommendation of the Bureau. The Director may initiate additional negotiation or BAFO procedures with the selected Vendor {Bidder}.

**Negotiations will be conducted only in those circumstances where it is deemed by the Bureau or Director to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the Vendor {Bidder} is advised to submit its best technical and price Quote in response to this Bid Solicitation since the State may, after evaluation, make a Blanket P.O. award based on the content of the initial submission, without further negotiation and/or BAFO with any Vendor {Bidder}.**

All contacts, records of initial evaluations, any correspondence with a Vendor {Bidder} related to any request for clarification, negotiation or BAFO, any revised technical and/or price Quotes, and related documents will remain confidential until a Notice of Intent to Award a Blanket P.O. is issued.

If the Bureau contemplates negotiation, Quote prices will not be publicly read at the Quote opening. Only the name and address of each Vendor {Bidder} will be publicly announced at the Quote opening.

#### **6.9 "REQUEST FOR REVISION" WITHIN [NJSTART](#)**

The State may request a revision of the Vendor's {Bidder's} Quote within [NJSTART](#). The Vendor {Bidder} shall respond to the "Request for Revision" (e.g., to reduce pricing if a BAFO is requested) only for the reason(s) identified by the State. Any changes made by a Vendor {Bidder} to the Quote other than as requested by the State shall be considered null and void.

#### **6.10 POOR PERFORMANCE**

A Vendor {Bidder} with a history of performance problems may be bypassed for consideration of an award issued as a result of this Bid Solicitation. The following materials may be reviewed to determine Vendor {Bidder} performance: Blanket P.O. cancellations for cause pursuant to Section



5.7(b) of the SSTC; information contained in Vendor performance records; information obtained from audits or investigations conducted by a local, state or federal agency of the Vendor's {Bidder's} work experience; current licensure, registration, and/or certification status and relevant history thereof; or its status or rating with established business/financial reporting services, as applicable. Vendors {Bidders} should note that this list is not exhaustive.

## **7.0 BLANKET P.O. AWARD**

### **7.1 DOCUMENTS REQUIRED BEFORE BLANKET P.O. AWARD**

#### **7.1.1 REQUIREMENTS OF PUBLIC LAW 2005, CHAPTER 51, N.J.S.A. 19:44A-20.13 - N.J.S.A. 19:44A-20.25 (FORMERLY EXECUTIVE ORDER NO. 134), EXECUTIVE ORDER NO. 117 (2008) AND N.J.A.C. 17:12-5 ET SEQ.**

- A. The State shall not enter into a Blanket P.O. to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods;
- B. Prior to awarding any Blanket P.O. or agreement to any Business Entity, the Business Entity proposed as the intended Vendor {Contractor} of the Blanket P.O. shall submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions, available for review on the Division's website at <http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>, shall be provided to the intended Vendor {Contractor} for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Blanket P.O., the intended Vendor {Contractor} shall submit to the Division, in care of the Division Procurement Specialist, the Certification and Disclosure(s) within five (5) business days of the State's request. The Certification and Disclosure(s) may be executed electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form. Failure to submit the required forms will preclude award of a Blanket P.O. under this Bid Solicitation, as well as future Blanket P.O. opportunities; and
- C. Further, the Vendor {Contractor} is required, on a continuing basis, to report any contributions it makes during the term of the Blanket P.O., and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division's website at <http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>, shall be provided to the intended Vendor {Contractor} with the Notice of Intent to Award.

The Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form is located on the [Division's website](#). The form is also available in [NJSTART](#). Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation through [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

Vendors {Bidders} should verify its Chapter 51 Compliance status on the "Maintain Terms and Categories" Tab within its profile in [NJSTART](#). In the event of an issue with a Vendor's {Bidder's} Chapter 51 Compliance status, [NJSTART](#) provides a link to take corrective action.

### **7.1.2 SOURCE DISCLOSURE REQUIREMENTS**

Pursuant to N.J.S.A. 52:34-13.2, all Blanket P.O.s primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a Vendor {Contractor} or Subcontractor within the United States and the certification is approved by the State Treasurer. Also refer to Section 3.6 Service Performance within U.S. of the SSTC.

Pursuant to the statutory requirements, the intended Vendor {Contractor} of a Blanket P.O. primarily for services with the State of New Jersey must disclose the location by country where services under the Blanket P.O., including subcontracted services, will be performed. The Source Disclosure Form accompanies the subject Bid Solicitation. FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A BLANKET P.O. TO THE INTENDED VENDOR {BIDDER}.

If any of the services cannot be performed within the United States, the Vendor {Bidder} shall state with specificity the reasons why the services cannot be so performed. The Director shall determine whether sufficient justification has been provided by the Vendor {Bidder} to form the basis of his or her certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

The Source Disclosure Form is located on the [Division's website](#). The form is also available in [NJSTART](#). Vendors {Bidders} may refer to the QRGs "Vendor Forms" and "Attaching Files" for instructions on submitting the forms required by this section of the Bid Solicitation through [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

#### **7.1.2.1 BREACH OF BLANKET P.O.**

A SHIFT TO PROVISION OF SERVICES OUTSIDE THE UNITED STATES DURING THE TERM OF THE BLANKET P.O. SHALL BE DEEMED A BREACH OF BLANKET P.O. If, during the term of the Blanket P.O., or any extension thereof, the Vendor {Contractor} or Subcontractor, who had upon Blanket P.O. award declared that services would be performed in the United States, proceeds to shift the performance of any of the services outside the United States, the Vendor {Contractor} shall be deemed to be in breach of its Blanket P.O. Such Blanket P.O. shall be subject to termination for cause pursuant to Section 5.7b.1 of the SSTC, unless such shift in performance was previously approved by the Director and the Treasurer.

#### **7.1.3 AFFIRMATIVE ACTION**

The intended Vendor {Contractor} must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Intended Vendors {Contractors} not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at [http://www.nj.gov/treasury/purchase/forms/AA\\_%20Supplement.pdf](http://www.nj.gov/treasury/purchase/forms/AA_%20Supplement.pdf).

Vendors {Bidders} should verify its Affirmative Action Compliance status on the "Maintain Terms and Categories" Tab within its profile in [NJSTART](#). In the event of an issue with a Vendor's {Bidder's} Affirmative Action Compliance status, [NJSTART](#) provides a link to take corrective action.

#### **7.1.4 BUSINESS REGISTRATION**

In accordance with N.J.S.A. 52:32-44(b), a Vendor {Bidder} and its named Subcontractors must have a valid Business Registration Certificate ("BRC") issued by the Department of the Treasury,

Division of Revenue and Enterprise Services prior to the award of a Blanket P.O. See Section 4.4.2.1 of this Bid Solicitation for further information.

Vendors {Bidders} should verify its Business Registration Certification Active status on the “Maintain Terms and Categories” Tab within its profile in [NJSTART](#). In the event of an issue with a Vendor’s {Bidder’s} Business Registration Certification Active status, [NJSTART](#) provides a link to take corrective action. Vendors {Bidders} may refer to the QRG “Vendor Categories and Certifications” for instructions on completing certifications on the “Maintain Terms and Categories” Tab within its profile in [NJSTART](#). QRGs are located on the [NJSTART Vendor Support Page](#).

## **7.2 FINAL BLANKET P.O. AWARD**

Blanket P.O. award[s] will be made with reasonable promptness by written notice to that responsible Vendor(s) {Bidder(s)}, whose Quote(s), conforming to this Bid Solicitation, is(are) most advantageous to the State, price, and other factors considered. Any or all Quotes may be rejected when the State Treasurer or the Director determines that it is in the public interest to do so.

## **7.3 INSURANCE CERTIFICATES**

The Vendor {Contractor} shall provide the State with current certificates of insurance for all coverages required by the terms of this Blanket P.O., naming the State as an Additional Insured. See Section 4.2 of the SSTC accompanying this Bid Solicitation.

Vendors {Bidders} should verify its Insurance Certification Compliance status on the “Maintain Terms and Categories” Tab within its profile in [NJSTART](#). In the event of an issue with a Vendor’s {Bidder’s} Insurance Certification Compliance status, contact the Division Procurement Specialist.

## **7.4 PERFORMANCE SECURITY**

Not applicable to this procurement.

## **8.0 BLANKET P.O. ADMINISTRATION**

### **8.1 STATE CONTRACT MANAGER**

The State Contract Manager (SCM) is the State employee responsible for the overall management and administration of the Blanket P.O.

The SCM for this project will be identified at the time of execution of Blanket P.O. At that time, the Vendor {Contractor} will be provided with the State Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and e-mail address.

#### **8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES**

For an agency Blanket P.O. where only one (1) State office uses the Blanket P.O., the SCM will be responsible for engaging the Vendor {Contractor}, assuring that Purchase Orders are issued to the Vendor {Contractor}, directing the Vendor {Contractor} to perform the work of the Blanket P.O., approving the deliverables and approving payment vouchers. The SCM is the person who the Vendor {Contractor} will contact **after the Blanket P.O. is executed** for answers to any questions and concerns about any aspect of the Blanket P.O. The SCM is responsible for coordinating the use of the Blanket P.O. and resolving minor disputes between the Vendor {Contractor} and any component part of the SCM's Department. The SCM is also responsible for notifying OIT and other appropriate parties of security and privacy violations or incidents. The SCM cannot modify the Blanket P.O., direct or approve a Change Order.

If the Blanket P.O. has multiple users, the SCM shall be the central coordinator of the use of the Blanket P.O. for all Using Agencies, while other State employees engage and pay the Vendor {Contractor}. All persons and agencies using the Blanket P.O. must notify and coordinate the use of the Blanket P.O. with the SCM.

#### **8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER**

Any Blanket P.O. user that is unable to resolve disputes with a Vendor {Contractor} shall refer those disputes to the SCM for resolution. Any questions related to performance of the work of the Blanket P.O. by Blanket P.O. users shall be directed to the SCM. The Vendor {Contractor} may contact the SCM if the Vendor {Contractor} cannot resolve a dispute with Blanket P.O. users.

**9.0 STATE OF NEW JERSEY STANDARD TERMS AND CONDITIONS**

(Rev: 7/18/18)

**1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT**

Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's Proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.

**1.1 CONTRACT TERMS CROSSWALK**

<b><u>NJSTART</u> Term</b>	<b>Equivalent Existing New Jersey Term</b>
Bid/Bid Solicitation	RFP/Solicitation
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order (Blanket P.O.)	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor	Bidder/Contractor

**2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS**

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

**2.1 BUSINESS REGISTRATION**

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of

Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

## **2.2 ANTI-DISCRIMINATION**

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions Contracts (Exhibit B and Executive Order 151, August 28, 2009, attached) as appropriate.

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.

## **2.3 PREVAILING WAGE ACT**

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on [this proposal] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

## **2.4 AMERICANS WITH DISABILITIES ACT**

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

## **2.5 MACBRIDE PRINCIPLES**

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

## **2.6 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;
- 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 or 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.

## **2.7 POLITICAL CONTRIBUTION DISCLOSURE**

The contractor 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 contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor'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/>.

## **2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST**

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

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

No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she 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 State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and

The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.



## **2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE**

Pursuant to N.J.S.A. 54:49-19, 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 that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses 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 to the set-off to the taxpayer 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 requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section 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.

## **2.10 COMPLIANCE - LAWS**

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

## **2.11 COMPLIANCE - STATE LAWS**

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

## **2.12 Warranty of no solicitation on commission or contingent fee basis**

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

## **3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**

### **3.1 COMPLIANCE - CODES**

The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

### **3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT**

The New Jersey Public Works 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 pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

### **3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS**

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- 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/her 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.

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

- A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or 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, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:

1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

### **3.4 BUILDING SERVICE**

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

### **3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT**

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

### **3.6 SERVICE PERFORMANCE WITHIN U.S.**

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

### **3.7 BUY AMERICAN**

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

### **3.8 DIANE B. ALLEN EQUAL PAY ACT**

Pursuant to N.J.S.A. 34:11-56.14, a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

## **4. INDEMNIFICATION AND INSURANCE**

### **4.1 INDEMNIFICATION**

The contractor’s liability to the State and its employees in third party suits shall be as follows:

- A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
- B. The contractor’s indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

### **4.2 INSURANCE**

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days’ written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor’s insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at:

[ccau.certificate@treas.nj.gov](mailto:ccau.certificate@treas.nj.gov)

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

- C. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as “Additional Insureds” and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under

these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;

- D. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
- E. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
  - 1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
  - 2. \$1,000,000 DISEASE EACH EMPLOYEE; and
  - 3. \$1,000,000 DISEASE AGGREGATE LIMIT.
    - a. This \$1,000,000 amount may have been raised by the RFP when deemed necessary by the Director; and
    - b. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

## **5. TERMS GOVERNING ALL CONTRACTS**

### **5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR**

The contractor's status shall be that of any independent contractor and not as an employee of the State.

### **5.2 CONTRACT AMOUNT**

The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.

### **5.3 CONTRACT TERM AND EXTENSION OPTION**

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions including pricing of the original contract shall apply unless more favorable terms for the State have been negotiated.

### **5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK**

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed

adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and

- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

### **5.5 CHANGE IN LAW**

Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the contractor of the change and the Director's determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and
- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

### **5.6 SUSPENSION OF WORK**

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

### **5.7 TERMINATION OF CONTRACT**

- A. For Convenience:  
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;
- B. For Cause:
  - 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director

may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and

2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.
- C. In cases of emergency, the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
- D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

#### **5.8 SUBCONTRACTING OR ASSIGNMENT**

- A. Subcontracting: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor'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; and
- A. Assignment: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

#### **5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE**

Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

#### **5.10 MERGERS, ACQUISITIONS**

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

**5.11 PERFORMANCE GUARANTEE OF CONTRACTOR**

The contractor hereby certifies that:

- A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
- B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
- D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- F. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

**5.12 DELIVERY REQUIREMENTS**

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

**5.13 APPLICABLE LAW AND JURISDICTION**

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

**5.14 CONTRACT AMENDMENT**

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.



**5.15 MAINTENANCE OF RECORDS**

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

**5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)**

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract. In connection with this assignment, the following are the express obligations of the contractor:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
  - 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
  - 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

**6. TERMS RELATING TO PRICE AND PAYMENT**

**6.1 PRICE FLUCTUATION DURING CONTRACT**

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

**6.2 TAX CHARGES**

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

**6.3 PAYMENT TO VENDORS**

- A. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between

the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;

- B. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the State Contract Manager or using agency on the date of each delivery. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;
- C. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at [www.nj.gov/treasury/purchase/forms/Vendor\\_Timesheet.xls](http://www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls); and
- D. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

**6.4 OPTIONAL PAYMENT METHOD: P-CARD**

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

**6.5 NEW JERSEY PROMPT PAYMENT ACT**

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

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

**6.6 AVAILABILITY OF FUNDS**

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

## **7. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS**

The provisions set forth in this Section 7 of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

### **7.1 PROCUREMENT OF RECOVERED MATERIALS**

To the extent that the scope of work or specifications in the contract requires the contractor to provide any of the following items, this Section 7.1 of the Standard Terms and Conditions modifies the terms of the scope of work or specification.

Pursuant to 2 CFR 200.322, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including:
  - 1. Paper and paper products listed in 40 C.F.R. 247.10;
  - 2. Certain vehicular products as listed in 40 CFR 247.11;
  - 3. Certain construction products listed in 40 C.F.R. 247.12;
  - 4. Certain transportation products listed in 40 C.F.R. 247.13;
  - 5. Certain park and recreation products, 40 C.F.R. 247.14;
  - 6. Certain landscaping products listed in 40 C.F.R. 247.15;
  - 7. Certain non-paper office products listed in 40 C.F.R. 247.16; and
  - 8. Other miscellaneous products listed in 40 C.F.R. 247.17.
  
- B. As defined in 40 CFR 247.3, "recovered material" means:
  - 1. waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and
  - 2. for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:
    - a. Postconsumer materials such as --
      - i. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
      - ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and
    - b. Manufacturing, forest residues, and other wastes such as --
      - i. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and

- other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
- ii. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;
  - iii. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
  - iv. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
  - v. Fibers recovered from waste water which otherwise would enter the waste stream.
- C. For contracts in an amount greater than \$100,000, at the beginning of each contract year, contractor shall provide the State estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). For all contracts subject to this Section 7.1 of the Standard Terms and Conditions, at the conclusion of each contract year, the contractor shall certify to the State the minimum recovered material content actually utilized in the prior contract year.

## **7.2 EQUAL EMPLOYMENT OPPORTUNITY**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor 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 race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such

disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

### **7.3 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED**

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

### **7.4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

### **7.5 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit

Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**7.6 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED**

Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**7.7 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)**

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**7.8 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352**

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**EXHIBIT A**

**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.A.C. 17:27 et seq.

**GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS**

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 of the contractor's commitments under this chapter 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.

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

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

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



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

The contractor 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 AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [http://www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance)).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and 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 and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to **N.J.A.C. 17:27-1 et seq.**

**EXHIBIT B**

**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)

N.J.A.C. 17:27-1.1 et seq.

**CONSTRUCTION CONTRACTS**

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, up grading, 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.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of \$250,000 to guarantee equal employment opportunity to veterans.

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 Dept. of LWD, Construction 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 agreement 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 agreement 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 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 of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor 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 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 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.

## EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property 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 Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property'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 Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.

Attachment  
NJStart Purchase Order  
Security Services

**State of New Jersey**  
**Division of Purchase and Property**  
**Master Blanket Purchase Order**

T0900 - Armed and Unarmed Security Guard Services for  
 NJ Statewide

Blanket Order Number  
  
**19-GNSV1-00840**  
  
 SHOW THIS NUMBER ON ALL  
 PACKAGES, INVOICES AND  
 SHIPPING PAPERS.

**V  
E  
N  
D  
O  
R** Vendor Number: V00003998  
 Universal Protection Service LLC dba Allied Universal  
 Security Services  
 Eight Tower Bridge  
 Attn Accounts Receivable  
 Conshohocken, PA 19428  
 remittance@aus.com  
 484-351-1945

INVOICES: Direct invoices in DUPLICATE to the address shown above. TERMS AND CONDITIONS set forth in our Bid or Quotation, on the reverse side hereof or incorporated herein by reference become a part of this order.

Master Blanket/Contract Begin Date: 06/01/2019

Master Blanket/Contract End Date: 05/31/2022

ATTN:

Solicitation (Bid) No.: 18DPP00247	Payment Terms: Shipping Terms: Freight Terms: Delivery Calendar Day(s) A.R.O.: 0																		
Item # 1 Class-Item 990-46  All Inclusive Hourly Rate for Senior Coordinator																			
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Quantity</th> <th>Unit Price</th> <th>UOM</th> <th>Discount %</th> <th>Total Discount Amt.</th> <th>Tax Rate</th> <th>Tax Amount</th> <th>Freight</th> <th>Total Cost</th> </tr> </thead> <tbody> <tr> <td align="center">1.00</td> <td align="right">\$ 33.67</td> <td align="center">HOUR</td> <td align="center">0.00 %</td> <td align="right">\$ 0.00</td> <td></td> <td align="right">\$ 0.00</td> <td align="right">\$ 0.00</td> <td align="right">\$ 33.67</td> </tr> </tbody> </table>		Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost	1.00	\$ 33.67	HOUR	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 33.67
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1.00	\$ 33.67	HOUR	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 33.67											
Item # 2 Class-Item 990-46  Atlantic County All Inclusive Hourly Rate for Armed Security Guard Service. No Radio.																			
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Quantity	Unit Price	UOM	Discount %	Total Discount Amt.	Tax Rate	Tax Amount	Freight	Total Cost											
1.00	\$ 30.38	HOUR	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 30.38											





**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan  
**DATE:** September 9, 2020  
**SUBJECT:** New Jersey Wind Port – Engineering and Design Contract Assignment

**REQUEST**

The Members of the Authority are asked to approve the assignment of the attached Moffatt and Nichol (M&N) New Jersey Wind Port Engineering and Design contract from PSEG Nuclear (PSEG) to NJEDA and amendment thereof (Assignment) (Attachments 1 and 2) as a sole source procurement.

NJEDA is seeking to assume this contract from PSEG due on the changing relationship with PSEG and in order to have direct control over the design process and to establish privity with the port designer. In addition, the Authority is amending the contract to:

1. Conform to New Jersey public sector contracting requirements; and
2. Better fit the Authority's increased role to lead the development for the New Jersey Wind Port, including, adding a second scope of work (Scope 2) to cover:
  - a. Feasibility Design and Detailed Design work for Phase 1b;
  - b. Construction phase services for Phase 1a and Phase 1b; and
  - c. An option for design and construction phase services related to Phase 2 of the project.

Staff are currently seeking approval for a total not to exceed contract value of \$8.32 M. This includes \$7.95 M for Phase 1a and Phase 1b and \$365,000 under the Phase 2 option.

Of the total \$8.32 M, the Authority has already budgeted \$4.84 M for Phase 1a detailed design (Scope 1), originally envisioned as reimbursement to PSEG under the terms of the Letter of Intent ("LOI") with PSEG. The new, second scope included in this contract adds additional feasibility and detailed design work for Phase 1b with a not to exceed amount of \$1,240,000. Of this, \$115,000 is based on a lump-sum estimate for feasibility design work for Phase 1b and \$1,125,000 is based on an estimate of the detailed design of Phase 1b.

The balance of the contract amount, not to exceed \$1.875 M for construction phase services for Phase 1a and 1b, is being priced through this contract assignment, but actual expenses will be based on time and materials utilized during construction administration and therefore will not be incurred until after the project's financing.

Overall, this contract will increase the Authority's pre-financing budget by a total of \$1.60 M. Similar to other pre-financing costs, these funds are expected to be reimbursed to the NJEDA at the time of the project's financing.

This Assignment will help the Authority lock in hourly pricing for time and materials related expenses for Phase 2 work. Staff will come back to the Board to request approval for any additional lump sum or time and materials-based work related to Phase 2 option.

## **BACKGROUND**

M&N is a world-renowned leader in design and engineering services for ports. M&N has been involved with the offshore wind industry in the United States since the early 2000s when it designed the offshore substation for the now defunct Cape Wind Project in Massachusetts.

M&N has more than 75 years of experience as waterfront infrastructure planners and designers and is now focused on the retrofit and new design of port infrastructure to support the offshore wind industry.

M&N has a dedicated group of engineers that works exclusively on OSW ports.

In addition to working on the New Jersey Wind Port, M&N is the lead designer of the OSW marshalling port at the State Pier in New London, CT for Baystate Wind (a joint venture of Orsted and Eversource) and the Connecticut Port Authority (Connecticut State Pier project). The Connecticut project is similar to the marshalling port planned at the NJ Wind Port, and M&N has reached the 60 percent level of design for the Connecticut State Pier project. This technical experience and expertise will help provide insight for the upcoming detailed design.

In addition to the Connecticut State Pier project, M&N is currently working on or has completed the following OSW port projects (sample projects):

1. Design of OSW marshalling port in Mid-Atlantic region for a confidential client;
2. Design of heavy lift wharf for Port of Albany to support OSW waterfront component manufacturing site;
3. Design of pier as home berth for OSW service operations vessel (LOA +/- 350') in New York for a confidential client;
4. Feasibility study and economic analysis of existing waterfront infrastructure (8 sites) to establish capability to service OSW industry for the Port Authority of New York and New Jersey;

5. State of Maine Port Infrastructure Assessment, economic analysis and concept design to establish capability to service OSW industry for Maine Department of Transportation;
6. Port planning, loading analysis and design retrofits of existing Piers 1 and 2 at Port of Davisville, RI to serve as loadout point for OSW components; and
7. Design oversight of waterfront OSW monopile factory for Orsted/EEW in Paulsboro, NJ. This facility will allow for RORO transfer of monopiles up to 3000 tons.

M&N was originally engaged to assess the technical feasibility of developing an offshore wind marshalling port at the Lower Alloways Creek site by Orsted, a global offshore wind developer, through a competitive procurement process. This effort was undertaken as part of Orsted's Ocean Wind project submission for the New Jersey Board of Public Utilities' (NJBPU) first offshore wind solicitation in 2018. While the NJBPU did award a 1,100 MW project to Ocean Wind through its first solicitation, it decided not to fund the development of the port through ratepayer fees, and thus did not approve that portion of Ocean Wind's proposal. After the port was not funded through the NJBPU process, Orsted provided the results of the technical feasibility study to PSEG (the owner of the land). Separately, the NJEDA had also identified the Lower Alloways Creek as a site with high potential for a co-located marshalling and manufacturing site and began investigating its feasibility. As part of NJEDA's evaluation of the site's technical potential, NJEDA's requested and received from Orsted the results of the original M&N technical feasibility study.

In late summer 2019, PSEG approached NJEDA about the potential to develop an offshore wind port on the site, and in October 2019 NJEDA and PSEG entered into an LOI to cooperate on conducting an economic and financial feasibility study of the site (October 2019 LOI), while beginning discussions about PSEG's and EDA's continued cooperation on the development of a possible port. At that time, in anticipation of an active role in the design and engineering work for the port, PSEG directly procured M&N's services, at PSEG's own risk, for conceptual design because M&N are a leading port engineering firm and were familiar with the site and a possible port project. The rates PSEG secured were based on the rates that were competitively procured by Orsted.

Based upon the economic and financial feasibility study completed under the October 2019 LOI, NJEDA decided it was in the Authority's and the State's best interest to partner with PSEG to pursue the development of the NJ Wind Port Project at the Lower Alloways Creek site and entered into a binding LOI with PSEG in April 2020 (approved at NJEDA's March 2020 Board meeting) to continue the project's development (April 2020 LOI).

From the inception of the project, the goal was to develop the port by 2023, to have the opportunity to support marshalling and manufacturing work related the New Jersey's first wind solicitation. This goal is consistent with the Governor's plan to jumpstart the offshore wind industry, including development of the supply chain, in New Jersey.

As part of the April 2020 LOI, NJEDA agreed to reimburse PSEG for certain port-related work undertaken by PSEG directly or through contractors, which included work by M&N. Accordingly, in June 2020, NJEDA Staff approved a Purchase Order for \$2.59 M to cover the first half of the Scope 1 (Phase 1a detailed design), with the expectation that pending successful completion, it would also approve a Purchase Order for the balance of the \$4.84 M needed to complete this work. (Note: through this contract assignment, the full \$4.84 M will be paid by directly by NJEDA to M&N instead of NJEDA reimbursing PSEG.)

As part of the evolution of the relationship between PSEG and NJEDA, which entailed NJEDA taking the role as sole developer of the NJ Wind Port, PSEG and NJEDA Staff determined it was more appropriate for NJEDA to assume direct control of the design of the project. Accordingly, in order to ensure a smooth transition of the existing design and engineering services and to be able to meet the 2023 deadline, Staff is recommending that NJEDA assume the M&N contract, through an assignment. This will provide NJEDA with direct privity with the port designer, which allows NJEDA to directly interact with M&N and to integrate M&N's role as engineer with the future construction work. As part of this assignment, NJEDA is including a second scope of work (Scope 2) to cover:

- Design work for Phase 1b;
- Construction phase services for Phase 1a and Phase 1b; and
- An option for design services related to Phase 2 of the project.

## **SUMMARY OF CONTRACT**

PSEG currently has a contract with M&N for detailed design work for Phase 1a of the port project (Scope 1). NJEDA seeks to assume Scope 1 under the PSEG contract and to add Scope 2.

Upon assumption of the contract, NJEDA Staff proposes to initiate the portion of Scope 2 related to Phase 1b feasibility and detailed design immediately and the portion of Scope 2 related to feasibility design. NJEDA Staff anticipate initiating Phase 1a and 1b construction phase services when construction on the project starts (targeted Q2 2021)

NJEDA staff will come back to the Board to request approval to exercise additional work under the option for Phase 2 of the Port.

### **Scope 1**

Scope 1 consists of the design of the following improvements, which collectively comprise Phase 1a of the project:

- A dredged vessel approach channel between the Federal Delaware River Channel and the Port site (approximately 5,000 feet), dredged to a depth of -32.38 feet relative to Mean Lower-Low water with 1.5 feet of over dredge;

- A vessel turning basin dredged to a depth of -32.38 feet relative to Mean Lower-Low water with 1.5 feet of over dredge and two berthing pockets (combined length of 1,280 linear feet); and
- Parcel A, a 30-acre area developed for offshore wind marshalling and assembly, which includes a heavy lift wharf and high-load upland areas.

Scope 1 has been broken down into two phases:

- Phase 1 of Scope 1 (\$2.59 million) includes geotechnical work and engineering to advance Phase 1a to 30 percent detailed design; and
- Phase 2 of Scope 1 (\$2.25 million) includes the balance of engineering to reach full Phase 1a design.

## **Scope 2**

Scope 2 consists of Phase 1b design works and Phase 1a and Phase 1b construction administration services.

Phase 1b design work includes Parcel G, an approximately 20-25-acre area developed for tier-1 offshore wind component manufacturing (but which may be utilized as additional storage or staging area for Parcel A in the short-term); and a heavy lift corridor between Parcel A and Parcel G to enable components to be moved back and forth between the heavy lift wharf and Parcel G.

Key Phase 1a and Phase 1b construction administration services include services and activities related to M&N overseeing construction of the project. (See attached scope for full list of services):

- M&N will review and discuss with the entity responsible for constructing and advise the NJEDA in relation to, any recommendations from the constructing entity with respect to value engineering or constructability issues;
- M&N will assist the constructing entity in identifying ways to effectively package the construction work to multiple contractors and advise NJEDA with respect to those packages;
- The M&N representative will be considered the site Resident Engineer (RE) and will observe the installation of the work to monitor and ensure compliance with the contract documents;
- M&N will consult with the NJEDA, provide administration of the contract between the NJEDA and the constructing entity, and act as the NJEDA's representative, as provided in the Terms and Conditions; and
- M&N will receive, review, and advise the NJEDA on the acceptability of any and all schedules that the constructing entity is required to submit to the NJEDA or M&N, including, but not limited to, the progress schedule, schedule of submittals, and schedule of values.

Scope 2 also includes an option for Phase 2 feasibility design, detailed design, and construction administration services, including:

- An expanded turning basin and an additional two berth pockets (additional combined length of 1,400 linear feet);
- Parcel B, a ~99-acre area with a portion to be developed for expanded offshore wind marshalling and tier-1 offshore wind component manufacturing; this site will likely include an additional heavy lift wharf and high-load upland areas;
- Parcel C, a ~30-acre area to be developed for additional tier-1 offshore wind component manufacturing; and
- Parcel D, a ~20-25-acre area to be developed for additional tier-2 offshore wind manufacturing, centralized parking, and other port services.

For ease of reference, please see below for the not to exceed amounts for each of the costs related to this contract<sup>1</sup>:

Related scope	Description of item	Type of contract	Timing of expense	Value
Scope 1 (Transfer from PSEG)	Phase 1a detailed design	Lump sum	Pre-financing	\$4,835,570
Scope 2 (New)	Phase 1b feasibility design	Lump sum	Pre-financing	\$115,000
Scope 2 (New)	Phase 1b detailed design estimate	Lump sum (estimate)	Pre-financing	\$1,125,000
Scope 2 (New)	Phase 1a and 1b construction administration services	Time and materials (estimate)	Post-financing	\$1,875,000
Scope 2 (New)	Phase 2 feasibility design	Lump sum	Pre-financing	\$365,000

**Total Contract Value** \$8,315,570

**Total value for Phase 1a + 1b work** \$7,950,570

**Total value of new pre-financing budget** \$1,605,000

NJEDA staff have run a series of cost reasonable analyses on these contract values, including reviewing these costs with the Authority’s Owners Engineer on the NJ Wind Port project, WSP. Based on these analyses, Staff have determined that the Phase 1b and Phase 2 feasibility study estimates are in line or on the low end of what could be expected to complete work of similar scope

<sup>1</sup> The actual design fee for Phase 1b will not be able to be confirmed until the feasibility design study for Phase 1b is completed (e.g., geotechnical work is completed, and results are analyzed), but any such fee shall not exceed the amount in the table.

and size. The estimated detailed design cost for Phase 1b is on the low end of what is reasonable for detailed design estimates based on evaluating design costs as a percentage of expected construction costs. In addition, the overall Phase 1a + 1b costs are in line with industry standards compared to the overall expected construction costs for Phase 1. The Phase 1a + 1b Construction Administration Services hourly rates have been reviewed and are determined to be reasonable for the requested scope of work.

For ease of reference, please see below for the hourly rates related to this contract:

<b>Staff Title</b>	<b>Billing Rate /Hour</b>
Principal Engineer	\$240
Supervisory Engineer	\$234
Project Manager	\$219
Engineer III	\$171
Engineer II	\$150
Engineer I	\$126
Staff Engineer	\$105
CAD II	\$120
CAD I	\$102
Word Processing	\$72
Engineer Diver	\$141
Senior Engineer Diver	\$210
Dive Supervisor	\$117

These are M&N’s 2020 rates. A 2% per year escalator will be utilized for this contract.

These hourly rates are the same rates included

**BASIS FOR THE ASSIGNMENT AND AMENDMENT OF THE CONTRACT**

As noted above, NJEDA was not involved in the initial selection of M&N as the port designer; PSEG, as the owner of the site, contracted with M&N because M&N had done an initial technical feasibility study on the potential for a marshalling port in Lower Alloways Creek and therefore was familiar with the project and the site. Through the April 2020 LOI, PSEG, concurrent with negotiations with EDA on the respective involvement of EDA and PSEG in the port’s development and as potential Landlord, provided design services for the port through M&N. PSEG handled the day-to-day supervision of the M&N, with funding and high-level input provided by NJEDA.

During the financial due diligence phase of the April 2020 LOI, NJEDA explored private development options but determined that public development would provide the most efficient development pathway for the port. Additionally, the relationship between PSEG and NJEDA has continued evolving through discussions, and PSEG now anticipates generally reducing and ceasing its role in any development activities. In order to continue ongoing work in a seamless and timely

manner to meet the 2023 deadline, NJEDA Staff began exploring the possibility to assume the design contract.

Design engineering contracting is governed by statutes and EDA's regulations. Specifically, N.J.S.A. 52:34-9.7 and EDA's regulations at N.J.A.C. 19:30-8.1 allow the use of any State procurement process, which, as stated in Executive Order 37 (Corzine 2006) (EO 37) and reflected in the NJEDA's Internal Process Management (IPM) procedures, incorporate a sole source exception. Under EO 37, sole source can be used when there is only one vendor available or capable of providing the service. In this instance, PSEG, as the landlord and potential partner in developing the port, retained M&N. Due to the evolution of the project plans and the external time schedule pressures that this project faces based on when the NJ Wind Port needs to be operational to support the NJBPU's first offshore wind solicitation (which solicitation deadline was not established by NJEDA), use of this sole source exception is appropriate.

Hence, based on these exceptional circumstances, M&N is the only contractor capable to carry out the project needs in time to capture the State's first offshore wind project (EO 37, Section 16.c).

Moreover, the transfer or assignment of a design and engineering contract is not uncommon, especially for larger infrastructure projects. For example, the State of Connecticut recently completed a similar process for an offshore wind port project in New London. That project started conceptual design as an Orsted-led development but was shifted to a public sector entity to take forward through construction and operation.

Because this agreement will exceed \$2.5 million, NJEDA staff will transmit all materials related to this agreement to the Office of the State Comptroller after execution of the agreement.

#### **SUMMARY**

The Members of the Authority are asked to approve the assignment of the attached Moffatt and Nichol (M&N) New Jersey Wind Port Engineering and Design contract from PSEG Nuclear (PSEG) to NJEDA and amendment thereof (Attachments 1 and 2).



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Tim Sullivan, CEO



# ATTACHMENT 1

Amendment Agreement

by and between

Moffatt & Nichol

and

New Jersey Economic Development Authority

**THIS AMENDMENT AGREEMENT** (this "**Agreement**") is made and entered into as of [ ], 2020 (the "**Effective Date**") by and between NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the authority of N.J.S.A. 34:1B-1 et seq. with offices at [ ]<sup>1</sup> ("**NJEDA**"), and MOFFATT AND NICHOL, a California corporation with offices at 529 5<sup>th</sup> Avenue #14, New York, New York 10017 ("**M&N**").

**RECITALS:**

- (A) PSEG and M&N are parties to that certain Contract for Detailed Engineering for the Hope Creek Generating Station Marine Terminal Project (Contract No. MA00006732) dated as of June 16, 2020 and attached hereto as Appendix 2 (the "**Design Agreement**"), pursuant to which M&N has agreed to supply and PSEG agreed to purchase detailed design services in relation to development of a Wind Turbine Generation Marine Terminal at Hope Creek (the "**Services**").
- (B) Prior to the execution of this Agreement, PSEG, NJEDA and M&N will enter into an Assignment and Assumption Agreement, dated as of the Effective Date (the "**Assignment and Assumption**"), pursuant to which NJEDA will assume (i) PSEG's right, title and interest in the Design Agreement as well as (ii) all obligations arising thereunder after the Effective Date.
- (C) NJEDA and M&N have agreed certain amendments to be made to the Design Agreement which will take effect from the Effective Time as follows:
  - (1) The parties desire to amend and restate, with effect from and after the Effective Time, the General Terms and Conditions in furnishing Labor and Materials, dated June 16, 2020, which is referenced in Section 1.1 of, and comprises part of the Design Agreement; and
  - (2) The parties desire to expand the M&N's scope of work under the Design Agreement as set forth in the Proposal for Additional Professional and Construction Administration Services, New Jersey Wind Port, Lowes Alleys Creek, NJ, prepared for NJEDA by M&N and dated [●].
- (D) Therefore, in consideration of the mutual covenants contained herein and other valuable consideration received, and with the intent to be legally bound, the parties agree as follows.

**THE PARTIES AGREE AS FOLLOWS:**

**1. CONSTRUCTION AND INTERPRETATION**

- (a) All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Design Agreement.
- (b) The section and paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provision hereof.
- (c) Unless otherwise expressly specified, the terms, provisions and obligations contained in the Appendices attached hereto shall have the same force and effect as if herein set forth in full.
- (d) Each of the parties acknowledge and agree that:
  - (i) it is an experienced and sophisticated party and has been given the opportunity to independently review this Agreement with legal counsel;

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<sup>1</sup> NJEDA to provide.

- (ii) it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of this Agreement; and
- (iii) if there is an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement will not be interpreted or construed against the party that prepared it.

2. **CONSENT, CONFIRMATION AND ACKNOWLEDGEMENT**

Each of the parties hereto:

- (a) consents to the amendments to the Design Agreement set forth in Appendix 1;
- (b) confirms that the Design Agreement shall remain in full force and effect, as amended by this Agreement in accordance with Article 3; and
- (c) confirms and ratifies the Design Agreement, as amended by this Agreement.

3. **AMENDMENT AND RESTATEMENT OF THE DESIGN AGREEMENT**

3.1 **Amendment of Design Agreement**

- (a) The Design Agreement is hereby amended with effect at and from the Effective Time in the manner set forth in Appendix 1.
- (b) Except as specifically modified by way of this Agreement in the manner set out in Appendix 1, the Design Agreement, as amended by this Agreement in accordance with this Article 3, will continue in full force and effect.

3.2 **CONDITIONS TO EFFECTIVENESS**

This Agreement shall become effective automatically and immediately after (i) the assignment under the Assignment and Assumption has become effective and (ii) the execution of this Agreement by each party hereto (the "**Effective Time**").

4. **REPRESENTATIONS AND WARRANTIES**

4.1 **Representations and warranties**

The representations and warranties in Sections 4.2 and 4.3 are made as of the Effective Date.

4.2 **NJEDA's Representations and Warranties**

NJEDA represents and warrants to M&N that this Agreement is enforceable against NJEDA in accordance with its terms. This Agreement and all transactions contemplated thereby do not contravene any applicable law.

4.3 **M&N's Representations and Warranties**

M&N represents and warrants to NJEDA that this Agreement is enforceable against M&N in accordance with its terms, subject in all respects to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at law). This Agreement and all transactions contemplated thereby do not contravene any applicable law or any of its obligations or undertakings by which it or any of its assets are bound or require any consent, approval or permit other than those which have been obtained and are in full force and effect

5. **MISCELLANEOUS**

5.1 **Severability**

If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive NJEDA of material benefits derived from this Agreement or make performance under this Agreement unreasonably difficult, then NJEDA and M&N shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to NJEDA and M&N.

5.2 **Governing Law**

This Agreement and any claim, dispute or controversy arising out of, under or related to this Agreement, the relationship of the parties under this Agreement, and the interpretation and enforcement of the rights and obligation of the parties under this Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of New Jersey, without regard to choice of law principles.

5.3 **Jurisdiction**

Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be submitted for resolution to a Court of competent jurisdiction in the County of Mercer in the State of New Jersey.

5.4 **Counterparts**

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. Delivery of a counterpart of this Agreement by email attachment or fax constitutes an effective mode of delivery.

5.5 **Notices**

- (a) All notices shall be delivered in accordance with Article 67 of the Design Agreement.
- (b) Notices shall be provided to M&N at the address provided in the Design Agreement.
- (c) Notices shall be provided to NJEDA at the following address: Attn: Project Director, 36 West State Street, P.O. Box 990, Trenton New Jersey 08625.

5.6 **No Waiver**

No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Agreement shall constitute an impairment or waiver of any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations.

5.7 **Authority**

Each person executing this Agreement represents and warrants that he or she has the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners', members', managers', and other approvals have been obtained.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, M&N and NJEDA have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**M&N**

MOFFATT & NICHOL

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

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

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

**NJEDA**

NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY

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

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

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

**APPENDIX 1**

**Amendments to Design Agreement**

**AMENDED AND RESTATED GENERAL  
TERMS AND CONDITIONS FOR FURNISHING LABOR AND MATERIAL**

Dated: [August [●]], 2020

**NJEDA**

**TABLE OF CONTENT****CONTENTS**

<b>CLAUSE</b>	<b>PAGE</b>
1. OVERVIEW .....	1
2. DEFINITIONS .....	1
3. AGREEMENT .....	7
4. CONTRACT DOCUMENTS .....	7
5. STANDARDS .....	8
6. CONTRACTOR INSPECTION .....	9
7. CHECKED DIMENSIONS .....	9
8. CONTRACTOR'S DRAWINGS .....	9
9. INTELLECTUAL PROPERTY .....	10
10. CONTRACTOR'S WARRANTIES AND CORRECTION OF WORK .....	11
11. LIENS .....	12
12. INDEMNIFICATION .....	13
13. INSURANCE .....	17
14. RESERVED .....	20
15. ADEQUATE ASSURANCE OF FUTURE PERFORMANCE .....	20
16. AUDIT OF CONTRACTOR'S RECORDS .....	20
17. SAFETY MEASURES .....	21
18. EMPLOYEE PROTECTION .....	22
19. PROTECTION OF WORK AND PROPERTY .....	22
20. CLEANING AND WASTE REMOVAL .....	23
21. CONSTRUCTION ADMINISTRATION SERVICES .....	23
22. ENVIRONMENTAL PROTECTION .....	24
23. HAZARD COMMUNICATION PROGRAM .....	25
24. RESERVED .....	25
25. RESERVED .....	25
26. NO THIRD-PARTY BENEFICIARIES .....	25
27. INDEPENDENT CONTRACTOR .....	25
28. SUBCONTRACTORS .....	26
29. OFF-SHORE SERVICES .....	27
30. FORCE MAJEURE AND DELAYS .....	27
31. SHIPMENT, TITLE AND RISK OF LOSS .....	29
32. SEQUENCE OF WORK .....	29
33. COORDINATION AND COOPERATION .....	29
34. LABOR AND PERSONNEL .....	30
35. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION .....	32



36.	CONFIDENTIAL AND PROPRIETARY INFORMATION AND INFORMATION SECURITY	33
37.	RESERVED	39
38.	RESERVED	39
39.	RESERVED	39
40.	ALTERATIONS, CHANGES, AND EXTRAS	39
41.	COMPANY'S RIGHT TO DO WORK	42
42.	CHARGES TO CONTRACTOR FOR WORK PROVIDED BY COMPANY	42
43.	WORK PROVIDED BY OTHERS	42
44.	PROJECT SCHEDULE	42
45.	COMPENSATION	44
46.	PAYMENT SCHEDULE	45
47.	FINAL PAYMENT	46
48.	TAXES	46
49.	WITHHOLDING AND SET-OFF OF PAYMENTS	47
50.	ALLOWANCES	47
51.	INSPECTION, TESTS, AND APPROVALS	47
52.	DISPUTES	48
53.	SUSPENSION OF WORK	48
54.	TERMINATION FOR CONVENIENCE	49
55.	TERMINATION FOR CAUSE	51
56.	TERMINATION ASSISTANCE SERVICES	53
57.	RETURN OF COMPANY DATA	54
58.	ESCROW OF BID DOCUMENTS	55
59.	REQUIRED FILINGS	55
60.	ADVERTISING AND USE OF COMPANY FACILITIES	55
61.	NATURE OF COMPANY'S RIGHTS	55
62.	NO WAIVER	55
63.	GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL	56
64.	LIMITATION OF LIABILITY	56
65.	ASSIGNMENTS	57
66.	SURVIVAL	58
67.	NOTICES	58
68.	NEGOTIATED TERMS	58
69.	COUNTERPARTS	58
70.	HEADINGS	58
71.	RULES OF CONSTRUCTION	58
72.	ENTIRE AGREEMENT	59
73.	MISCELLANEOUS	59
74.	POLITICAL CAMPAIGN CONTRIBUTIONS	61

EXHIBIT 14.1 RESERVED .....	64
EXHIBIT 14.2 RESESRVED .....	65
EXHIBIT 14.3(A) RESERVED .....	66
EXHIBIT 14.3(B) RESERVED .....	67
EXHIBIT 21.9 SPECIFIC SCOPE OF SERVICES WITH RESPECT TO ADMINISTERING OWNER/CONSTRUCTION MANAGER AGREEMENT .....	68
EXHIBIT 34.14 KEY CONTRACTOR PERSONNEL .....	83
EXHIBIT 36.2 CONFIDENTIALITY AND NON-DISCLOSURE .....	84
EXHIBIT 37.2 COMPANY VPN AGREEMENT .....	89
EXHIBIT 40.1 CHANGE ORDER FORM .....	91
EXHIBIT 40.3A CHANGE REQUEST FORM .....	93
EXHIBIT 40.3B FIELD CHANGE DIRECTIVE (SAMPLE) .....	95
EXHIBIT 44.1 PROJECT SCHEDULE .....	96
EXHIBIT 45.3 NON-LUMP SUM WORK .....	97
EXHIBIT 45.4 BUILT UP WAGE RATE SHEETS .....	101
EXHIBIT 45.5 EQUIPMENT RENTAL RATES .....	102
EXHIBIT 46.1 CONTRACTOR'S AFFIDAVIT AND INTERIM WAIVER OF LIENS .....	104
EXHIBIT 46.2 REQUISITION FOR PAYMENT .....	106
EXHIBIT 47.4 CONTRACTOR'S AFFIDAVIT AND FINAL WAIVER OF LIENS .....	1

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1. **OVERVIEW**

- 1.1 These Amended and Restated General Terms and Conditions set forth the terms and conditions between Company and Contractor ("Terms and Conditions"), including all attached Exhibits as applicable.
- 1.2 Contractor shall fully, completely, and safely perform its obligations under the Contract without unreasonably interrupting or impacting the operation of Company's business in strict compliance with all Laws in effect at the time any Work is provided. Contractor shall comply with all requirements of all commissions, boards, bodies, and agencies having legal jurisdiction over or with respect to the Company, the Work, any persons or entities employed in the provision of the Work.
- 1.3 Contractor's performance shall include everything requisite and necessary to complete the Work notwithstanding the fact that every item involved in the Work may not be specifically set forth in the Contract. The objective of this Contract and the express intent of the Parties is to relieve Company of the obligation to supply labor, services, materials, or perform any action with respect to the Work unless expressly stated herein as being furnished by, or the responsibility of, Company.
- 1.4 The Contractor shall provide engineering services to the Company in all disciplines (including, but not limited to, civil, structural, geotechnical, environmental, mechanical, electrical, instrumentation and controls, project management, CADD design, scheduling, and estimating), on a priority basis and according to acceptable professional and industry standards ordinarily provided to and expected to be received by companies of a similar size and financial capability and of the same, or similar, geographic location of business operations.

2. **DEFINITIONS**

The following definitions shall apply wherever the defined words are used herein:

- 2.1 "Affiliate" means:
  - (a) with respect to Contractor and PSEG, any entity that directly or indirectly controls, is controlled by, or is under common control with Contractor. "Control," for purposes of this definition, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of Contractor.
  - (b) with respect to Company, the State and any agency of the State.
- 2.2 "Annual Audited Consolidated Financial Statements" means, with respect to Contractor reporting documents audited by a certified public accountant describing the state of such party's finances, including balance sheet, income statement, statement of cash flows, and notes to Annual Audited Consolidated Financial Statements.
- 2.3 "Annual Risk Analysis" means an annual review of Contractor's Annual Audited Consolidated Financial Statements to determine if Contractor has a credit risk profile acceptable to Company.
- 2.4 "Business Day" means any Day other than a Saturday, Sunday, or other Day on which commercial banks in New Jersey are authorized or required by Law to close.

- 2.5 "Change Order" means Company's written authorization to Contractor to make changes in the Work or to provide extra Work that meets the requirements of Section 40.1. It may consist of the form provided in EXHIBIT 40.1 or a Purchase Order designated as a Change Order.
- 2.6 "Change Request" has the meaning ascribed thereto in Section 40.3.
- 2.7 "Claim(s)" means any and all claims, complaints, suits, proceedings, demands, disputes, actions, or allegations of any kind, whether just or unjust.
- 2.8 "Company" means New Jersey Economic Development Authority, and its successors and assigns.
- 2.9 "Company Data" means all data, information, text, drawings, or other materials pertaining to Company or any of its Affiliates that are embodied in any medium (including all electronic, optical, magnetic, or tangible media) and that are (i) disclosed or supplied to Contractor by or on behalf of Company or any Company Affiliate in connection with or incidental to the Work contemplated by this Contract, (ii) accessed, collected, procured, generated, recorded, processed, stored, reported, or transmitted by Contractor or its Personnel in connection with or incidental to the performance of this Contract, or (iii) derived by Contractor or its Personnel from the information described in (i) or (ii) above including any modifications, enhancements, refinement or enrichment of Company Data. Company Data may include, but is not limited to, any Confidential Information, Personal Information or information pertaining to the operations or affairs of the Company.
- 2.10 "Company Directed Change" has the meaning ascribed thereto in Section 40.1.
- 2.11 "Company Indemnified Person" means the Company, the State and any agency of the State.
- 2.12 "Company Systems" means the electronic information systems comprising any one (1) or more of hardware, device, equipment, software (including software, applications or solutions hosted on third-party servers), peripherals, and communications networks owned, leased, operated, subscribed to, or controlled by Company or Company's Affiliates. Company Systems also include Critical Cyber Systems.
- 2.13 "Confidential Information" means information disclosed by Company or on behalf of Company or a Company Affiliate to Contractor covered by the NDA attached as EXHIBIT 36.2 or information that the Company considers to be kept in confidence. For purposes of clarity, Company Data shall be considered Confidential Information.
- 2.14 "Construction Contract" means any contract for construction services in relation to the Project.
- 2.15 "Construction Contractor" means any contractor engaged by the Company under a Construction Contract.
- 2.16 "Construction Work" means any work contemplated under a Construction Contract.
- 2.17 "Contract Administrator" means (i) the Company employee or (ii) the entity administering and managing this Contract on behalf of Company, who is authorized to direct the activities of Contractor and to send and receive Written Notices on behalf of Company.

- 2.18 ["Contract" or "Contract Documents" that certain Contract for Detailed Engineering for the Hope Creek Generating Station Marine Terminal Project (Contract No. MA00006732) dated as of June 16, 2020 between PSEG and M&N, as assigned to NJEDA pursuant to that certain Assignment and Assumption Agreement dated as of [●], among the Company, M&N and PSEG; and as amended pursuant to that certain Amendment Agreement dated as of [●], among the Company and Contractor.]<sup>2</sup>
- 2.19 "Contractor" means the person or entity engaged by Company to provide the Work.
- 2.20 "Contract Price" means the total dollar amount of Contractor's compensation, including profit, for fully and completely performing the Work, as set forth in the Contract.
- 2.21 RESERVED.
- 2.22 "Credit Rating" shall mean, with respect to a party or entity, if applicable, on any date of determination, (i) the respective rating then assigned to its senior unsecured, long-term debt (not supported by third party enhancement) by S&P, Moody's or any other rating agency agreed to by the Parties, or if there is no rating for its senior unsecured long-term debt, then (ii) the lower of its (a) corporate credit rating or long-term issuer default rating then assigned to such party or entity, if applicable, by S&P, Moody's or (b) the specific rating agency lowered by one (1) notch.
- 2.23 "Critical Cyber System" means any computer or information network, system, facility, equipment, hardware, device or software, which if misused, degraded, destroyed or rendered unavailable, would adversely affect the reliable operation of the Company's or PSEG's bulk electric systems, nuclear facilities, gas lines or electric distribution system.
- 2.24 "CSD" or "Contract Signature Document" means the Contract Signature Document to which these Terms and Conditions may be annexed.
- 2.25 "Day" means a calendar day.
- 2.26 "Disabling Code" means any software, virus, Trojan horse, time bomb, or other code that: (i) is harmful or disabling; (ii) enables unauthorized access to Company Systems or network; (iii) enables theft or damage to Company Data; or (iv) otherwise impairs the operation of Company Systems or any third-party system utilized by Contractor in providing the Work hereunder.
- 2.27 "Eligible Bank" means a commercial bank or trust company organized under the laws of the United States: (i) with senior unsecured debt rating of at least "A2" by Moody's and "A" by S&P; (ii) with a capital surplus of at least ten billion dollars (\$10,000,000,000); and (iii) that is otherwise acceptable to Company in its sole discretion.
- 2.28 "Environmental Laws" has the meaning ascribed thereto in Article 22
- 2.29 "Evidence of Insurance" means a certificate or other document issued and provided to Company by Contractor's insurance company or broker that is acceptable to Company in its sole discretion and accurately states the insurance coverage that Contractor has in effect.

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<sup>2</sup> M&N to confirm this is the most up to date version of the contract.

- 2.30 "Export Control Laws" means laws that relate to the export of nuclear materials, equipment, software, and technology, such as the United States Department of Energy regulations found in 10 CFR Part 810, the United States Nuclear Regulatory Commission regulations in 10 CFR Part 110, and the United States Department of Commerce's Export Administration Regulations found in 15 CFR Part 730 et seq., as may be amended.
- 2.31 "Force Majeure" has the meaning ascribed thereto in Section 30.1.
- 2.32 "Field Change Directive" has the meaning ascribed thereto in Section 40.3.
- 2.33 RESERVED.
- 2.34 RESERVED.
- 2.35 "Hazardous Material" means any chemical, material or substance, regardless of its form or nature, defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," "solid waste" or words of similar import under any applicable Environmental Laws.
- 2.36 "Intellectual Property" or "Intellectual Property Rights" means: (i) all inventions or works and any and all rights under United States or foreign patents, trade secrets, know how, copyrights, trademarks, and other industrial or intangible property rights of a similar nature; (ii) all rights pursuant to grants and/or registrations worldwide in connection with the foregoing and all other rights with respect thereto; (iii) all rights under applications for any such grant or registration, all rights of priority under international conventions to make such applications, and the right to control their prosecution, and all rights under amendments, continuations, divisions, and continuations in part of such applications; and (iv) all rights under corrections, reissues, patents of addition, extensions, and renewals of any such grant, registration, and/or right.
- 2.37 RESERVED.
- 2.38 "Law(s)" or "laws" means any act, statute, law, ordinance, rule, regulation, requirement, order, directive, permit, legislative or administrative action, decree, judgment, order, code, standard, constitution, or charter of any federal, state, local, municipal, county, agency, commission, or court having jurisdiction over the Parties, Work, Site, or any other persons or entities.
- 2.39 RESERVED.
- 2.40 RESERVED.
- 2.41 "Loss(es)" means any loss, liability, lien, damage, judgment, fine, penalty, fee, or expense (including reasonable attorneys' fees, court costs, and disbursements).
- 2.42 "Material(s)" means any articles, apparatus, drawings, goods, materials, products, items, data (including Company Data), software (including software, applications or solutions hosted on third-party servers), hardware, documents, designs, supplies, equipment, component parts and assemblies, or any other substances, parts, or any combination thereof used, consumed, furnished, or installed by Contractor or its Subcontractors under this Contract.
- 2.43 "Moody's" shall mean Moody's Investors Service, Inc. or its successor.

- 2.44 "NDA" has the meaning ascribed thereto in Section 36.2.
- 2.45 "Notification Related Costs" shall include Company's or Company Affiliates' internal and external costs associated with investigating, addressing and responding to a Security Incident, including but not limited to: (i) preparation and mailing or other transmission of notifications or other communications to consumers, employees or others as Company deems reasonably appropriate; (ii) establishment of a call center or other communications procedures in response to such Security Incident (e.g., customer service FAQs, talking points and training); (iii) public relations and other similar crisis management services; (iv) legal, consulting and accounting fees and expenses associated with Company's investigation of and response to such event; and (v) costs for commercially reasonable credit reporting and monitoring services that are associated with legally required notifications or are advisable under the circumstances as determined by Company in its sole discretion.
- 2.46 "Parent" means any entity that owns or controls enough voting equity in Contractor to control management and operations by influencing or electing its board of directors or other management body.
- 2.47 "Party" means Company or Contractor, as the case may be.
- 2.48 "Parties" means Company and Contractor, collectively.
- 2.49 Reserved.
- 2.50 Reserved.
- 2.51 "Personal Information" means any information relating to an identified or identifiable individual, whether such information is in individual or aggregate form and regardless of the media in which it is contained, that is (i) disclosed or supplied to Contractor by or on behalf of Company or any Company Affiliate in connection with or incidental to the Work contemplated by this Contract, (ii) accessed, collected, procured, generated, recorded, processed, stored, reported, or transmitted by Contractor or its Personnel in connection with or incidental to the performance of this Contract, or (iii) derived by Contractor or its Personnel from the information described in (i) or (ii) above. For avoidance of doubt, Personal Information includes, but is not limited to, first and last name; home or other physical address including street name and name of a city or town; email address or other online contact information (such as an online user ID or screen name); telephone number; date of birth; Social Security number (or its equivalent); driver's license number (or other government-issued identification number, such as military identification, passport, or other personal identification number); account information (including financial account information); tax information; payment card data (including primary account number, expiration date, service code, full magnetic stripe data or equivalent on a chip, CAV2/CVC2/CVV2/CID and PIN number); access code, password or security questions and answers; shared secrets or security tokens used for authentication; birth or marriage certificate; health or medical information, including demographic data, that relates to an individual's past, present, or future physical or mental health or condition, the provision of healthcare to an individual, or the past, present, or future payment for the provision of healthcare to an individual; health insurance information; biometric data; a persistent identifier, including a customer number held in cookies, processor or device serial number, unique device identifier, or Internet Protocol (IP) address; geolocation or information that can be used to derive geolocation; any information that is combined with any of the data elements above including, but not limited to, information

regarding an individual customer's energy usage. Personal Information may relate to a Company or Company Affiliate employee, customer, investor, supplier, contractor, service provider, business partner or any other individual.

- 2.52 "Personnel" means the employees, agents, consultants or Subcontractors of the Contractor or Contractor Affiliate.
- 2.53 "Process" or "Processing" means any operation or set of operations performed upon Company Data, whether or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying Company Data.
- 2.54 "Project" means the development of the New Jersey Wind Port, an offshore wind marshalling and manufacturing port in Lower Alloway's Creek, New Jersey.
- 2.55 "Privacy Laws" has the meaning ascribed thereto in Section 36.3.
- 2.56 "Project Schedule" means the schedule attached hereto as EXHIBIT 44.1.
- 2.57 "Purchase Order" means the document including the order number that is generated by Company that refers to these Terms and Conditions and that may describe Work to be performed as part of this Contract and that will be used for payment administration purposes.
- 2.58 "Retainage" has the meaning ascribed thereto in Section 46.6.
- 2.59 "S&P" means Standard & Poor's Financial Services LLC or its successor.
- 2.60 "Scope of Work" means the scope of work referenced in (i) PSEG Power Nuclear Station Departmental Engineering and Technical Services Division Offshore Wind Development, Detailed Scope of Work GEN-HOP-YARD-ENGRG-SPEC-2020-1 Scope of Work for Engineering Design, Hope Creek Generating Station Marine Terminal Construction Project, Revision No. 2, dated July 8, 2020; Drawings and Attachments, and (ii) Proposal for Additional Professional Services and Construction Administrative Services, New Jersey Wind Port, Lower Alloys Creek, NJ, Prepared for NJEDA by Moffett & Nichol (including any detailed scope of services developed by Contractor and accepted by Company with respect to the outline of Additional Professional Services in Attachment A to that proposal), in each case as supplemented or modified from time to time.
- 2.61 "Security Incident" means any (1) actual or reasonably suspected loss of or unauthorized access to or acquisition, use, disclosure, modification or destruction of Company Data; or (2) attempted or actual compromise to the security, confidentiality, or integrity of a process, function, or data on a Company System or a third-party system (including software, applications or solutions hosted on third-party servers) that attempts to disrupt the Company's business operations or a Company System.
- 2.62 "Site" or "Station" or "Jobsite" or "Plant" or "plant" or "facility" or "premises" means the location where Work is performed or is to be performed.
- 2.63 "SOC Reports" has the meaning ascribed thereto in Section 36.6.
- 2.64 "Subcontract" means any contract or agreement between Contractor and a Subcontractor in connection with the Work.



- 2.65 "Subcontractor" means any person or entity, such as subcontractors or suppliers of any tier, under contract with Contractor to provide any part of the Work.
- 2.66 "Terms and Conditions" has the meaning ascribed thereto in Section 1.1.
- 2.67 "Utility Construction Project" means any or all construction, reconstruction, installation, demolition, restoration, alteration and vegetation management services to any facilities or properties of any public utility in the State of New Jersey.
- 2.68 "Warranty Period" has the meaning ascribed thereto in Section 10.6.
- 2.69 "Work" means any and all, technical advice, work direction, design, engineering, professional services, drawings, specifications, services, configurations, data, or Materials provided by Contractor or Subcontractors to Company under this Contract as required under the Scope of Work, including any conceptual design work performed by Contractor or Subcontractors prior to entering into the Contract. The word "Work" shall specifically include Material as defined herein..
- 2.70 "Written Notice" means a written communication signed by a duly authorized representative and delivered in accordance with Article 68.

3. **AGREEMENT**

Company hereby objects to any different or additional terms and conditions other than those contained in the Contract Documents. This Contract is expressly conditioned on Contractor's assent to these Terms and Conditions. In the absence of Contractor's due execution and delivery of this Contract, the shipping of any Materials or the performing of any Work shall be conclusive proof that Contractor agrees with and consents to these Terms and Conditions.

4. **CONTRACT DOCUMENTS**

- 4.1 The Contract Documents shall consist of the documents designated by the Company, including these Terms and Conditions, the CSD, any special terms and conditions, a detail or technical specification (which may be designated as a Statement of Work or some other designation and which may be a separate document or may be included on the Purchase Order), Purchase Order(s), Change Order(s) and Field Change Directive(s) issued by the Company and any other documents the Company chooses to include. The Contract Documents are divided into sections and paragraphs that are titled and numbered for convenience only, as further outlined in the CSD or Purchase Order, as the case may be. It is not to be inferred that this is a complete or correct segregation of the several divisions of Work to be performed. Company shall not be liable for the omission or duplication of items of Work by Contractor or Subcontractor due to real or alleged error in the arrangement of matter in the Contract Documents.
- 4.2 The documents, drawings, diagram, charts, prints, attachments, pictures, papers, sketches, or items identified as part of the Contract Documents or which supplement the Contract shall be deemed complementary in that what is shown on one and not specified on the other, or vice versa, shall be considered as shown on both.
- 4.3 Should Contractor find any error, omission, inconsistency, ambiguity, or other discrepancy in the Contract Documents, Contractor shall provide Written Notice to Company within three (3) Business Days of such finding. Contractor

represents that, prior to executing this Contract, it received and carefully read and compared the Contract Documents and found them to be complete, accurate, consistent, and appropriate for the Work. EXCEPT AS STATED HEREIN, COMPANY MAKES NO REPRESENTATION AND DISCLAIMS ANY GUARANTY OR WARRANTY WHATSOEVER, WHETHER EXPRESS OR IMPLIED, REGARDING THE CONTRACT DOCUMENTS. Contractor shall be under a continuing duty to carefully read and compare the Contract Documents.

- 4.4 Company shall have the right to issue written clarifications to the Contract Documents. Any oral clarifications, instructions, or interpretations from Company to Contractor shall not be binding upon Company and Company shall not have any liability in connection therewith. All written determinations, decisions, instructions, judgments, interpretations, or clarifications of an authorized Company representative regarding the Contract Documents and the Work to be provided shall be final, binding, and conclusive unless determined to have been made in bad faith.
- 4.5 Company shall not be liable for any misinterpretation or misunderstanding of the Contract Documents on the part of Contractor or for any failure by Contractor to fully acquaint itself with all circumstances relating to the Work. Contractor covenants that it has carefully and completely read and examined all the Contract Documents, including all plans, drawings, and specifications, and that there are no defects, errors, inconsistencies, or omissions, whether subtle or obvious, in the Contract Documents and that the Contract Documents comply with all Laws.
- 4.6 If the Contract Administrator is not an employee of Company, the Contract Administrator shall not have the authority to enter into any contractual or other commitment on behalf of Company or to modify, suspend, terminate, or otherwise in any manner change this Contract. Only the Port Director shall have the right to modify any design requirements or scope of services in the field by issuing a Field Change Directive, provided that no such modification shall modify the time for performance or Contract Price. The Senior Vice President of the Office of Economic Transformation and Executive Vice President of Real Estate Division may enter into a contractual or other commitment on behalf of Company or modify, suspend, terminate, or otherwise in any manner change this Contract, any other Contract Document or any other contract between Company and Contractor, in accordance with a delegation of authority by the board of the Company.

## 5. STANDARDS

- 5.1 Contractor shall provide all Work in strict accordance with the Contract with that degree of care, skill, diligence, professional knowledge, judgment, and expertise demonstrated by similarly situated professions in Contractor's industry and, according to sound work practices and accepted professional and industry standards, in a well-managed, organized, and efficient manner, and to the reasonable satisfaction of Company. All Work provided by Contractor shall be subject to the approval of Company.
- 5.2 Unless otherwise specified, Material provided hereunder shall be of new manufacture, tested and installed, in part and in whole, in accordance with the last applicable published ANSI, IEEE, ASME, NBFU, ASHRAE, ASTM, AEIC, NEMA, or other recognized codes and standards. Commercial terms and conditions contained in published standards referenced in the Contract shall not be applicable to this Contract.

**6. CONTRACTOR INSPECTION**

- 6.1 Contractor acknowledges that it inspected the premises where the Work is to be performed before submitting its bid or proposal to do the Work and is satisfied as to the conditions under which it will perform the Work or that in any manner could affect the Work. No allowances, changes to the Contract Documents or changes to the Contract Price shall be made by Company for the benefit of Contractor if Contractor fails to adequately inspect the premises. Contractor shall in all cases arrange for inspection of premises.
- 6.2 It is the obligation of Contractor to ascertain all of the facts concerning conditions to be found at the location of the Work, including all physical characteristics above, on, and below the surface of the ground, to consider fully these and all other matters that could in any way affect the Work, and to make the necessary investigations relating thereto. Company shall not have any responsibility with respect to ascertaining facts for Contractor concerning physical characteristics at the Site.
- 6.3 Company may make available to Contractor certain borings, test excavations, or other subsurface investigations, which are made available solely for Contractor's informational purposes on an "As Is" basis and without any representation or warranty by Company. Company expressly disclaims any liability if such borings, test excavations, or other subsurface investigations do not show the actual subsurface conditions. Contractor acknowledges and accepts the risk that the actual conditions encountered may not conform to those indicated by the borings, test excavations, or other subsurface investigations conducted by Company. With Company's prior written approval, Contractor may conduct its own investigation or testing of the subsurface conditions prior to submitting a bid or proposal.

**7. CHECKED DIMENSIONS**

Company may make available to Contractor certain quantities and dimensions that are made available solely for Contractor's informational purposes and without any warranty by Company. Contractor shall check all quantities and dimensions provided by Company and shall be responsible for any errors that can be discovered by examination or check of the Contract Documents. To the extent applicable to the Work provided by Contractor, Contractor shall be responsible for the joining and fitting of all parts of the Work. Company may check or inspect the Work on an on-going basis, which shall not relieve Contractor of any responsibility to perform the Work in strict compliance with the Contract Documents.

**8. CONTRACTOR'S DRAWINGS**

- 8.1 To the extent applicable to the Work provided by Contractor, all documentation submitted by Contractor to Company shall be in hard copy (only when specifically requested by Company), pdf format, and in a Company approved, native format capable of being manipulated, including but not limited to, AutoCAD, Microstation, word, excel. Contractor's documentation shall meet the following minimum requirements:
  - (a) All technical document deliverables shall be provided as specified in the Scope of Work in electronic format, as may be required for records, inspection, or general superintendence of the Work, and for any use in connection with the Work. Final signed and issued documents shall be provided in a "read only" file format such as "PDF," "TIFF," or a Company-approved equivalent. The original file shall also be provided in its native file format, allowing for future documentation versioning control.

- (b) All technical drawings shall conform to the Contract requirements. Original native drawing files shall be provided in the latest version of AutoCAD or Microstation.
  - (c) Contractor shall coordinate the use of its own drawing title blocks and numbering systems with Company. Each document title block shall include, at a minimum, a reference to the project, design discipline, descriptive title, unique identification number, revision status/explanation, Contractor logo, and approvals.
  - (d) Contractor shall provide a master document database that includes mandatory document coding, compliant with Company-approved attribute coding tables. The database shall be provided in Microsoft Access or Excel format with both "read" and "write" access.
- 8.2 Contractor shall furnish prints of such shop or detail drawings as required in the Contract Documents and shall obtain one (1) set of such prints that have been approved by Company before fabrication of any part of the Work is commenced. The preparation of these drawings shall commence immediately upon execution of the Contract.
- 8.3 If required by the Contract, Contractor shall furnish one (1) set of "as constructed" drawings upon completion of the Work, or Company may, at its option, elect to accept prints of construction drawings legibly marked to show all final changes.
- 8.4 Company's approval of such shop, detail, or other drawings is to be construed as meaning the approval of the general arrangements depicted on such documents only and is not to be construed as a complete check of the drawings or of the sufficiency of design, and it shall not lessen the responsibility of Contractor to ensure the accuracy and correctness of such drawings and comply with the requirements of the Contract Documents.

## 9. **INTELLECTUAL PROPERTY**

- 9.1 All Intellectual Property furnished or prepared by the Contractor under this Contract, (including, without limitation all drawings, specifications, studies, electronic data, estimates BIM models and other materials), shall at all times be the property of the Company, and may be used by the Company to complete the Project in the event that the Company elects to terminate or cancel this Contract pursuant to any provision hereof. If this Contract is terminated by either party hereto or cancelled by the Company, all Intellectual Property prepared or furnished by the Contractor shall be delivered to the Company. The Contractor hereby assigns to the Company the sole ownership of any copyright, whether existing under federal or state law, in all of the Intellectual Property prepared or furnished by the Contractor including all drawings, specifications, studies, electronic data, estimates BIM models and other materials.
- 9.2 All such Intellectual Property (including, without limitation all drawings, specifications and materials may be referred to freely by the Company for the purpose of appending any addition to and integrating the same with the Project, performing any alterations or repairs of any portion of the Project or designing and constructing other similar buildings and projects whenever and wherever the Company shall desire; provided, however, that the Contractor shall not thereafter be responsible for any misuse, alteration or interpretation of such Intellectual Property. Intellectual Property (including drawings and specifications) are not to be used on any other project by the Contractor.

- 9.3 In the event the Work contains any of Contractor's pre-existing intellectual property, the pre-existing intellectual property owned by the contractor on the date of the contract, as well as any modification or adaptations thereto, remain the property of the Contractor. The Contractor hereby grants the Company, a non-exclusive, royalty-free license to use any of the Contractor's pre-existing intellectual property for the purposes contemplated by the contract and any extensions thereto.

**10. CONTRACTOR'S WARRANTIES AND CORRECTION OF WORK**

- 10.1 Without prejudice to Section 5.1, all Work provided by Contractor or its Subcontractors shall: (i) be of professional quality performed in accordance with sound work practices and accepted professional and industry standards used by reputable professional engineering firms performing engineering services in the United States marine port terminal industry; (ii) comply with established industry codes and standards; (iii) comply with sound industry and work practices; (iv) comply with all Laws; and (v) otherwise fully conform in all respects to the Contract Documents. Contractor warrants that all Work provided by Contractor or its Subcontractors shall not violate any Intellectual Property Right or other proprietary interest.

- 10.2 To the extent applicable to the Work provided by Contractor, Contractor warrants that:

- (a) Prior to delivery of any Work, Contractor shall use current industry antivirus measures to detect, prevent, and remove Disabling Code, and to prevent the spread of Disabling Code between the Parties when accessing and/or exchanging data or software. Anti-virus measures shall be incorporated by Contractor on all data transfer mechanisms as well as any other points requested by Company or that are otherwise set forth in this Contract.
- (b) On delivery, the Work and its components will not contain any Disabling Code, and Contractor shall use its best efforts to ensure that no Disabling Code is introduced into Company Systems or network environment by the Work.
- (c) If Disabling Code is present in the Work, Contractor shall, at its sole cost and expense, remove such Disabling Code within twenty-four (24) hours, but in no event longer than seventy-two (72) hours (or other response time period commensurate with the severity of the Disabling Code and the impact on Company's operations, as determined by Company), of Contractor's receipt of written communication from Company regarding such Disabling Code; provided, however, that with respect to a third-party system, Contractor shall diligently pursue its remedies against the third party and remove, or cause to be removed, such Disabling Code within twenty-four (24) hours, but in no event longer than seventy-two (72) hours, of receiving the correction from the third party. If Contractor fails to timely remove the Disabling Code, and the Disabling Code impairs Company's operations, then Contractor shall be in material breach of this Contract and Company shall have the right to terminate this Contract for cause in accordance with Article 55.

- 10.3 During the progress of the Work, Contractor shall, at its sole cost and expense, promptly repair, replace, or re-perform any Work, including Material, in whole or in part, that is rejected by Company as failing to conform to the Contract. Contractor shall also bear all expenses required to fix any

work of Company or other contractors that is impaired, destroyed, or damaged by such non-conforming Work or the repair, replacement, or re-performance of such non-conforming Work.

- 10.4 For two (2) years from the date Work has been accepted by Company or the date Work has been placed into commercial use, whichever is later (the "Re-Performance Period"), Contractor will promptly repair, correct, replace, and re-perform any said Work that fails to conform to the Contract at no additional cost to Company. All such re-performed work shall be performed on a schedule acceptable to Company and the re-performance period shall extend for two (2) additional full years from the date of repair, correction, replacement, or re-performance of such Work, which two (2) additional years shall be considered the Re-Performance Period. Company's acceptance of said Work or placement of such Work into commercial use, or final payment therefor, shall not relieve Contractor of its responsibility to provide conforming Work.
- 10.5 Written communication to Contractor specifying defective or otherwise nonconforming Work that appears either during the progress of the Work or during the Re-Performance Period after acceptance of the completed Work for use or operation shall be deemed sufficient notice to Contractor to promptly remedy the defect or nonconformity as required by this Contract.
- 10.6 If repair, correction, replacement, or re-performance of defective or otherwise nonconforming Work by Contractor would, in Company's opinion, be impracticable or disadvantageous to Company, Company shall be entitled to a refund of the price paid by Company for such defective or nonconforming Work.
- 10.7 Company shall have the right, at its option, to repair, replace, or correct nonconforming Work, or to take a credit against the Contract Price. If any such repair, correction, replacement, or re-performance of such nonconforming Work is performed by Company, Contractor shall be charged as set forth in Article 42, "Charges to Contractor for Work Performed by Company." If Company elects to perform any repair, correction, replacement, or re-performance of such nonconforming Work, such performance shall not affect Contractor's obligation to re-perform Work, or portions or components thereof, that have not been repaired, replaced, or corrected.
- 10.8 The liability of Contractor shall extend to all of Company's damages caused by the breach of any of the foregoing obligations and shall include, but not be limited to, the cost of removal and replacement of nonconforming Material, shipping of Material, correction of Work, Company's labor expenses resulting from the breach of these obligations, and the cost of removal and reinstallation of other material or work made necessary thereby.

## 11. LIENS

- 11.1 In consideration of any payments, whether full, partial, or disputed, made under this Contract, Contractor hereby waives and forever releases Company and/or Company Affiliates and their respective real properties, from any past, present, or future lien notices, lien claims, liens, encumbrances, security interests, or other lien rights or any kind based, in whole or in part, on any Work provided or to be provided, under this Contract.
- 11.2 If any lien claims or liens are filed against Company and/or Company Affiliates or their respective real properties by any of Contractor's Subcontractors, or by subcontractors or suppliers of Contractor's Subcontractors, that, in whole

or in part, are based on any Work provided or to be provided under this Contract, then Contractor, at no cost or expense to Company, shall immediately:

- (a) Pay the claimant and obtain a discharge of lien claim or lien from the claimant; or
  - (b) Cause the lien claim or lien to be discharged by filing a surety bond or making a deposit of funds as required by law within seven (7) Days following Company's request to do so; and
  - (c) Take any and all other steps that may be necessary to resolve and discharge any lien claims or liens.
- 11.3 No lien claims or liens shall be filed against Company and/or Company Affiliates or their respective real properties by any claimant for Work provided unless, prior to the provisions of the Work, there exists written formally executed contract(s) reflecting the final, complete, and unambiguous agreement, including any amendments thereto, between the parties to such contract(s) for the Work to be provided. Upon Company's request, Contractor shall promptly provide copies of said contracts to Company, at no cost or expense to Company.
- 11.4 If any lien claims or liens or notices of liens are filed against Company or its property or the property of Company Affiliates by any of Contractor's Subcontractors or by any subcontractors or suppliers of Contractor's Subcontractors, Company shall have the right to withhold from any amounts due to Contractor and pay directly to the lien claimant the amount of the lien claim or lien and deduct such amount from the amount owed Contractor.

## 12. INDEMNIFICATION

### 12.1 General Terms Applicable to Contractor's Indemnification Obligations

- (a) To the fullest extent permitted by Law, Contractor's obligation to defend, indemnify, and hold harmless described in this Article 12 shall exclude only Claims or Losses that are the direct result of (i) intentional and deliberate misconduct by a Company Indemnified Person or (ii) the sole negligence of a Company Indemnified Person.
- (b) All decisions regarding, relating to, or in connection with defending Company Indemnified Persons, including the selection of defense counsel, shall be made solely by Company.

### 12.2 General Indemnity. To the fullest extent permitted by Law, Contractor shall defend, indemnify and hold harmless each Company Indemnified Person from and against any and all Claims and Losses resulting from:

- (a) Personal injury, death, or occupational disease of any person, including any of Contractor's or Subcontractor's employees or agents, that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with: (i) the acts or omissions of Contractor, its employees, contractors, agents, Subcontractors, or representatives; (ii) the performance of any Work; (iii) the use, operation, or possession of any Material or of Company's equipment, machinery, or materials; (iv) the nature or condition of the Site, premises, or facilities where any Work was provided or performed; or (v) Contractor's or any Subcontractor's failure to provide adequate preventative and protective measures, safeguards, or devices. Contractor's obligation

to indemnify, defend and hold harmless a Company Indemnified Person extends beyond instances where the Company Indemnified Person may be liable for Contractor's negligence and exists regardless of whether the Company Indemnified Person is alleged or is determined to be liable due in part to its own concurrent or partial negligence for the personal injury claimed.

- (b) Damage to or loss of property that in whole or in part, actually or allegedly arises out of, relates to, results from, or is connected with:
  - (i) the acts or omissions of Contractor, its employees, contractors, agents, Subcontractors, or representatives;
  - (ii) the performance of any Work;
  - (iii) the use, operation, or possession of any Material or of Company's equipment, machinery, or materials;
  - (iv) the nature or condition of the Site, premises, or facilities where any Work was provided or performed; or
  - (v) Contractor's or any Subcontractor's failure to provide adequate preventative and protective measures, safeguards, or devices. Contractor's obligation to indemnify, defend and hold harmless a Company Indemnified Person extends beyond instances where the Company Indemnified Person may be liable for Contractor's negligence and exists regardless of whether the Company Indemnified Person is alleged or is determined to be liable due in part to its own concurrent or partial negligence for the property damage claimed; except for any Claims that are covered by Contractor's professional liability policy required by Section 13.1(f) herein and in such case Contractor's indemnification obligations under Article 12 are limited to the extent of its own negligence including the negligence of its employees, agents, and Subcontractors;
- (c) Any component of the Work, including any open source software or other similar free source code, provided by Contractor to Company under this Contract;
- (d) Any material misrepresentation by Contractor or breach by Contractor of any representation, warranty, covenant, agreement, or obligation of Contractor made herein;
- (e) Any negligence or omission of Contractor or a Subcontractor;
- (f) Any violation of Law by Contractor or a Subcontractor;
- (g) Any failure of any part of the Work;
- (h) Any consequential, special, incidental, or indirect damages for which a Company Indemnified Person, or anyone acting for or on its behalf, becomes liable that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with Contractor's acts or omissions or acts or omissions of Contractor's employees, contractors, agents, Subcontractors, or representatives related to the Work, a breach of this Contract by Contractor, or the failure of any part of the Work; and
- (i) Any Security Incident involving (i) Company Data in Contractor's or its Personnel's possession, custody or control, or for which Contractor is otherwise responsible, or (ii) a compromise or disruption to a Company System caused by or attributable to Contractor's or its Personnel's acts or omissions.



- 12.3 Defense of Claims At Company's option and at Contractor's sole cost and expense, Contractor shall defend Company Indemnified Persons against any and all Claims that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with any of the matters for which Contractor may be required to indemnify the Company Indemnified Person hereunder.
- 12.4 Contractor Waiver. For purposes of fulfilling its duties to defend, indemnify, and hold harmless the Company Indemnified Persons, Contractor waives the immunities, rights, or defenses that may be available under applicable Workers' Compensation Laws.
- 12.5 Intellectual Property Rights and Proprietary Interests
- (a) Contractor shall not infringe upon or violate any Intellectual Property Right or any other proprietary interest of any kind of any person or entity. To the fullest extent permitted by Law, Contractor shall indemnify and hold harmless each Company Indemnified Person from and against any and all Losses that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with any actual or alleged infringement or violation by Contractor or its Subcontractors of any Intellectual Property Right or other proprietary interest in any Work, invention, mark, name, diagram, drawing, design, apparatus, process, or work of authorship, or any part thereof, provided under the Contract, or that the use of any such item or part thereof, constitutes an infringement or violation of any Intellectual Property Right or other proprietary interest.
  - (b) Contractor shall, at Company's option and at Contractor's sole cost and expense, defend Company Indemnified Persons from and against any and all Claims that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with any such alleged infringement or violation by Contractor or any of its Subcontractors for which Contractor is required to indemnify Company Indemnified Persons hereunder.
  - (c) If the use of such item referred to in Section 12.6a), or any part thereof, shall in any suit or proceeding be held to constitute an infringement or violation of any Intellectual Property Right or other proprietary interest and the use thereof be enjoined, Contractor shall, at its sole cost and expense: (i) procure for Company the right to continue to use such item or part thereof; (ii) replace it with non-infringing or non-violating items; or (iii) so modify the item that it becomes non-infringing or non-violating. Any substituted non-infringing or non-violating item shall, in Company's judgment, be of quality and performance equal to or better than the item replaced.
- 12.6 Liens
- (a) To the fullest extent permitted by Law, Contractor shall indemnify and hold harmless each Company Indemnified Person from and against all Losses that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with any and all lien notices, lien claims, liens, encumbrances, security interests, or other lien rights of any kind filed by any of Contractor's Subcontractors that, in whole or in part, are based on any Work provided, or to be provided, under this Contract.

- (b) Contractor shall, at Company's option and at Contractor's sole cost and expense, defend Company Indemnified Persons from and against any and all Claims that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with any of the matters for which Contractor may be required to indemnify Company Indemnified Persons hereunder.
- (c) Contractor's obligations, including the obligation to defend, indemnify, and hold harmless a Company Indemnified Person with respect to liens, shall exclude only those instances that are due to Company's failure to pay undisputed sums as and when due hereunder.

#### 12.7 Identity Theft Prevention and Information Security

- (a) To the fullest extent permitted by Law, Contractor shall indemnify and hold harmless each Company Indemnified Person from and against all Losses (including, but not limited to, Notification Related Costs) that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with Contractor's or its Personnel's failure to comply with Contractor's obligations under Articles 36, and 57 of the Contract, including, but not limited to, Contractor's or its Personnel's failure to treat Company Data or information pertaining to any employee, contractor, or agent of a Company Indemnified Person in accordance with the terms of the Contract and applicable Laws.
- (b) Contractor shall, at Company's option and at Contractor's sole cost and expense, defend each Company Indemnified Person from and against any and all Claims that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with any of the matters for which Contractor may be required to indemnify Company Indemnified Persons hereunder.

#### 12.8 Co-Employment

- (a) To the fullest extent permitted by Law, Contractor shall indemnify and hold harmless each Company Indemnified Person from and against all Losses that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with any finding of co-employment or common law employment with respect to any personnel having performed Work for any Company Indemnified Person.
- (b) Contractor shall, at Company's option and at Contractor's sole cost and expense, defend Company Indemnified Persons from and against any and all Claims that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with any of the matters for which Contractor may be required to indemnify Company Indemnified Persons hereunder.

#### 12.9 Export Control

- (a) To the fullest extent permitted by Law, Contractor shall indemnify and hold harmless each Company Indemnified Person from and against all Losses that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with Contractor's or a Subcontractor's acts or omissions affecting Company's compliance with Export Control Laws.

- (b) Contractor shall, at Company's option and at Contractor's sole cost and expense, defend each Company Indemnified Person from and against any and all Claims that, in whole or in part, actually or allegedly arise out of, relate to, result from, or are connected with any of the matters for which Contractor may be required to indemnify Company Indemnified Persons hereunder.

### 13. INSURANCE

13.1 Prior to the start of any Work, Contractor shall, at its sole cost and expense, procure and maintain in effect during performance and until final completion and acceptance of any Work under the Contract the following minimum insurance coverage with carriers acceptable to Company including:

- (a) Workers' Compensation insurance in accordance with statutory limits, as required by the state in which the Work is to be performed, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence for each coverage provided.
- (b) Commercial General Liability ("CGL") insurance (occurrence-based form) providing coverage for premises, bodily injury, property damage, personal injury, advertising injury, contractual liability, and products and completed operations, covering Contractor's ongoing and completed operations and obligations under this Contract for not less than three (3) years from the date Company accepts the Work; coverage for independent contractors and broad form property damage coverage, with coverage limits of not less than one million dollars (\$1,000,000) for each occurrence and an annual aggregate of not less than two million dollars (\$2,000,000) per occurrence/policy aggregate plus per location aggregate where Work is performed.
- (c) Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired automobiles used by Contractor in the performance of the Work, with a combined single limit of not less than one million dollars (\$1,000,000).
- (d) Umbrella/Excess Liability insurance with a limit of not less than ten million dollars (\$10,000,000) for each occurrence, with an annual aggregate of not less than ten million dollars (\$10,000,000) per project or per location where the Work is performed. This limit applies in excess of each of the coverages set forth above in Sections 13.1a) (Workers' Compensation), 13.1b) (CGL), and 13.1c) (Commercial Automobile Liability), which are to be scheduled as underlying insurance.

**A combination of CGL and Umbrella/Excess Liability policies will be acceptable as a means to meet the limits specifically required.**

- (e) Professional Liability insurance with a limit of not less than five million dollars (\$5,000,000) per claim where the Work involves or includes Contractor providing or performing design, architectural, engineering, consulting, or any professional services. If Contractor's services include software development, systems development, or outsourced systems, the insurance shall include coverage for liability arising from intellectual property infringement, information technology, and software development services. If the Professional Liability insurance is claims-made, the coverage shall remain in place for the greater of: (i) three

- (3) years from the expiration of this Contract as amended; or (ii) three (3) years from the date Company accepts the Work.
- (f) The Contractor shall carry Cyber Security Insurance in the amount of \$1,000,000 each claim which shall include coverage for breach of the Privacy Act of HIPAA regulations. This coverage will be either a part of or separate from the Professional Liability Insurance.
- 13.2 If Contractor has or obtains an insurance policy with a limit of liability (per occurrence, per claim, or in the aggregate) in excess of the minimum amount specified in Sections 13.1a) through 13.1f) herein, the total amount of the applicable policy's actual limit of liability, not the minimum amount specified in this Contract, shall be the amount of insurance coverage required by this Contract and available to Company, and Contractor shall, if necessary to comply with this provision, obtain an endorsement to the relevant policy(ies) to provide this scope of coverage and delete any contrary policy terms.
- 13.3 The insurance coverage to be provided by Contractor under this Contract shall: (i) be primary and non-contributory (or, with respect to the excess/umbrella policy, non-contributory) with respect to any and all other insurance or self-insurance maintained by Company, and shall not seek contribution from any and all other insurance or self-insurance maintained by Company; (ii) contain standard cross-liability provisions where applicable; and (iii) provide for a waiver of all rights of subrogation against Company by Contractor and its insurers.
- 13.4 The insurance coverage to be provided by Contractor under this Contract shall not include any of the following: (i) except for Professional Liability, any claims-made insurance policies; or (ii) any self-insured retention or deductible amount greater than two hundred fifty thousand dollars (\$250,000) unless approved in writing by Company. For self-insurance approved by Company, Company retains the right at any time after its written approval of self-insurance to require that Contractor provide commercial insurance as required by the terms of this Contract. In such case, Company will provide Contractor Written Notice of its requirement that Contractor supply a commercial insurance policy consistent with the terms of this Contract. Within ten (10) Days of such Written Notice, Contractor shall provide Company with Evidence of Insurance as required by this Contract. The insurance coverage provided under this Contract shall not contain any restrictions or limitations that are inconsistent with Company's rights under the Contract.
- 13.5 Without limiting any other requirement set forth in this Article 13, the insurance coverage required by this Contract, including Commercial General Liability insurance, shall not exclude coverage for bodily injury, property damage, personal injury, or advertising injury to: (i) a present, former, future, or prospective partner, officer, director, stockholder, or employee of any insured or additional insured; or (ii) any business enterprise in which any insured or additional insured owns an interest, is a partner, or that is a Parent, Affiliate, subsidiary, or sister company of any insured.
- 13.6 If any insurance is provided on a claims-made basis, Contractor shall maintain continuous insurance coverage during the term of this Contract, and in addition to the coverage requirements above, such policy shall: (i) contain a retroactive date that coincides with or precedes the insured's initial services under the Contract (including subsequent policies purchased as renewals or replacements); and (ii) allow for reporting of circumstances or incidents that might give rise to future Claims. Contractor shall maintain similar insurance for at least three (3) years following the date upon which Company accepts

the completed Work, including the requirement of adding Company as an additional insured. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least three (3) years to report Claims arising from Work performed in connection with this Contract.

- 13.7 Company reserves the right at any time, including after the Work has begun, to require Contractor to procure and maintain different or additional insurance coverage or increased limits of liability. Contractor shall immediately furnish such different or additional insurance or increased limits, and the associated increase, if any, in premium paid by Contractor shall be reimbursed by Company at cost without mark-up.
- 13.8 All above-mentioned insurance policies, with the exception of Worker's Compensation and Professional Liability, shall name Company, its tenants,, PSEG and PSEG's Affiliates (including their respective officers, directors, managers, agents, servants, representatives, employees, shareholders, successors, and assigns) as additional insured providing insurance coverage to Company for all Claims that may be asserted against Company or Company's Affiliates, including Claims involving or that may involve any negligent conduct by Company or its Affiliates (or their respective officers, directors, managers, agents, servants, representatives, employees, shareholders, successors, and assigns). Contractor shall maintain the required coverage naming Company (including its Affiliates, officers, agents, servants, representatives, employees, shareholders, successors, and assigns) as additional insured for a period of not less than three (3) years from the date Company accepts the Work. Contractor is solely responsible for obtaining from its insurer(s) the appropriate policy terms, by endorsement or otherwise, that include Company and Company's Affiliates as additional insured as required by this Contract.
- 13.9 Prior to the start of any Work, and annually upon the expiration of the required insurance policies, Contractor shall deliver to Company, through its agent, Evidence of Insurance. Contractor shall provide Written Notice to Company if the coverage afforded under the policies are canceled, allowed to expire, or available limits are reduced. Company or its agent may inspect any or all policies of insurance at any time.
- 13.10 All insurance coverage required under this Contract shall be provided by insurance companies acceptable to Company and having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Evidence of Insurance).
- 13.11 Failure to obtain and maintain the insurance required under the Contract shall constitute a material breach of the Contract and Contractor will be liable for any and all costs, liabilities, and damages, (including attorneys' fees, court costs, and settlement expenses) resulting to Company from such breach. If Contractor fails to provide the required insurance, Company may, at its option, procure said insurance at Contractor's expense.
- 13.12 The insurance requirements set forth above are to protect Company and Company's Affiliates from any and all Claims, including claims by employees of Contractor, its agents, Subcontractors, and invitees. Said insurance, however, will in no manner relieve or release Contractor, its agents, Subcontractors, and invitees from, or limit their liability as to, any and all obligations assumed under the Contract, including the obligation to defend, indemnify, and hold harmless Company and Company's Affiliates as set forth in this Contract.

13.13 Contractor shall notify Company's Project Director of all accidents arising out of Work performed under this Contract by immediately telephoning the Project Director at 609.960.5510 from 8:00 am to 4:30 pm on Business Days; or at 732.495.3901 after hours and on weekends; and in writing within twenty-four (24) hours after the occurrence. Such notice shall not relieve either Party of its obligations under this Contract or be construed to be other than a mere notification.

14. **RESERVED**

14.1

15. **ADEQUATE ASSURANCE OF FUTURE PERFORMANCE**

Company shall have the right to request that Contractor provide adequate assurance that Contractor will perform its obligations in a timely fashion in accordance with the Contract. Within three (3) Business Days of Company's request for adequate assurance, Contractor shall provide such assurance via Written Notice. Company shall have the right to terminate the Contract for cause if: (i) Contractor fails to provide timely adequate assurance of performance; (ii) Contractor acknowledges that it cannot or will not perform in a timely fashion in accordance with the Contract; or (iii) any act or omission of Contractor makes it, in Company's judgment, improbable at the time that Contractor will perform in accordance with the Contract.

16. **AUDIT OF CONTRACTOR'S RECORDS**

16.1 Contractor shall keep a detailed account of all costs necessary for proper financial management with a system in accordance with Generally Accepted Accounting Principles ("GAAP"), consistently applied. Maintaining proper records shall not relieve Contractor of its responsibility to properly document all invoices submitted for payment. All records and data used to prepare invoices shall be maintained in an electronic native file format capable of manipulation and shall be provided to Company upon request.

16.2 This Contract is subject to N.J.A.C. 17:44-2.2. Company, the state of New Jersey, and agencies, departments and offices thereof, including the Office of the State Comptroller and their respective agents or employees, shall, at all times, have access to the Work and to all of Contractor's books, vouchers, memoranda, records, data, and other documents relative to the Work for inspection, audit, or reproduction. Contractor shall preserve all documentation related to products, transactions, or services under this contract for a period of five years from the date of final payment, during which time Company shall have the right to perform any audit, inspection, or reproduction it may desire. If discrepancies or questions arise, the records shall be preserved until an agreement is reached between Company and Contractor. Company reserves the right to recover any overcharges or incorrect charges from Contractor. Furthermore, relevant records of private vendors or other persons entering into contracts with covered entities are subject to audit or review by the Office of the State Comptroller pursuant to N.J.S.A. 52:15C-14(d).

16.3 Any audit conducted by Company will be at its expense except that if Company determines that Contractor incorrectly charged Company, Contractor shall be liable to Company for all damages, including the amount of the overcharge or incorrect charge and the cost of the audit or other investigation, including reasonable costs incurred in the collection of such damages. Audits shall take place at times and places to be mutually agreed except that if the Parties cannot agree, audits shall take place at such place and at such times as the

Company may reasonably require. Contractor shall make all Work-related records and data that Company identifies available to Company in electronic format within ten (10) Days of Company's request.

- 16.4 On an annual basis for Work performed on a cost plus or time and material basis, Contractor shall, at Contractor's sole cost and expense, perform a self-audit in January of each year to identify and verify tax components that were collected for wages that exceed maximum taxable earnings for the previous year. The audit shall include, but not be limited to:
- (a) FUTA;
  - (b) FICA – Social Security Tax; and
  - (c) State taxes (e.g. in New Jersey, State Unemployment Insurance, State Disability Insurance, etc.).
- 16.5 Contractor shall provide the results of said self-audit to Company no later than February 1st of each year. Contractor shall reimburse Company for the full amount of any tax overpayments within ten (10) Days of the completion of the self-audit.
- 16.6 The Contractor shall not disclose to any third party the contents of the information, reports, findings, analysis, surveys, drawings and creative elements generated or produced in performance of this Contract, or provide copies of same, without the prior written consent of the Company, except where such information, reports, etc. are legally required by order of court or administrative agency, state or federal.

## 17. SAFETY MEASURES

- 17.1 Contractor shall take all precautions necessary to protect from personal injury, death, or occupational disease employees of Contractor or any Subcontractor who may be on or about that portion of the Site upon which the Work is being done. Contractor shall comply with all of Company's and PSEG's safety rules and regulations (including those of any contractor engaged by Company or PSEG with responsibility for site safety) and shall designate a Contractor safety representative for the Site where the Work is performed.
- 17.2 All Work performed and Materials used on the Site shall comply with: (a) Company safety standards as set forth in its rules and regulations referenced in the Contract Documents or otherwise communicated to Contractor; (b) the Safety and Health Standards promulgated under the Occupational Safety and Health Act of 1970 as amended, 29 U.S.C. 651 et seq. (OSHA); and (c) all other applicable Laws. In the event of a discrepancy between Company's safety standards and those under Law, the more stringent standard shall govern. Contractor shall provide Company with information relating to discrepancies between Company's safety standards and standards under Law.
- 17.3 Company shall have the right to stop Work whenever, in its judgment, safety-related concerns could result in personal injury, death, occupational disease, or damage to property. Company shall be permitted to remove any persons responsible for safety violations from the Site. Contractor's failure or refusal to correct safety violations shall entitle Company to terminate the Contract for cause.
- 17.4 If the Site requires Contractor's compliance with OSHA regulation "Occupational Exposure to Bloodborne Pathogens" (29 CFR 1910.1030),

Contractor shall inform its employees and Subcontractors of this potential biohazard and ensure that universal precautions are exercised in the handling of such materials to prevent or eliminate this potential biohazard.

- 17.5 Contractor shall provide Company's designated Site safety supervisors with a copy of all reports made to governmental or regulatory authorities and insurance companies relating to any accident or injury occurring during the performance of the Work.
- 17.6 No Material supplied shall contain asbestos except as permitted by United States Environmental Protection Agency ("EPA") regulations (40 CFR 763.160 - 179).
- 17.7 All trucks, vehicles, equipment, machinery, or the like provided or utilized by Contractor shall be in safe operating condition and at all times shall be properly protected, maintained, and safely operated.
- 17.8 Contractor shall institute a health and safety program that complies with applicable Laws, prevailing industry standards, or that may be required by the Scope of Work set forth in this Contract.
- 17.9 Contractor shall adopt an employee drug and alcohol abuse policy that conforms to the intent and requirements of Company's and PSEG's policies on alcohol and drug abuse.
- 17.10 To the extent applicable to the Work provided by Contractor, Contractor shall strictly comply with the New Jersey "High Voltage Proximity Act," codified at N.J.S.A. 34:6-47.1 et seq., concerning safety precautions to be taken in the proximity of electrical conductors installed aboveground, and in accordance with all of the rules and regulations promulgated thereunder by the Commissioner of the New Jersey Department of Labor and Workforce Development.

**18. EMPLOYEE PROTECTION**

- 18.1 Contractor shall implement a program and develop procedures to advise all employees that they are entitled and encouraged to raise safety concerns to Contractor's management and to Company without fear of discharge or other discrimination.
- 18.2 If a Contractor's employee makes an allegation of discrimination prohibited by Law against Contractor, Contractor shall notify Company both verbally and by Written Notice within two (2) Business Days thereof.

**19. PROTECTION OF WORK AND PROPERTY**

- 19.1 Contractor shall assume the risk of loss or of damage to real or personal property at the Site.
- 19.2 Where an act or omission of Contractor or any of its employees or Subcontractors results in damage to property, defective workmanship, or increased cost of Work, or any or all of the foregoing, the cost of correcting such damages, deficiencies, and increased costs shall be borne by Contractor or by an insurance company acting on behalf of Contractor. If Company has already paid the cost occasioned by such acts or omissions, it may withhold, deduct, or offset money due to Contractor to reimburse Company for such cost.



- 19.3 Contractor shall at all times perform the Work so as to ensure the protection of Company's and/or PSEG's property from loss or damage and to avoid causing interruption of the Work or operation of Company's equipment or facilities.

20. **CLEANING AND WASTE REMOVAL.**

To the extent applicable to the Work provided by Contractor, and during the progress of the Work or whenever in the opinion of Company it becomes necessary, Contractor shall remove all rubbish, tools, items, scaffolding, materials, or like objects. After completion of the Work, Contractor shall leave the premises, including adjacent areas and streets, broom clean. On or before the completion of the Work, Contractor shall remove and properly dispose of any and all waste matter and material generated by Contractor or that in any manner arose out of or resulted from the performance of any Work, or the provision of any Materials under the Contract, whether occasioned by Contractor or any employee, Subcontractor, agent, or invitee of Contractor.

21. **CONSTRUCTION ADMINISTRATION SERVICES**

- 21.1 The Contractor shall perform in a good, skillful, and prompt manner all architectural, site planning, engineering, and other professional services required for the complete design, preparation of contract documents, bidding, and administration of Construction Contracts for the Project. Such services shall be performed to the satisfaction of the Company and shall include, without limitation, the services set forth in this Contract.

- 21.2 The Contractor shall review and approve or take other appropriate action upon the Construction Contractor's submittals such as shop drawings, product data and samples (each, a 'Submittal') for the purpose of determining whether or not the Construction Work, when completed, will be in compliance with the requirements of the Construction Contract. The Contractor shall review shop drawings within five (5) calendar days of receipt, any review by subconsultants is included within the five (5) day total, as to cause no delay in the Construction Work or in the construction of the Company or of separate contractors. In no event shall the Contractor be required, as part of its payment hereunder, to conduct more than three (3) reviews of any Submittal, except that any review made necessary by the Contractor's failure to comment on a Submittal during a prior review shall not be counted as a review conducted by the Contractor. Additional reviews conducted by the Contractor shall be subject to the issue of a Change Order hereunder. Review of such Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Construction Contractor, all of which remain the responsibility of the Construction Contractor to the extent required by the Construction Contract. The Contractor's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Contractor, of construction means, methods, techniques, sequences or procedures. The Contractor's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Construction Contract, the Contractor shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Construction Contract.

- 21.3 On behalf of the Company, the Contractor shall conduct observations, determine the dates of substantial completion and final completion and shall

issue a certificate of substantial completion under the Construction Contract. The Contractor will receive and review written guarantees and related documents required by the Construction Contract to be assembled by the Construction Contractor and shall issue a final certificate of payment under the Construction Contract.

- 21.4 The Contractor shall interpret and provide recommendations concerning performance of the Construction Contractor under the requirements of the Construction Contract on written request of either the Company or the Construction Contractor. The Construction Contractor's response to such requests shall be made within five (5) days of the request, unless the nature of the request is such that a longer response period is warranted.
- 21.5 Interpretations and decisions of the Contractor shall be consistent with the intent of and reasonably inferable from the Construction Contract and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Contractor shall endeavor to secure faithful performance by both the Company and the Construction Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith and in absence or negligence.
- 21.6 The Contractor shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Company and the Construction Contractor relating to the execution or progress of the Construction Work as provided in the Construction Contract.
- 21.7 Without limiting the foregoing, the Contractor acknowledges that its obligations include those set forth in **EXHIBIT 21.9** hereto as they relate to the administration of an owner/construction manager agreement anticipated to be entered into by the Company.

## 22. **ENVIRONMENTAL PROTECTION**

Contractor shall perform the Work in conformity with all Laws, guidance, orders, and requirements pertaining to environmental protection, including, without limitation, the following (including their implementing regulations and state counterparts and any subsequent amendments thereto): the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, et seq. (CERCLA); the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. (RCRA); the Toxic Substances Control Act, 15 U.S.C. 2601 et seq. (TSCA); the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq. (EPCRA); the Clean Air Act, 42 U.S.C. 7401, et seq. (CAA); the Federal Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. 1251 et seq. (CWA); the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq. (OPA); the Endangered Species Act, 16 U.S.C. 1531 et seq. (ESA); and any other federal, state, or local Law that governs: (i) the existence, removal, or remediation of wastes, pollutants, or Hazardous Materials; (ii) the emission, discharge, release, or control of wastes, pollutants, or Hazardous Materials; (iii) the use, generation, handling, transport, treatment, storage, disposal, or recovery of wastes, pollutants, or Hazardous Materials; or (iv) the protection of public health, the environment, or natural resources (collectively, "Environmental Laws," and each an "Environmental Law"). All of Contractor's internal costs incurred in connection with compliance with said Laws shall be borne by Contractor. All Work shall be performed in accordance with Company's environmental, health, and safety practices and procedures. Contractor shall report to Company any violation of this provision, whether caused by or connected with Contractor's or Subcontractor's performance of the Work or observed by Contractor during the course of said Work, whether or not said violation was caused by Contractor or by other parties.

23. **HAZARD COMMUNICATION PROGRAM**

To the extent applicable to Contractor's Work, and prior to initiating any Work, Contractor shall implement a "Hazard Communication Program" required by 29 CFR 1910.1200(e) for all "hazardous chemicals" that will be brought to the Site by Contractor or its Subcontractors during the performance of any Work or provision of any Materials.

24. **RESERVED**

25. **RESERVED**

26. **NO THIRD-PARTY BENEFICIARIES**

Nothing in this Contract, either express or implied, is intended to or shall confer upon any other person any right, benefit, or remedy of any nature whatsoever under or by reason of this Contract.

27. **INDEPENDENT CONTRACTOR**

27.1 Contractor's status shall be that of independent contractor, and Contractor, its employees, agents, or Subcontractors shall not, for any reason or purpose, hold themselves out as or be deemed to be a subcontractor, agent, partner, or employee of Company, and this Contract shall not create any joint venture or partnership relationship between Company and Contractor or any Subcontractor. This Contract creates no rights or benefits between Company and any person or entity other than Contractor.

27.2 Contractor or its respective Subcontractors shall be the employer in law and in fact of all persons assigned to perform Work. This Contract does not create a co-employment relationship between Company and Contractor's or Subcontractors' employees. Contractor shall take all necessary efforts and precautions to protect Company from co-employment status including: (i) establishing, maintaining, and ensuring Contractor's employer status with all of its employees through proactive measures; (ii) incorporating similar protective co-employment provisions into all of its Subcontracts; (iii) monitoring all hours worked by persons performing the Work so as to avoid any potential finding of liability against Company pursuant to Section 414(n) of the Internal Revenue Code; and (iv) taking any and all other steps necessary or prudent to ensure compliance with any other Law regarding co-employment so as to protect Company from being found to be a co-employer of any person performing the Work.

27.3 Contractor shall have full responsibility for all labor and employment matters, including all of its and its Subcontractors' selection, hiring, discipline, supervision, control, compensation, benefits, labor relations, collective bargaining, and payroll taxes and costs.

27.4 Company shall rely on the organization, management, skill, cooperation, productivity, and efficiency of Contractor and its Subcontractors, if any, to provide the Work and conform to the Contract within the scheduled time.

27.5 Contractor shall at all times be fully responsible for the acts or omissions of its employees, agents, or any other person or entity under its direction or control, including the acts or omissions of its Subcontractors and their employees, agents, or any other person or entity under the Subcontractor's direction or control.

27.6 Company shall have the right to exercise general superintendence, inspection, review, coordination, monitoring, and oversight to ensure that Company's

interests are protected, and the exercise of any of Company's rights under the Contract shall not relieve Contractor of any of its responsibilities under the Contract.

28. **SUBCONTRACTORS**

- 28.1 Prior to the start of Work, Contractor shall submit the names of all persons or entities from which it proposes to receive bids for any Work and shall request bids only from such Subcontractors approved in writing by Company.
- 28.2 Where a Subcontract is on a cost plus fee basis, EXHIBIT 44.1 shall govern Contractor's arrangement with Subcontractor as to payment for costs and fees, and Contractor shall submit all bids received, and after receiving written approval, place the order or Subcontract as directed.
- 28.3 Unless approved in advance by Company, Contractor shall bind every Subcontractor to the terms and provisions of this Contract as far as applicable to its Work and Contractor shall be responsible for each Subcontractor's compliance with the terms and provisions of the Contract as applicable to the Work performed by such Subcontractors. Contractor's subcontracts shall provide that, except to the extent prohibited by law, payment shall be made to Subcontractors within fifteen (15) days of Contractor's receipt of payment from Company.
- 28.4 If, at any time during the progress of the Work, Company determines in its sole judgment that any Subcontractor is incompetent or undesirable, Company will notify Contractor, and Contractor shall take immediate steps to terminate Subcontractor's involvement with the Work.
- 28.5 The rejection or approval of any Subcontractor or the termination of a Subcontractor or failure of a Subcontractor to perform its obligations shall not relieve Contractor of any of its responsibilities under the Contract nor be the basis for additional charges to Company.
- 28.6 If this Contract is terminated for any reason, Company shall have the right, but not the obligation, to use any Subcontractor with or without assuming its Subcontract or other agreement with Contractor, and to pay such Subcontractor in accordance with the terms of its Subcontract with Contractor, or in accordance with such other terms as Company and Subcontractor may agree to, and to deduct an amount equal to such payments from the Contract Price or charge Contractor such costs upon written demand.
- 28.7 Each Subcontractor must have a written Subcontract. Contractor shall have no right to amend or modify the provisions of any Subcontract required by this Contract without Company's prior written consent.
- 28.8 Contractor shall communicate with Subcontractors and manage all Subcontractor contractual obligations as defined in the Contract. Contractor shall schedule the Work of all Subcontractors. Contractor shall ensure that proper procedures and documentation are maintained by Subcontractors. Contractor shall be responsible for coordination of all Subcontractor activities and shall be responsible for the administration of procedures, conduct, and coordination, project meetings, and the resolution of construction coordination issues. Contractor shall maintain the following information for all Subcontractor Work not covered by lump sum price agreements, including: (i) logs of equipment; (ii) payroll documents; (iii) records and timesheets; and (iv) any supporting documentation for invoiced amounts. Contractor shall

maintain, and provide upon request, Subcontractor labor rate breakdowns in detail, including overhead and profit. Contractor shall maintain the Project Schedule with integrated Subcontractor sections with details.

29. **OFF-SHORE SERVICES**

Contractor shall not perform any Work outside of the United States (i.e., off-shore Work) or utilize any non-United States-based Subcontractors (i.e., off-shore Subcontractors) or employees in connection with Contractor's provision of the Work under this Contract without Company's prior written approval. Any approved off-shore Subcontractor and its employees are required to execute a confidentiality and non-disclosure agreement with Company prior to their commencement of any portion of the Work. Notwithstanding Company's review and approval of such measures or execution of such confidentiality and non-disclosure agreement, Contractor remains fully responsible for the performance of the Work in accordance with applicable Law or non-performance of the Work, as well as for all obligations under the confidentiality and non-disclosure agreement by any approved off-shore Subcontractor of Contractor to the same extent as if Contractor itself performed or failed to perform such Work pursuant to, and in accordance with, the provisions of this Contract or the confidentiality and non-disclosure agreement, as the case may be.

30. **FORCE MAJEURE AND DELAYS**

30.1 Time of performance of the Work is of the essence. "Force Majeure" or "Force Majeure Event" shall mean, and are limited to, those events listed below that are outside of the asserting Party's control and that materially and adversely affect the performance of a Party hereunder. Except as provided in Section 30.2 below, a Party shall not be liable or considered in breach of its obligations under this Contract to the extent that the Party's performance is delayed or prevented directly by earthquake, volcanic eruption, landslide, famine, plague, fire, acts or omissions of any governmental authority, flood, epidemic, war (declared or undeclared), armed conflict, civil unrest, acts or threats of terrorism, risk of kidnapping, acts of god, act (or failure to act) of governmental authorities or of third parties not engaged by the Party claiming the Force Majeure Event, or adverse weather conditions, provided that the first ten (10) Days of any such weather related delay shall not be considered a Force Majeure Event. If Contractor is materially delayed in the critical path for completing the Work by (i) any act or omission of Company or any other contractor engaged by Company, (ii) changes ordered in the Work in writing by an authorized Company representative or extra Work ordered, or (iii) a Force Majeure Event, or any cause that Company shall decide to justify the delay, then for all such delays Contractor shall be allowed one (1) Day in addition to the time limitations stated in the Contract for each and every Day of such delay so caused in the progress or completion of the Work, the same to be ascertained solely by Company and a similar allowance of extra time will be made for such other delays as Company may find to have been caused by Company.

30.2 A Force Majeure shall not excuse Contractor:

- (a) If the failure to perform or delay is due to Contractor's or a Subcontractor's fault, negligence, or lack of diligence;
- (b) Contractor's or a Subcontractor's breach or violation of any applicable Law;
- (c) If Contractor fails to provide notice as provided herein;

- (d) To the extent that the Force Majeure was caused or provoked by Contractor or a Subcontractor;
  - (e) If an experienced contractor could have foreseen and taken reasonable precautions to prevent such event or circumstance;
  - (f) If such event or circumstance does not result in a delay to the critical path of Work; or
  - (g) Where Contractor or a Subcontractor fails to fulfill its obligations as soon as reasonably possible after such Force Majeure has been eliminated or has ceased to prevent Contractor from fulfilling its obligations.
- 30.3 If the Parties do not agree that a Force Majeure Event has occurred, the burden of proof shall rest with Contractor.
- 30.4 Contractor shall, at its sole cost and expense, use a high degree of care, skill, diligence, professional knowledge, judgment, and expertise to avoid and minimize delay and shall keep Company promptly informed via Written Notice of any event that may delay performance of the Work. Delay in Contractor's receipt of subcontracted Work, including Materials, for any reason, shall not be excusable hereunder if the Work or Material is available to Contractor from an alternative source(s).
- 30.5 While an event of Force Majeure is in effect, Contractor shall take all commercially reasonable steps to mitigate the effects of the Force Majeure and shall inform Company in writing on a weekly basis of: (i) the status of the Force Majeure Event; (ii) when it expects to remove the cause of Force Majeure; and (iii) what steps it is taking to cure or eliminate the Force Majeure.
- 30.6 If a Force Majeure Event has occurred, Contractor shall be entitled to an extension of time only and no increase to the Contract Price. Contractor shall, within twenty-four (24) hours from the beginning of any delay (unless Company grants a further period of time), provide Written Notice to Company of the cause(s) of the claimed delay. No extensions of time will be made for any one (1) or more delays unless, within three (3) Business Days after the beginning of such delay, Contractor submits to Company Written Notice that clearly and convincingly supports the request for additional time. In the case of a continuing cause of delay, only one (1) request shall be necessary.
- 30.7 COMPANY SHALL NOT BE LIABLE FOR ANY INCREASED COSTS, INCLUDING PRICE ESCALATION, BEYOND THE ORIGINAL COMPLETION OR DELIVERY DATE FOR THE WORK, AND NO CLAIM FOR EXPENSES, DAMAGES, OR ANY CLAIM OTHER THAN FOR EXTENSION OF TIME AS HEREIN PROVIDED SHALL BE MADE OR ASSERTED BY CONTRACTOR DUE TO ANY OF THE DELAYS HEREIN MENTIONED. NOTHING CONTAINED HEREIN SHALL PRECLUDE CONTRACTOR FROM HOLDING ANY OTHER CONTRACTOR(S), SUBCONTRACTOR(S), OR ENTITY(IES) RESPONSIBLE FOR UNREASONABLE OR UNJUSTIFIABLE DELAYS INCURRED BY CONTRACTOR CAUSED BY SUCH OTHER CONTRACTORS, SUBCONTRACTORS, OR ENTITY(IES).
- 30.8 Notwithstanding the provisions of this Article 30, Company shall reimburse Contractor its actual, necessary, reasonable, and verifiable expenses that may be incurred as a direct result of delay due to Company's active interference in violation of the terms and conditions of this Contract; provided, however, that

in no event shall Company be liable for unabsorbed overhead, loss of anticipated profit or revenue, or other consequential loss due to delay.

- 30.9 Contractor's full compliance with the requirements of this Article 30 shall be a condition of receiving any extension of time (or payment for any claim for delay due to Company's active interference in violation of the terms and conditions of this Contract), and Contractor's failure to comply with these requirements shall constitute a waiver of any extension of time or claim.
- 30.10 Nothing within this Article 30 shall prevent Company from exercising its rights including termination or suspension rights under the Contract.

31. **SHIPMENT, TITLE AND RISK OF LOSS**

- 31.1 Shipment shall be made F.O.B. (i.e., "free on board" or "freight on board") to the destination specified by Company, freight included. Contractor shall obtain and bear the expense of any import and export license fees, charges, and costs and carry out, where applicable, all customs formalities and requirements necessary for the export of its Materials, for their transport through any country, and for their import.
- 31.2 Title to all Work covered by an application for payment shall pass to Company no later than (i) at time of payment or (ii) upon acceptance of the Work by Company, whichever occurs first. When title passes to Company for Work furnished on Company Sites located in New Jersey, it shall be deemed to have passed in the State of New Jersey. All Work shall be free and clear of any liens, Claims, unsatisfied demands, notices of intention, stop notices, unsatisfied judgments, security interests, or other encumbrances in favor of Contractor or any other person or entity. The passing of title shall not affect risk of loss and shall not be deemed to constitute Company's acceptance of nonconforming Work.
- 31.3 Risk of loss for Work delivered to Company shall pass from Contractor to Company upon Company's acceptance of the Work.

32. **SEQUENCE OF WORK**

Contractor shall commence Work when requested in accordance with the approved Project Schedule. If, in Company's opinion, it would be advantageous to immediately perform some particular part of the Work or adjust the sequence of Work, Contractor shall, upon Written Notice, make every effort to meet such requirement at no additional cost to Company.

33. **COORDINATION AND COOPERATION**

- 33.1 Contractor shall cooperate with Company and its agents, employees, designees and other contractors, if any, to ensure that the Work is properly performed on schedule. Contractor shall collaborate with any other contractors and coordinate its Work with the work of such other contractor(s) that could affect the Work. Contractor shall proceed in such manner so as not to interfere or delay the progress of any Company project as a whole.
- 33.2 If any part of Contractor's Work depends for proper execution or results upon the work of any other contractor(s), Contractor shall inspect and promptly report in writing to Company any defects in the work of such other contractor that renders it unsuitable for such proper execution or results. Failure of Contractor to do so shall constitute its acceptance of the other contractors' work as fit and proper for the reception of Contractor's Work, except as to defects that may develop in the other contractors' work after the execution of Contractor's Work.

- 33.3 Company shall have the right to perform Work with its own employees or by other contractors and to permit other entities to do work during the progress and within the limits of, or adjacent to, the Site, and Contractor shall conduct its Work and cooperate with all others so as to mitigate any possible interference. Contractor shall allow other contractors or entities access to their work within the Site. Contractor shall make no Claims against Company for additional payment due to delays or other conditions created by the operations of such other parties.
- 33.4 In cases of disagreement or disputes between Contractor and other contractors(s) that could delay or interfere with the Work due to the failure to collaborate and cooperate or that cannot be resolved between Contractor and the other parties involved, Contractor shall provide Company prompt Written Notice specifying in detail the disagreement or dispute. In such cases, Company shall have the right to determine the proper method of coordinating the Work.
- 33.5 Contractor shall provide, as requested by Company, an on-site representative duly authorized to act for and on behalf of Contractor and to commit to decisions that shall be binding on Contractor. If requested, said representative shall attend meetings that may be called by Company. Notwithstanding the existence of a dispute or disagreement between Contractor and Company, Contractor shall diligently and without interruption proceed with the Work at such rates of progress as will ensure full completion of the Work on time.
- 33.6 Contractor shall at all times perform the Work to avoid interruption or interference with Company's or PSEG's operations.
- 33.7 Contractor shall provide Company any information that Company may request to verify actual progress and predict future progress of the Work.
- 33.8 Contractor shall cooperate with Company and provide all reasonable and necessary assistance and support with regard to Claims by or against third parties arising out of or related to the Work at Contractor's cost, without profit.

34. **LABOR AND PERSONNEL**

- 34.1 To the extent applicable, Contractor shall comply and cause any of its subcontractors to comply with all prevailing wage (including, but not limited to, N.J.S.A. 34:1B-5.1, N.J.A.C. 19:30-4.1 et seq., and N.J.S.A. 34:11-56.48) and affirmative action requirements (including, but not limited to, N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3.1 et seq.) of Tenant. Any construction contracts and subcontracts must contain additional language as set forth in the Authority's Affirmative Action Addendum to Construction Contract. Regulations, forms, guidance documents (including an Affirmative Action and Prevailing Wage program summary) are available at [www.njeda.com/affirmativeaction](http://www.njeda.com/affirmativeaction).
- 34.2 For Work to be performed on Company's Site, Contractor shall provide daily to Company's Site representative a list of all personnel and their badge numbers working on Company's Site, including Subcontractor's employees. Company reserves the right to deny access to the Site to any person or employee of Contractor or its Subcontractor(s) about whom Company, in its absolute discretion, is of the opinion is not fit to perform Work or does not otherwise meet the requirements of the Contract.



- 34.3 Unless otherwise specifically noted, Contractor shall provide and promptly pay for all labor, materials, equipment, water, heat, utilities, transportation, services, and all other items or facilities necessary for the proper execution and completion of the Work.
- 34.4 Contractor, and all of its employees, contractors and Subcontractors, shall work in harmony with one another and all other trades, employees, and contractors engaged in any work at each Site.
- 34.5 Contractor shall furnish qualified workers in sufficient number for the efficient performance and timely completion of the Work in accord with the schedule for the Work. All means and avenues of recruitment shall be used to ensure proper and timely completion of the Work.
- 34.6 When requested, Contractor shall issue an identification badge, approved by the Company, to each of its employees, contractors, agents, representatives, and Subcontractors that shall be worn at all times while working on the Site.
- 34.7 Contractor represents that it is fully and properly experienced, qualified, licensed, organized, equipped, insured, and financed to provide the Work, and that Contractor's employees, contractors and its Subcontractors are well-trained, experienced, qualified, competent, reliable, trustworthy, and certified or licensed as appropriate.
- 34.8 Contractor and its Subcontractors, if any, shall comply with Company's rules, regulations, and policies regarding personnel practices in the workplace and fitness for duty requirements, including its policy on drugs and alcohol. Copies of the rules, regulations, policies, and practices are available upon request from Company or as set forth herein.
- 34.9 Contractor shall cause the foregoing provisions to be inserted in all Subcontracts to the end that Company and Contractor shall have the rights therein set forth with respect to each Subcontractor.
- 34.10 Whenever threatened or actual picketing, slowdowns, work stoppages, or any other labor dispute may delay or otherwise affect the Work, Contractor shall immediately provide Written Notice to Company. Such Written Notice shall include all relevant information regarding the labor dispute, its background, and the steps Contractor proposes to take to resolve or prevent its occurrence.
- 34.11 In the event of a labor dispute involving Contractor, including any of Subcontractor(s), Contractor shall promptly initiate proceedings in such administrative, judicial, or arbitral forum having jurisdiction to resolve or minimize the impact of the labor dispute.
- 34.12 In the event of a labor dispute, Contractor shall be liable to Company for all losses or damage incurred by Company unless Contractor shall have taken all reasonable steps available to resolve or minimize such labor dispute, including negotiation, filing of appropriate papers, and taking whatever legal actions can be initiated. Contractor's obligations in the event of any labor dispute shall include taking all reasonable and lawful steps necessary to have pickets removed.
- 34.13 In the event of a labor dispute, Company shall not be liable for any payment, reimbursement, or other compensation except as specified in this Contract, and any increase in pay, benefits, or other terms and conditions of employment shall not be charged to Company.

- 34.14 Company shall have the right before or during the performance of the Work to designate certain Contractor personnel as key Contractor personnel ("Key Contractor Personnel"), which, if designated at the time of the Contract execution, shall be listed on EXHIBIT 34.14. Contractor shall not reassign or replace any Key Contractor Personnel without Company's prior written consent except in the case of (i) voluntary resignation, (ii) dismissal for cause, or (iii) inability to work due to illness, disability, or death. In the event Key Contractor Personnel are replaced, Contractor shall ensure that an appropriate replacement is promptly found and that a smooth transition occurs. Where practicable, there shall be an appropriate over-lap period where both the new employee and the employee being replaced shall be assigned to support the Work. All Key Contractor Personnel, including those that are replaced, must be acceptable to Company and Contractor shall verify the suitability of their qualifications, experience, and education in relation to the Work.
- 34.15 The basis for executing the Work will be on a forty (40) hour workweek unless the Company or the Contract specifies otherwise. Company has the right to set or change the work hours, work days, starting, and quitting times for all shifts and workweek arrangements. Contractor has the obligation to determine the appropriate supervision and associated crew size to accomplish the Work in accordance with the Contract.

35. **EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

- 35.1 Contractor hereby represents and covenants to Company that: (i) Contractor is in compliance with all of the laws and executive orders prohibiting discrimination, including, but not limited to, Title VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and their state law counterparts; (ii) Contractor and its Subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a) (for construction contractors, 41 CFR §60-4.3(a)); (iii) Contractor does not discriminate against qualified individuals based on their status as protected veterans or individuals with disabilities and does not discriminate against individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or any other characteristic protected by law; (iv) Contractor and its Subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability and (v) Contractor shall comply with the provisions of 29 CFR Part 471, Appendix A to subpart a, as applicable.
- 35.2 Company is committed to increasing the amount of business placed with minority, women, veteran and service disabled veteran owned businesses. Contractor is encouraged to utilize qualified minority, women, veteran and service disabled veteran owned Subcontractors wherever possible. When a minority, women, veteran or service disabled veteran owned Subcontractor is utilized, Contractor shall provide to Company the Subcontractor's name, the services it provides, the estimated dollar value of the Subcontract, and whether or not such Subcontractor is certified as a minority, women, veteran or service disabled owned business by a certifying agency and if so, the name of the certifying agency.
- 35.3 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 cancelled 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

**36. CONFIDENTIAL AND PROPRIETARY INFORMATION AND INFORMATION SECURITY**

- 36.1 Contractor and its Personnel shall (1) hold in strict confidence any and all Company Data, and (2) Process Company Data solely on behalf of and for the benefit of Company and solely for the purpose of carrying out its obligations to Company pursuant to this Contract. Contractor's obligations set forth in this Article with respect to Company Data will survive the termination or expiration of this Contract.
- 36.2 Contractor agrees to accept, receive, or hold information, whether in oral, written, or physical form, that is confidential or proprietary, in the manner set forth in EXHIBIT 36.2, the terms of which shall survive any termination or expiration of this Contract.
- 36.3 Contractor's Policies and Practices to Protect the Privacy, Confidentiality and Security of Company Data and Prevent Identity Theft.
  - (a) To the extent applicable to the Work provided by Contractor, Contractor shall establish and maintain policies and practices to identify indications of possible identity theft risks or other harm to the employees of Company that may arise in the performance of Work under this Contract. Contractor will take steps to mitigate and prevent identity theft or other harms including, but not limited to, physically and electronically storing only that information it receives regarding Company business or employees which is necessary for Contractor to perform Work under this Contract.

- (b) Privacy and Data Protection. Contractor shall comply with all applicable Laws and industry standards relating in any way to the privacy, confidentiality or security of Personal Information or Company Data, including, but not limited to: the Gramm-Leach-Bliley Act ("GLBA"), 15 U.S.C. §§ 6801-6827, and all regulations implementing GLBA; the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq., as amended by the Fair and Accurate Credit Transactions Act ("FACTA"), and all regulations implementing the FCRA and FACTA; Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (codified as amended in scattered sections of 29 U.S.C. and 42 U.S.C.), and all regulations implementing HIPAA; the Controlling the Assault of Non-Solicited Pornography and Marketing Act ("CAN-SPAM"); information security breach notification Laws; Laws imposing minimum information security requirements; Laws requiring the secure disposal of records containing certain protected information (such as N.J. Stat. § 56:8-162 and N.Y. Gen. Bus. Law § 399-H); the Payment Card Industry Data Security Standard ("PCI DSS"); SSAE-18 and AICPA AT Section 101, or any successor standards; the International Organization for Standardization's standards: ISO/IEC 27001:2013 – Information Security Management Systems – Requirements and ISO-IEC 27002:2013 – Code of Practice for Information Security Controls; and all other similar international, federal, state, provincial, local, and industry requirements (collectively, "Privacy Laws").
- (c) Contractor shall not share, transfer, disclose or otherwise provide access to any Company Data to any third party, or contract any of its rights or obligations concerning Company Data to a third party, unless Company has authorized Contractor to do so in writing, except as required by Law. Where Contractor, with the consent of Company, provides to a third party access to Company Data, or contracts such rights or obligations to a third party, Contractor shall enter into a written agreement with each third party that imposes obligations on the third party that are substantially similar to those imposed on Contractor under this Article.
- (d) Subject to applicable Law, Contractor shall notify Company immediately in writing of any subpoena or other judicial or administrative order by a government authority or proceeding seeking access to or disclosure of Company Data. Company shall have the right to defend such action in lieu of and on behalf of Contractor. Company may, if it so chooses, seek a protective order. Contractor shall reasonably cooperate with Company in such defense.
- (e) Notification and Mitigation. Contractor shall comply with the requirements of Section 36.5 below.
- (f) Confirmation. To the extent applicable to the Work provided by Contractor, Contractor shall deliver to Company its written confirmation of Contractor's compliance with the provisions of this Section 36.3 (including, but not limited to, Contractor's establishment and maintenance of policies and practices to identify indications of possible identity theft risks) upon Company request.
- (g) Ensure that all Company Data generated by Contractor on behalf of Company is accurate and, where necessary, promptly corrected or updated to meet applicable Contract requirements.

- 36.4 Information Security Program. In addition to Contractor's other obligations with respect to Company Data (including Confidential Information and Personal Information) pursuant to this Contract, Contractor shall:
- (a) Ensure that all Company Data is: (i) collected, stored, processed, generated, maintained, and provided to Company in a secure manner and in compliance with applicable Law, regulatory requirements, prevailing industry practices and standards, and Contractor privacy and security practices, policies and procedures and (ii) collected, stored, processed, generated, and maintained solely in the United States;
  - (b) Develop, implement, maintain, and monitor a comprehensive, written information security program that complies with applicable Laws (including Privacy Laws) and includes appropriate administrative, technical, and physical safeguards and other security measures adequate to (i) ensure the security and confidentiality of Company Data; (ii) protect against any anticipated threats or hazards to the security and integrity of Company Data and Company Systems accessible to Contractor or its Personnel; and (iii) protect against Security Incidents. With respect to cyber threats, Contractor's program shall address the life-cycle of a cyber incident, including identification of, response to, and recovery from a cyber event. Contractor shall conduct an exercise to annually test its cyber incident response program, such as a tabletop exercise. Subsequent to the exercise, Contractor shall document and incorporate lessons learned into its program. Contractor shall provide to Company a copy of its program and the results of its annual testing of that plan within thirty (30) Days of the completion of the test. Such test results provided to Company shall include, at a minimum, any lessons learned or vulnerabilities the test uncovered, and Contractor's steps taken or to be taken to implement those lessons learned and address those vulnerabilities;
  - (c) Conduct an annual vulnerability assessment (including, but not limited to, a cybersecurity risk assessment) to (i) identify and assess reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of electronic, paper, and other records containing Company Data and of Company Systems accessible to Contractor or its Personnel, and (ii) evaluate and improve, where necessary, the effectiveness of its safeguards for limiting those internal and external risks, and provide a summary of such assessment to Company within thirty (30) Days of the completion of such assessment. Such summary shall contain, at a minimum, any vulnerabilities the assessment identified and the steps Contractor has taken or will take to address those vulnerabilities. Notwithstanding the foregoing, Contractor shall remediate any identified vulnerabilities within thirty (30) Days of discovery;
  - (d) Review and, as appropriate, revise its information security program: (i) whenever there is a material change in Contractor's business practices that may reasonably implicate the security or integrity of Company Data or Company Systems; (ii) in accordance with prevailing industry practices and standards; (iii) in accordance with applicable Laws; and (iv) as requested by Company. If Contractor modifies its information security program following such a review, Contractor shall promptly notify Company of such modifications and shall provide the details of such modifications to Company in writing upon Company's

request. Contractor shall not alter or modify its information security program in such a way that could weaken or compromise the confidentiality and security of Company Data or Company Systems;

- (e) Maintain appropriate access controls and exercise the necessary and appropriate supervision over its relevant Personnel to maintain appropriate privacy, confidentiality and security of Company Data, including: (i) limiting access to Company Data to Personnel who have a need to know the Company Data as a condition to providing Work to the Company under the Contract, and who have explicitly agreed in writing to comply with legally enforceable privacy, confidentiality and security obligations that are substantially similar to those required by this Article; (ii) ensuring that Personnel who will be provided access to, or otherwise come into contact with, Company Data, will be required (including during the term of their employment or retention and thereafter) to protect all Company Data in accordance with the requirements of the Contract; (iii) providing such employees with appropriate training regarding information security and the protection of Personal Information and other Company Data; and (iv) in the event such Personnel no longer need access to Company Data, Contractor shall take all necessary measures to terminate such Personnel's access to Company Data. Further, Contractor agrees to provide Written Notice to Company before providing access to Company Data to any non-Contractor employee, including the person's employer and business need to access Company Data, and Company will have final determination as to whether such person shall be given access to Company Data. Contractor shall be responsible for, and remain liable to Company for, its Personnel's compliance with the terms of this Article;
- (f) Ensure that its information security program covers the Work, including all Material and services provided hereunder, and all networks, systems, servers, hardware, equipment, computers, notebooks, laptops, PDAs, mobile phones, and other devices that process or handle Company Data, and/or allow access to Company Systems or Company Data under the Contract. Contractor shall ensure that its information security program includes industry standard password protections, firewalls, and anti-virus and malware protections to protect Company Data and Company Systems;
- (g) Encrypt, using industry standard or legally required encryption tools commensurate with the technology platform and response time constraints, all Material, records, files and systems containing Company Data, including, but not limited to, Company Data that Contractor: (i) transmits or sends wirelessly or across public networks; (ii) stores on laptops or storage media; and (iii) where technically feasible, stores on portable devices. Contractor shall safeguard the security and confidentiality of all encryption keys associated with encrypted Company Data; and
- (h) Regularly dispose of Company Data that Company notifies Contractor in writing is no longer necessary to provide the Work to Company or that Contractor determines is no longer necessary to provide the Work to Company; provided, however, Contractor shall provide Company Written Notice of such determination and Contractor's planned timeframe for disposal of such Company Data at least thirty (30) Days prior to disposing such Company Data. If Contractor disposes of any paper, electronic, or other record containing Company Data, Contractor

shall do so by taking all reasonable and legally required steps to destroy the information by: (i) shredding; (ii) permanently erasing and deleting; (iii) degaussing; or (iv) otherwise modifying the Company Data in such records to make it unreadable, unreconstructable, and indecipherable.

- 36.5 Notification and Mitigation. Contractor shall provide Company with Written Notice and email notice, as set forth below, immediately upon (but in no case later than twenty-four (24) hours after) becoming aware of any Security Incident. Notwithstanding the aforementioned twenty-four (24) hour notice, Contractor shall provide Written Notice and email notice within thirty (30) minutes after it becomes aware of any such Security Incident that is reasonably likely to affect or involve a Critical Cyber System. Contractor shall promptly provide Company with detailed information regarding the nature and scope of the Security Incident, the actual or potential cause of the Security Incident, and the measures being taken by Contractor to investigate the Security Incident, correct or mitigate the Security Incident, and prevent future Security Incidents. Contractor agrees that any decision to notify individuals, a regulatory body, or governmental authorities of the Security Incident shall be at Company's sole discretion and any notice shall be approved in advance by Company.
- (a) In the event of a Security Incident, Contractor shall: (i) at the time of the initial notice described in Section 36.5, identify a Contractor employee to be a point of contact for the Company with respect to the Security Incident and who will be available at all times to discuss issues related to the Security Incident with Company, as well as provide Company with such person's e-mail and office address and office and cell phone number; (ii) immediately investigate and perform a root cause analysis of the Security Incident; (iii) within four hours of providing the initial notice described in Section 36.5, provide a written mitigation plan for Company's approval detailing the steps Contractor will take to remediate the effects of such Security Incident or disclosure and prevent its reoccurrence; (iv) once the mitigation plan is approved by Company, immediately commence the remediation and prevention actions set forth therein and update the Company as to the status of Contractor's remediation efforts no less frequently than every twelve (12) hours; (v) provide Company with such assurances as Company shall request that such Security Incident is not likely to recur; and (vi) assist and cooperate with Company in all matters related to the Security Incident and its actual or potential consequences, including, but not limited to, making all disclosures required by Laws (for example, disclosures to Company's employees). The content of any filings, communications, notices, press releases or reports related to any Security Incident must be approved by Company prior to any publication or communication thereof.
- (b) Upon the occurrence of an Security Incident involving (i) Company Data in Contractor's or its Personnel's possession, custody or control, or for which Contractor is otherwise responsible, or (ii) a compromise or disruption to Company Systems caused by or attributable to Contractor's or its Personnel's acts or omissions, Contractor shall reimburse Company on demand for all Notification Related Costs incurred by Company arising out of or in connection with any such Security Incident.
- (c) Contractor shall provide Company with summary documentation no later than twenty-four (24) hours after discovery of an uncorrected or

unmitigated security vulnerability in systems or data owned by Contractor or any third party that are used in connection with the Work, whether such vulnerabilities are publicly disclosed or otherwise. The summary documentation shall include a description of each vulnerability and its potential impact, root cause, and recommended compensating security controls, mitigations, and/or procedural workarounds. Contractor shall also provide, at Company's request, the status of Contractor's efforts to mitigate or correct each vulnerability. Finally, Contractor shall provide prompt Written Notice to Company once the uncorrected or unmitigated security vulnerability is adequately corrected or mitigated.

- (d) Contractor shall provide summary documentation to Company within twenty-four (24) hours after it receives any threat to the integrity, security or accessibility of systems or data owned by Contractor or any third party that are used in connection with the Work. The summary documentation shall include a description of the threat, its potential impact, and recommended compensating security controls, mitigations, and/or procedural workarounds. Contractor shall also provide, at the Company's request, the status of Contractor's efforts to mitigate or eliminate the threat. Finally, Contractor shall provide prompt Written Notice to Company once the threat is adequately mitigated or eliminated.
- 36.6 Reserved.
- 36.7 Upon Company's written request, Contractor shall complete and submit to Company an information security due diligence questionnaire provided by Company with the timeframe requested by Company.
- 36.8 For any material changes to Contractor's controls and technical protections as set forth in the documents Contractor submits to Company pursuant to Sections 36.6 and 36.7 above, Contractor agrees to provide a summary of those change(s) in writing to the Company within five (5) Business Days following the effective date of the change(s), or as otherwise agreed to by the Company and Contractor.
- 36.9 Company shall have the right to monitor Contractor's compliance with the terms of this Article. During normal business hours, Company or its authorized representatives may inspect Contractor's facilities and equipment, and any information or materials in Contractor's possession, custody or control, relating in any way to Contractor's obligations under this Article. An inspection performed pursuant to this Article shall not unreasonably interfere with the normal conduct of Contractor's business. Contractor shall cooperate fully with any such inspection initiated by Company.
- 36.10 No applicable Law or privacy or information security enforcement action, investigation, litigation or claim prohibits Contractor from (i) fulfilling its obligations under the Contract or (ii) complying with instructions it receives from Company concerning Company Data. In the event a Law or privacy or information security enforcement action, investigation, litigation or Claim, or any other circumstance, is reasonably likely to adversely affect Contractor's ability to fulfill its obligations under this Article, Contractor shall promptly notify Company in writing and Company may, in its sole discretion and without penalty of any kind to Company, suspend the transfer or disclosure of Company Data to Contractor or access to Company Data by Contractor, terminate any further Processing of Company Data by Contractor, and terminate the Contract.



36.11 Contractor agrees that any Processing of Company Data in violation of this Article, Company's instructions or any applicable Laws, or any Security Incident, may cause immediate and irreparable harm to Company for which money damages may not constitute an adequate remedy. Therefore, Contractor agrees that Company may obtain specific performance and injunctive or other equitable relief for any such violation or incident, in addition to its remedies at law, without proof of actual damages. Contractor agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. Contractor's failure to comply with this Article is a material breach of this Contract. In such event (including in the event of a Security Incident), Company may terminate the Contract effective immediately upon Written Notice to the Contractor without further liability or obligation to Contractor.

36.12 Upon termination or expiration of the Contract, or upon Written Notice from Company at any time, Contractor shall immediately (and in any event, no later than five (5) Business Days after the effective date of termination or expiration, or receipt of Written Notice, as applicable) return to Company all Company Data including any and all back-up data in format acceptable to Company. For avoidance of doubt, Company's rights under this Section shall be absolute and unqualified such that Company's access and right to possess all data (including Company Data) and information held by Contractor or Contractor's Personnel on its behalf remains unfettered and Company may access at any time, notwithstanding any disputes that may exist between the Parties at the time of Company's Written Notice or, as applicable, upon termination or expiration of the Contract. In its sole discretion, Company may direct Contractor by Written Notice to destroy the Company Data in a manner consistent with the requirements of Section 36.4h) in lieu of delivering Company Data to Company, in accordance with instructions given by Company at that time. Contractor shall certify in writing to Company that all Company Data in its possession or under its control has been returned to Company or destroyed in accordance with this Section within forty-five (45) Days following the termination or expiration of the Contract.

37. **RESERVED**

38. **RESERVED**

39. **RESERVED**

40. **ALTERATIONS, CHANGES, AND EXTRAS**

40.1 Company shall have the right, without invalidating the Contract, during the progress of the Work to: (i) order extra Work from Contractor on sole source basis; (ii) make alterations, additions, omissions, deletions, modifications, changes, or departures in the scope, schedule, sequence, method, or performance of the Work; and (iii) make changes in any specifications, plans, or drawings relating to the Work that it may desire (each, a "Company Directed Change"). Contractor agrees that notwithstanding (i) above, Company is under no obligation to solicit a proposal or retain Contractor on a sole source basis to provide any extra work. Contractor agrees to effect all such Company Directed Changes. Except as provided in Section 40.3 below, any such Company Directed Changes that Company elects to make shall be by Change Order or a Purchase Order designated as a Change Order issued by Company. All Change Orders must be signed by a duly authorized Company procurement representative or a Company officer to be effective. All Change Orders must include a description of the Work covered, the changes or extras involved, and the compensation as determined in

accordance with Section 40.6 below. Company's form of Change Order is attached hereto as EXHIBIT 40.1 or is a Purchase Order designated as a Change Order.

- 40.2 Except as provided in Section 40.3 below, Contractor shall not perform or provide extra Work or supply extra Material unless a Change Order has been obtained prior to the commencement of such extra Work. If Contractor believes it is entitled to a Change Order, Contractor shall notify Company by Written Notice within ten (10) Days following the event giving rise to the change with a detailed explanation regarding the change and the basis for entitlement for such change and a completed Change Request form (defined below). Failure to comply with this requirement shall constitute a waiver by Contractor of any claim for additional compensation..
- 40.3 In the event Contractor believes it is entitled to a Change Order and prior to performing any out-of-scope work, Contractor shall submit to Company a change request in the form attached hereto as of EXHIBIT 40.3A (a "Change Request"). The failure to submit said Change Request prior to the performance of any out-of-scope work shall operate as a waiver of Contractor's right to any additional compensation or time to perform. Notwithstanding the provisions of Sections 40.1 through 40.3, Contractor may, at the direction of Company, provide additional or out-of-scope Work or Materials without first being issued a Change Order under the following circumstances: (i) in the event of an emergency that could involve bodily injury or damage to Company property or (ii) to advance or implement necessary action due to timing constraints regarding the Work or cost efficiencies, pursuant to a field change directive issued by the Company in the form attached hereto as EXHIBIT 40.3B) (a "Field Change Directive")<sup>3</sup>, provided that no Field Change Directive shall modify the time for performance or Contract Price. Contractor shall submit a Change Request for any emergency Work or Field Change Directive within ten (10) Business Days following the Company's request to perform such emergency Work or issuance of such Field Change Directive.
- 40.4 The value of changes that decrease the scope of Work shall be determined and agreed jointly by Company and Contractor and deducted from the Contract Price. The value of changes or extras that increase the scope of Work shall be determined in accordance with Section 40.6 below and shall be added to the Contract Price. If changes do not involve extra costs, no additional compensation will be paid to Contractor.
- 40.5 Changes that reduce the quantity of Work to be provided shall not constitute a claim for damages or for anticipated or lost profits on the Work involved in such reductions. Company shall be entitled to deduct from the Contract Price an amount equal to the value of the omitted Work, subject to an allowance to Contractor for any actual loss incurred by it in connection with the purchase, rental, delivery, and subsequent disposal of Materials planned but that could not be used in any of the Work actually performed as a result of such changes.
- 40.6 Where changes or extras increase the quantity of Work to be provided beyond that required by the Contract, such increase shall be paid for by Company, at Company's option, by one of the following methods:
- (a) Method A: By lump sum to be agreed to by the Parties; or

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<sup>3</sup> NJEDA to confirm if it has a form of field change directive. Otherwise we can remove the form and just insert words to the effect that it is a written direction issued by the Project Director that is identified as a Field Change Directive.

- (b) Method B: By agreeing to an amount applying (i) unit price(s) or (ii) time and material rates, reflected in the Contract Documents; or If the Parties cannot agree to Method A or Method B, Contractor shall be compensated at its direct cost plus a single mark-up of five percent (5%) for its overhead and profit.
- 40.7 Company shall have the right to have Contractor provide lump sum pricing for changes or extra Work broken down in the format as prescribed by the Company.
- 40.8 Company may direct the form in which accounts of costs of extra Work or additional Materials shall be kept and may also specify the method of doing the extra Work and the type and kind of Materials, if required, that shall be used in the performance of the extra Work or provision of additional Materials. The compensation paid to Contractor pursuant to Section 40.6 above shall be deemed to constitute full and complete compensation for Contractor's profit, overhead, superintendence, general foremen, foremen, office expenses, and all other elements of costs or expenses for extra Work.
- 40.9 For changes to the scope of Work compensated on a time and material basis, the following provisions apply:
- (a) Rental rates for third-party equipment used by Contractor for performance of changes to the scope of Work shall be approved by Company prior to rental and Contractor will be reimbursed at its actual cost, including transportation to the Site, as substantiated by invoices certified paid or by such documentation as may be required by Company, plus a single mark-up of five percent (5%) for overhead and profit. Prior to any third-party rentals, Contractor shall submit a stated value for the equipment being rented and demonstrate the rates to be favorable on a competitive basis. To the extent applicable, acceptable rental rates for the specified categories of equipment are as provided EXHIBIT 45.5.
  - (b) Labor rates for extra Work shall be in accordance with the built up wage rate sheets provided in EXHIBIT 45.4.<sup>4</sup>
  - (c) Subcontracts and third-party services employed by Contractor for performance of changes to the scope of Work shall be approved by Company prior to use and will be reimbursed at actual cost to Contractor as substantiated by invoices certified paid or by such documentation as may be required by Company, plus a single mark-up of five percent (5%) for overhead and profit.
  - (d) Compensation for additional Materials shall be at actual invoiced cost to Contractor, including transportation to the Site, as substantiated by invoices certified paid or by such documentation as may be required by Company, plus a single mark-up of five percent (5%) for overhead and profit. Contractor shall provide proof of competitive pricing for all Materials furnished.
- 40.10 Contractor shall obtain competitive market pricing for changes to the scope of Work performed by Subcontractors. Contractor, at the request of Company, shall provide all Subcontractor bids to Company on an open-book basis. For changes performed by Subcontractors, Subcontractors' mark-up for overhead

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<sup>4</sup> DF to confirm applicability.

and profit shall not exceed that of Contractor. No mark-up for overhead and profit shall be applied to Subcontractors' overtime premium costs. There shall be no mark-up applied to taxes.

- 40.11 If Contractor claims that any order, act, or omission of Company will increase expenses, costs, or Work, including Materials, Contractor shall give Company Written Notice thereof within three (3) Business Days after the date of such order, act, or omission. Not later than fifteen (15) Days after such Written Notice is received by Company, Contractor shall submit to Company a detailed statement of the cost of the extra Work claimed to be required, as well as any impact to the Work schedule, together with supporting documents and information that clearly and convincingly support Contractor's claim. The failure to fully comply with the requirements for Written Notice or the failure to provide a detailed statement as specified within the times set forth herein shall constitute a waiver by Contractor of any claim for additional compensation. Company's knowledge of the condition or event giving rise to any claims of extra expense, cost, or Work shall not affect Contractor's obligation to provide Written Notice to Company. Company shall not be charged for the costs or expenses of providing Written Notice, requesting changes to this Contract, or making any Claims arising out of this Contract.

41. **COMPANY'S RIGHT TO DO WORK**

If Contractor fails to complete Work in accordance with the schedule required by Company or fails to furnish sufficient qualified workers of the required skill, or Material of the required quality or quantity, necessary to perform the Work, after ten (10) or more Days after submission of Written Notice specifying such failure, and a reasonable opportunity for Contractor to cure, but no later than ten (10) days, Company shall have the option to supply workers, Material, or both, and do the Work. Company shall deduct expenses incurred in engaging other contractors and in supplying workers and material from payments due or that may become due to Contractor. If expenses exceed the balance due or that becomes due to Contractor, Contractor shall pay any reasonable the excess to Company.

42. **CHARGES TO CONTRACTOR FOR WORK PROVIDED BY COMPANY**

Any Work, including Material, provided by Company due to Contractor's failure to perform shall be charged to Contractor at Company's cost, plus a fee equal to fifteen percent (15%) of Company's total cost.

43. **WORK PROVIDED BY OTHERS**

- 43.1 Company reserves the right to contract with others for work related to, but not covered by, this Contract. Contractor shall coordinate its Work with that of such other contractor(s) to the end that the entire work shall be completed to Company's complete satisfaction.
- 43.2 To ensure the proper execution of its subsequent Work, Contractor shall measure any work already in place and shall at once report to Company any discrepancy between the existing work and the drawings or information covering Contractor's part of the Work.
- 43.3 Company reserves the right to provide any part of the Work required in connection with the Contract, as it may desire, and receive a credit of the Contract Price.

44. **PROJECT SCHEDULE**

- 44.1 If applicable to the Work, Contractor's Level 1 Baseline Project Schedule is attached hereto as EXHIBIT 44.1 ("Project Schedule" or "Level 1 Baseline

Project Schedule"). After Contractor's receipt of the Contract executed by Company, Company shall have the right to request that Contractor submit a detailed project schedule in Level 3 detail for performing the Work ("Level 3 Project Schedule"). Within fifteen (15) Days of such request, Contractor shall submit to Company the Level 3 Project Schedule in a format and level of detail acceptable to Company, fully describing the sequence of activities and plan of operation for performing the Work, including the provision of Material. The Level 3 Project Schedule shall meet all milestones and dates set forth in the Level 1 Baseline Project Schedule. The Level 3 Project Schedule shall be supported by such data and documentation as Company deems appropriate and shall be revised and updated in accordance with the Contract to reflect the status and progress of the Work.

- 44.2 If applicable, the Level 3 Project Schedule shall include: (i) the order in which Contractor proposes to perform the Work; (ii) start and completion dates of the Work; (iii) the dates of order, receipt, and delivery of significant portions or components of Material; (iv) dates for the submittal and approval of drawings or data, testing, and inspection dates; (v) project milestone dates; (vi) personnel forecasts by individual craft and non-manual personnel; (vii) turnover dates for final reports and "as constructed" drawings; and (viii) all other details, dates, or information that Company deems appropriate, including schedules for Material procurement and drawing submissions.
- 44.3 Contractor shall be responsible to ensure that all Work, including that of its Subcontractors, as well as work performed by others that may affect Contractor's Work, is included on the Level 3 Project Schedule. Contractor's failure to include all such work, in whole or in part, shall not excuse Contractor from completing all Work within the required time.
- 44.4 Company shall have the right to use the Level 3 Project Schedule to establish payments to Contractor. The Level 3 Project Schedule shall include a schedule of values for the Work aggregating the Contract Price, which will divide the Work into component parts in sufficient detail to serve as the basis for progress payments during the Work. Contractor shall not imbalance or misrepresent the schedule of values nor artificially inflate any element thereof. Said schedule of values shall only be used as a basis for timing of progress payments.
- 44.5 The Level 3 Project Schedule shall be in such form as requested by Company, including in the form of a progress chart of suitable scale to approximately indicate the percentage of Work scheduled for completion at any time. If requested by Company, Contractor shall submit the Level 3 Project Schedule in a critical path form using the critical path method as may be designated by Company.
- 44.6 The Level 3 Project Schedule shall be suitable to ensure Contractor's proper planning, coordination, and execution of the Work, and to permit Company to monitor the status and progress of the Work, as well as to evaluate proposed changes to the Contract or Level 3 Project Schedule.
- 44.7 The Level 3 Project Schedule shall be updated on a weekly basis or as otherwise requested by Company. After receipt of the project schedule updates, Company will review the status and progress of the Work. In the case of a disagreement concerning actual status or progress, Company's determination shall govern.
- 44.8 Company shall have the right to request comprehensive written progress reports on a weekly basis describing the status, progress, costs, Materials

used, planned Work, or other matters pertaining to the Work. Said reports shall be provided in the manner requested at no cost to Company.

- 44.9 Contractor shall adhere to both the Project Schedule and the Level 3 Project Schedule. Company's review or acceptance of the Project Schedule or the Level 3 Project Schedule shall not impose upon Company any responsibility for the progress or scheduling of the Work. Contractor shall be fully responsible to ensure proper progress of the Work to completion, within the time set for completion in the approved Project Schedule or Level 3 Project Schedule.
- 44.10 If Contractor fails to provide a Project Schedule, Level 3 Project Schedule, updates, or any other data or information required under the Contract, Company may withhold progress payments until Contractor submits the required information.
- 44.11 If Company determines that the Project Schedule or Level 3 Project Schedule no longer represents the actual status or progress of the Work, Company shall have the right to require Contractor to revise the Project Schedule and/or the Level 3 Project Schedule accordingly to provide for an orderly, efficient, and timely prosecution of the Work. No changes to the Project Schedule or the Level 3 Project Schedule shall be made unless Company agrees that the change will not adversely impact the Work and the changes represent an orderly, efficient, and timely prosecution of the Work. No modification shall be made to the Project Schedule or the Level 3 Project Schedule without Company's written consent.
- 44.12 TIME OF PERFORMANCE IS OF THE ESSENCE. IF, AT ANY TIME, COMPANY DETERMINES THAT THE WORK IS BEHIND SCHEDULE, CONTRACTOR SHALL INCREASE ITS FORCES, WORK OVERTIME, ADD SHIFTS, OR OTHERWISE TAKE ALL NECESSARY STEPS TO GET THE WORK BACK ON SCHEDULE AT NO ADDITIONAL COST TO COMPANY.

45. **COMPENSATION**

- 45.1 Contractor shall not be entitled to any payment, reimbursement, or other compensation except as specified in this Contract. Contractor's compensation shall not exceed the dollar amount of the Contract Price, plus any additional Work authorized by a Change Order. Company will not be obligated to pay Contractor if an invoice is received more than sixty (60) Days after any Work has been performed.
- 45.2 The Contract Price is set forth in either the (i) CSD or (ii) Purchase Order.
- 45.3 The terms and conditions that shall apply to Work done on a non-lump sum basis are set forth in EXHIBIT 45.3, "Non-Lump Sum Work," attached to these Terms and Conditions.
- 45.4 For lump sum extra Work or Work done on a time and material basis, Contractor will be compensated for labor and professional services in accordance with EXHIBIT 45.4, "Built Up Wage Rate Sheets", which includes compensation for small tools (valued at \$3,000 or less), consumable and personal protective equipment ("PPE") .
- 45.5 For lump sum extra Work or Work done on a time and material basis, Contractor will be compensated for Contractor-owned equipment at the rates set forth in EXHIBIT 45.5, "Equipment Rental Rates," attached to these Terms and Conditions.

- 45.6 [RESERVED]
- 45.7 For Work done on a time and material basis or Work done on a cost plus basis, Company will reimburse Contractor for the actual cost of: (i) Contractor-purchased Material, plus a five percent (5%) fee and (ii) Subcontractors, plus a five percent (5%) fee. Contractor shall not purchase Material or perform Work with Subcontractors without Company's prior written consent.
- 45.8 Open-Book Review. Except for Work performed on a fixed price, lump sum basis, Contractor shall provide its pricing for the Work on a full open-book basis, including all Contractor labor, equipment, and material breakdown, which shall include all overheads, profits, taxes, fees, insurances, productivity levels, and any other related cost information, for Company's review. Company shall be entitled to receive Contractor's certified payroll, in an electronic native file format capable of manipulation, confirming the amounts paid to workers or Contractor's employees. In addition, Contractor shall also provide proposals for cost reductions and value engineering so as to provide Company with options for reducing the Contract Price, as applicable. Company is not required to accept any such proposals for cost reductions or value engineering from Contractor.
- 45.9 Under no circumstances will Company be liable for charges for any: (i) taxes never actually paid to the applicable taxing authority; (ii) wages paid to craft workers in excess of the applicable craft rate for their classification; (iii) taxes billed in excess of wage rate limits; (iv) charges for wages not actually paid; or (v) charges for costs or expenses not actually incurred.
- 45.10 Contractor agrees to: (i) collect all allowable refunds, rebates, and discounts on Material, containers, and other items received in connection with the Work and (ii) pay all invoices in time to take advantage of all cash discounts and credit any amounts owed by Company to Contractor by all such refunds, rebates, and discounts. All applications for payment shall certify that all such refunds, rebates, and discounts have been credited to Company, said credit being shown as a separate line item. If Contractor fails or neglects to take any discount or collect any refund or rebate offered, the sum so lost shall be credited to Company.

46. **PAYMENT SCHEDULE**

- 46.1 Company shall make payment in accordance with the applicable provisions of the Contract. Payment shall be due thirty (30) Days after receipt of a proper application for payment by invoice as approved by Company for the percentage of Work completed per the terms of the Contract. Unless otherwise specified in the Contract, on the tenth (10th) Business Day of such month after the start of Work, Contractor shall submit an application for payment for the one-month period ending on the last Day of the preceding month in a form approved by Company with such supporting data and documentation as Company may require. A duly executed Contractor's Affidavit and Interim Waiver of Liens in the form set forth in EXHIBIT 46.1 shall accompany each invoice.
- 46.2 Invoices in the form set forth in EXHIBIT 46.2, "Requisition for Payment," shall be mailed to the address as directed by Company. Invoices shall include Company purchase order number, item number, and invoice amount per item. Each order must be separately invoiced, and each invoice must have a nonrecurring invoice number. Two (2) or more orders delivered at the same time must be separately invoiced. Contractor must ensure that the information reflected in Tables 1 and 2 of the Requisition for Payment is up-

to-date, accurate, and that the columns total in a mathematically correct manner. Each invoice must be accompanied by Purchase Order line item details in the form attached to EXHIBIT 46.2 or otherwise provided by Company. For time and materials Work: (i) each invoice must include signed timesheets approved by the appropriate Company representative; and (ii) for the purchase of Materials or in the case of rental charges for equipment and for Subcontractor services (including equipment), each requisition must be approved by the appropriate Company representative prior to purchase or rental. Copies of the signed timesheets, together with the matching invoice and requisition, must accompany Contractor's Requisition for Payment.

- 46.3 Contractor shall maintain complete, detailed, and accurate records of the Work provided under the Contract, including the dates Work was provided, the dates Materials were delivered to the Site, and the dates the last Work was provided or delivered, as applicable. Copies of said records shall be promptly provided by Contractor, at no cost or expense to Company, upon request. Originals of such records shall be promptly provided for Company's review, at no cost or expense to Company, upon request.
- 46.4 Company shall be entitled to rely upon the accuracy of any and all documents furnished by Contractor, including: schedules of rates; daily timesheets; invoices; test reports; units of Work; and the like. Company's review and approval thereof, if any, shall not operate as an acceptance of the Work or Contractor's performance under the Contract or in any manner relieve Contractor from its responsibility for the performance of all the requirements of the Contract.

#### 47. **FINAL PAYMENT**

- 47.1 Contractor's acceptance, by endorsement or otherwise, of final payment shall constitute a waiver of any and all Claims, including any and all lien rights, claims, or notices of any kind, against Company or its property.
- 47.2 Contractor shall submit the final invoice for all Work, including Subcontractor billing, within forty-five (45) Days of notice by Company that the Work has been satisfactorily completed. Failure to comply with this requirement shall constitute a waiver of any claim for unbilled Work, as well as any Retainage that may be due.
- 47.3 No payment or acceptance, final or otherwise, shall constitute acceptance by Company of defective or otherwise nonconforming Work or in any way operate to release Contractor or its sureties from any obligation under the Contract.
- 47.4 Contractor shall deliver to Company a duly executed Contractor's Affidavit and Final Waiver of Liens in the form set forth in EXHIBIT 47.4 as evidence that all invoices have been paid and that there are no unsatisfied liens, judgments, Claims by or against Contractor that relate to, arise out of, or result from the performance of any Work or the furnishing of any Material.

#### 48. **TAXES**

To the extent any Work furnished under this Contract may be exempt from taxation under applicable state tax law, or taxable to Company, Company shall issue to Contractor the necessary exemption or direct payment certificates, as appropriate. In no event shall Company be responsible, or reimburse Contractor, for any corporate franchise, net income, or local taxes imposed upon it for the general privilege of doing business.



49. **WITHHOLDING AND SET-OFF OF PAYMENTS**

49.1 Company may decline to make payments, withhold, deduct, and offset from amounts due to Contractor, and demand the return of some or all of the amounts previously paid to Contractor, as may be necessary in Company's determination, due to the following breaches, and after Written Notice and a reasonable opportunity for Contractor to cure, but no later than fifteen (15) Days:

- (a) Failure to remedy defective Work;
- (b) Failure to conform to the Contract;
- (c) Incorrect charges by Contractor;
- (d) Failure to pay Subcontractor(s) promptly;
- (e) Failure to carry out Company instructions issued in accordance with the Contract and applicable Laws;
- (f) Failure to adhere to the Project Schedule or complete the Work within the time required;
- (g) Damage to the Work or Company property arising out of the Work
- (h) Claims or reasonably anticipated Claims against Company or its property arising out of the Work; or
- (i) Termination for cause.

49.2 All Claims for money due or that becomes due from Company shall be subject to deduction or set-off by Company by reason of any Claim arising out of the Contract or any other transaction with Contractor or Contractor's Affiliates.

50. **ALLOWANCES**

Wherever Work to be provided is covered by an allowance, Contractor shall cause the Work to be done or the Material to be furnished by such Subcontractors as Company may direct. If the actual cost of the Work to Contractor, exclusive of any supervision, overhead, or profit, is less than or exceeds the amount of the allowance, the Contract Price shall be adjusted accordingly.

51. **INSPECTION, TESTS, AND APPROVALS**

51.1 Company shall have the right, without extra charge therefor, to inspect all Material supplied under this Contract at any time including at the place of manufacture.

51.2 No extra charge or cost shall be incurred by Company for standard factory tests usually made of Material or for special tests made by Contractor on its own behalf. Company shall be notified of any such tests and be permitted to observe them. Contractor shall give Company access to every facility and every opportunity to determine that all Materials meet the requirements of the Contract.

51.3 Contractor shall furnish Company with six (6) copies of all test reports of Material, and Company shall have the right to review test data prior to shipment of any Material.

- 51.4 All Work provided shall be subject to inspection and shall be performed and furnished to Company's entire satisfaction. No money shall at any time become payable to Contractor until Company determines that Contractor is entitled to such payment. No certificate issued or payment made to Contractor, or partial or entire use or occupancy of the Work by Company, shall constitute an acceptance of any Work not performed in accordance with the Contract.
- 51.5 Contractor shall not impede, restrict, or place conditions on Company's ability to conduct inspections.

52. **DISPUTES**

Claims, disputes or other matters in question between the parties to this Contract arising out of or relating to this Contract or the breach thereof shall be submitted for resolution to a Court of competent jurisdiction within the State of New Jersey, venue to be determined in accordance with the rules of jurisdiction and procedure as to such Court then obtaining. The Company and Contractor waive the right to a trial by jury in the event of any litigation to which either is a party, whether or not such litigation is commenced with respect to this Contract and whether or not other parties are also parties hereto.

53. **SUSPENSION OF WORK**

- 53.1 Company shall at all times have the right, without prejudice to any other of its rights or remedies, to temporarily suspend the performance of the Work, in whole or in part, for its convenience by giving Written Notice to Contractor. The Written Notice shall state the extent, effective date, and expected duration of the suspension. Upon receipt of such Written Notice, Contractor shall:
- (a) Stop the suspended Work on the date and to the extent specified in the Written Notice and place no further orders or Subcontracts except as may be (i) required to complete portions of the Work not suspended or (ii) otherwise directed by Company;
  - (b) Promptly suspend, on terms satisfactory to Company, all orders or Subcontracts related to the suspended Work;
  - (c) Take such action as may be necessary, or as Company may direct, to protect the Work in which Company has, or may acquire, an interest;
  - (d) Promptly comply with Company's instructions and continue to perform and fully complete all Work that has not been suspended;
  - (e) Keep Company fully informed of all actions taken or intended to be taken as a result of the suspension and within ten (10) Days of the Written Notice, submit an itemized list of all actions taken or intended to be taken, said list to be updated by Contractor as requested; and
  - (f) Promptly resume and fully complete suspended Work if notified to do so by Company.
- 53.2 After completing the actions described above, Contractor shall promptly submit a suspension Change Request. Contractor shall furnish all information and documentation in the Change Request to substantiate the Contractor's entitlement to compensation for the suspension to Company's full satisfaction. Contractor's suspension claim shall be submitted promptly, but not later than thirty (30) Days from the date of suspension.

- 53.3 As full compensation for such suspension, Contractor shall be reimbursed its actual, necessary, reasonable, and verifiable expenses that may be incurred as a direct result of such suspension. In no event shall Company be liable for unabsorbed overhead, loss of anticipated profit or revenue, or other consequential economic loss due to the suspension.
- 53.4 In the event of suspension, Contractor shall make every effort to reduce or otherwise mitigate any expense or damage to Company. Contractor shall not remove any Work from the Site unless Company so directs in writing.
- 53.5 Contractor shall not be entitled to additional compensation unless Contractor has incurred expenses as a direct result of such suspension. In the event of such suspension, Contractor shall be allowed one (1) Day additional to the time of performance set by the Contract for each Day of the suspension. In no event shall a suspension Change Request be filed in the event of delays covered under Article 30, "Force Majeure and Delays." No compensation or extension of time shall be granted for a suspension if Company exercises its right to suspend the Work due to Contractor's failure to provide Work in accordance with the requirements of the Contract.
- 53.6 Contractor's full compliance with the requirements of this Article 53 shall be a condition for receiving any payment hereunder, and Contractor's failure to comply with these requirements shall constitute a waiver of any claim for suspension.

54. **TERMINATION FOR CONVENIENCE**

- 54.1 Company shall at all times have the right, without prejudice to any of its other rights or remedies, to terminate the Contract, in whole or in part, for its convenience by giving Written Notice to Contractor. The Written Notice shall state the extent and effective date of the termination. On the effective date of termination, Contractor shall:
- (a) Stop the terminated Work on the date and to the extent specified in the Written Notice and place no further orders or Subcontracts except as may be (i) required to complete portions of the Work not terminated or (ii) directed by Company;
  - (b) Promptly terminate, on terms satisfactory to Company, all orders or Subcontracts related to the terminated Work, or, at Company's option, assign those agreements to Company or its designee, or take such other steps as Company may direct;
  - (c) Take such action as may be necessary, or as Company may direct, to protect the Work in which Company has, or may acquire, an interest;
  - (d) Perform, at rates or on terms not to exceed those in the Contract, any incidental or "close-out" work necessary, as directed by Company, to ensure that Company receives the full use and benefit of any Work provided prior to termination, including the provision of any and all information or documentation;
  - (e) Transfer title and possession as directed by Company of all terminated Work either partially or completely performed and complete all Work, if any, that was not terminated, provided, however, that such transfer shall not constitute acceptance of nonconforming Work;
  - (f) Execute and deliver all such papers and take all such steps, including the legal assignment of Contractor's contractual rights, as Company

may request, for the purpose of fully vesting in Company the rights and benefits of Contractor under such obligations or commitments;

- (g) Promptly comply with Company's instructions and continue to perform and fully complete all Work that has not been terminated; and
  - (h) Keep Company fully informed of all actions taken or intended to be taken as a result of the termination and, within ten (10) Days of the Written Notice, submit an itemized list of all actions taken or intended to be taken, said list to be updated by Contractor as requested by Company.
- 54.2 After completing the actions described above, Contractor shall promptly submit a termination related Change Request. Contractor shall furnish all information and documentation requested by Company to substantiate the basis for compensation for the Change Request to Company's full satisfaction. Contractor's termination related Change Request shall be submitted promptly, but not later than thirty (30) Days from the date of termination.
- 54.3 If the Contract is terminated prior to Contractor having performed any Work or placed any orders or Subcontracts, no payment shall be made to Contractor. If the Contract is terminated after Contractor has commenced Work or placed orders or Subcontracts, Contractor shall be reimbursed its actual, necessary, reasonable, and verifiable expenses that may be incurred as a direct result of such termination, which shall be documented in the Change Request. In no event shall Company be liable for unabsorbed overhead, loss of anticipated profit or revenue, loss of any incentive payments, or other consequential economic loss due to the termination.
- 54.4 If the Contract specifies that compensation is to be made on unit price or cost plus basis, Contractor will be compensated at the unit prices or rates specified in the Contract for conforming Work performed. Notwithstanding the above, where Company is billed at an hourly or unit rate for Work under the Contract, Company shall not be liable for time worked that, as a percentage of total anticipated hours to be worked, unreasonably exceeds the percentage of Work completed prior to termination, as determined by Company in its reasonable discretion.
- 54.5 If the Contract specifies that compensation is to be made on a fix-priced or lump sum basis, Contractor's compensation for conforming Work performed shall be determined by calculating the product of (i) the percentage of the conforming Work constituting the total Work to be performed under the Contract and (ii) the Contract Price. Notwithstanding the above, Company shall not be liable for lost profits on Work performed where Contractor would not have made a profit if the entire Contract had been performed. In the event Contractor would have sustained a loss if the entire Contract had been performed, the amount due Contractor shall be reduced to reflect such a loss.
- 54.6 If Company elects, at its option, to accept any Work, or portion thereof, that is defective, incomplete, or otherwise fails to conform to the Contract, Company shall be entitled to take a credit against the Contract Price. Termination shall not affect Contractor's warranty obligations for any Work provided under the Contract. Contractor shall not remove any Work from the Site unless Company so directs in writing.
- 54.7 In the event of termination, Contractor shall make every effort to reduce or otherwise mitigate any expense or damage to Company. Company shall be entitled to a credit for any amounts owed to Contractor for the scrap, salvage,

or resale value of Materials affected by the termination that Company elects not to keep. Any Materials affected by the termination that Company elects to keep shall be provided at cost without payment of profit or sales commission.

- 54.8 The payment, if any, provided under this Article 54 shall be Contractor's total and exclusive compensation, which shall not exceed the Contract Price as adjusted as set forth in this Article 54. Contractor's full compliance with the requirements of this Article 54 shall be a condition for receiving any payment hereunder, and Contractor's failure to comply with these requirements shall constitute a waiver of any compensation due related to the termination.

55. **TERMINATION FOR CAUSE**

- 55.1 Company shall at all times have the right, at its option, to declare Contractor in breach and terminate the Contract for cause, in whole or in part, by Written Notice to Contractor if Contractor:

- (a) Becomes insolvent or makes a general assignment for the benefit of creditors, files or has filed against it a petition in bankruptcy, is adjudged bankrupt, or its affairs are placed in the hands of a receiver, trustee, or assignee for the benefit of creditors;
- (b) Refuses or persistently or repeatedly fails to provide the Work or Materials in a timely manner;
- (c) Refuses or persistently or repeatedly fails to provide enough properly skilled workers, supervisory personnel, or proper Materials;
- (d) Without the prior written consent of Company, replaces or reassigns Key Contractor Personnel without providing a replacement acceptable to Company, in violation of Article 34;
- (e) Neglects or abandons the Work;
- (f) Fails to make prompt payment to Subcontractor(s); in accordance with Section 28.3;
- (g) Fails to comply with Law or the instructions of Company;
- (h) Is unable to perform the Work, fails to provide adequate assurance of future performance, or fails to adhere to the Project Schedule;
- (i) Becomes involved in litigation or labor problems that, in Company's opinion, will delay or adversely affect the Work;
- (j) Refuses or persistently or repeatedly fails to provide the Work in a safe manner;
- (k) Reserved; or
- (l) Materially violates any provision of the Contract.

- 55.2 The Written Notice shall state the extent and effective date of the termination for cause. On the effective date of such termination, Contractor shall promptly perform all steps set forth in Article 56 ("Termination Assistance Services") at Contractor's sole cost and expense.

- 55.3 In the event of termination for cause, Company shall have the right to take possession of and use the Site and all Work, tools, appliances, machinery, and equipment thereon, which shall be provided to Company at cost without payment of any profit or sales commission, notwithstanding that they may belong to or be rented or leased by Contractor, and finish the Work by whatever method it may deem expedient. In such case, Contractor shall not be entitled to receive payment, if any, under the provisions of this Article 55 for said use and possession until the completion of the terminated Work by Company or a contractor subsequently hired to complete said Work. Contractor shall not remove any Work from the Site unless Company so directs in writing.
- 55.4 Company shall also have the right to take possession of any Materials located off-Site under Contractor's possession or control that are unique, specially-designed, or manufactured for use or incorporation in the Work or that are not readily available on the general market without delay.
- 55.5 Company shall also have the right to use any Subcontractor of Contractor with or without assuming their Subcontracts with Contractor and to pay them in accordance with the terms of their Subcontracts with Contractor, or in accordance with such other terms as Company and Subcontractor may agree to, and to deduct an amount equal to such payments from the Contract Price.
- 55.6 If the unpaid balance of the Contract Price exceeds Company's damages due to the termination hereunder, including Company's expense of finishing the Work, such excess shall be paid to Contractor upon Company's completion of the terminated Work. In no event shall Company be liable for unabsorbed overhead, loss of anticipated profit or revenue, or other consequential economic loss incurred by Contractor due to the termination. If Company's damages due to the termination hereunder, including Company's expense of finishing the Work, exceed the unpaid balance of the Contract Price, Contractor shall pay the difference to Company within ten (10) Days of Company's demand therefor.
- 55.7 If Company elects, at its option, to accept any Work, or portion thereof, that is defective, incomplete, or otherwise fails to conform to the Contract, Company shall be entitled to take deduct from the Contract Price an amount equal to the cost of remedying, re-performing, completing or taking such other actions as may be necessary to cause such Work to meet the requirements set forth in the Contract Documents. Termination shall not affect Contractor's warranty obligations for any Work provided under the Contract.
- 55.8 In the event of termination, Contractor shall make every effort to reduce or otherwise mitigate any expense or damage to Company. Company shall be entitled to a credit or reduction to the Contract Price, as determined by Company, for any amounts owed to Contractor for the scrap, salvage, or resale value for Materials affected by the termination that Company elects not to keep. Any Materials affected by the termination that Company elects to keep shall be provided at cost without payment of profit or sales commission.
- 55.9 If, after termination for cause, it is subsequently determined for any reason that the termination was not for cause, such termination shall be deemed to be a termination for convenience and the rights and obligations of the Parties with respect to such termination shall be as set forth in Article 54, "Termination For Convenience."

55.10 The payment, if any, provided under this Article 55 shall be Contractor's total and exclusive compensation, which shall not exceed the Contract Price as adjusted as set forth in this Article 55. No such payment shall be made by Company until Company has completed, or elects not to complete, the Work terminated for cause. Contractor's full compliance with the requirements of this Article 55 shall be a condition for receiving any payment hereunder, and Contractor's failure to comply with these requirements shall constitute a waiver of any claim for termination.

55.11 Contractor may terminate the Contract if, upon advanced written notice and the expiration of a thirty-day (30) cure period, Company fails to pay an undisputed invoice within the time specified hereunder, unless otherwise excused as permitted hereunder. Contractor may terminate if Company becomes insolvent or makes a general assignment for the benefit of creditors, files or has filed against it a petition in bankruptcy, is adjudged bankrupt, or its affairs are placed in the hands of a receiver, trustee, or assignee for the benefit of creditors.

**56. TERMINATION ASSISTANCE SERVICES**

In addition to Contractor's obligations pursuant to Article 54, "Termination for Convenience," and Article 55, "Termination for Cause," Contractor agrees to the following:

56.1 Upon the expiration or termination of this Contract for any reason, Contractor, upon prior Written Notice by Company, shall: (i) cooperate with Company in effecting the orderly transfer of the Work to a third party or the resumption of the Work by Company upon Company's request; (ii) continue to perform the portions of the Work requested by Company; and (iii) perform the Work requested by Company described in a corresponding Scope of Work or Purchase Order (such activities collectively referred to as the "Termination Assistance Services"). The Termination Assistance Services shall be provided for a period of between one (1) and twelve (12) months ("Termination Assistance Period"), as stated specifically in Company's Written Notice, after the effective date of the expiration or termination of this Contract or any Scope of Work for any reason. Company may extend such Termination Assistance Period for an additional period of between one (1) and twelve (12) months thereafter upon Written Notice. Any Termination Assistance Services provided in connection with the expiration or termination of this Contract for any reason shall be provided as part of the Work and subject to the terms and conditions of the Contract Documents.

56.2 During the Termination Assistance Period, Contractor agrees to use commercially reasonable efforts for to accomplish those items, tasks and services under its direct control, to cooperate fully with Company and third parties, and to take all actions reasonably requested by Company or necessary to accomplish the smooth and complete transition of responsibility for the Work from Contractor to Company, or to any other contractor designated by Company, with no material interruption of or adverse impact on Company. Such Termination Assistance Services may include, without limitation, deconstruction, demolition, dismantling, disposal, consolidation, and/or transfer of equipment provided by Company to Contractor for provision of the Work as well as such documentation and other information as is sufficient to enable Company, or another reasonably knowledgeable party, to fully support the Work on a going-forward basis.

56.3 Within fifteen (15) Days of any request by Company for Termination Assistance Services, Contractor hereby agrees to submit to Company for its review and approval (if acceptable to Company), a written plan for

Termination Assistance Services ("Termination Assistance Plan"). Contractor hereby agrees to any modifications to the Termination Assistance Plan reasonably requested by Company. Contractor hereby agrees to provide the Termination Assistance Services in accordance with the Termination Assistance Plan, as approved by Company. Contractor hereby further agrees to ensure that the Termination Assistance Plan:

- (a) Includes a description of any out-of-scope services, tasks, and responsibilities as necessary for an orderly transfer of the Work being terminated;
  - (b) Specifies key Contractor employees and other resources that will be used to perform Termination Assistance Services;
  - (c) Provides the training, know-how, information, and documentation (including, without limitation, those relating to workflows), reasonably required for Company to understand the tools, processes, and workflows needed to perform or provide the Work; and
  - (d) Sets out a mutually acceptable timetable and process for performing Termination Assistance Services that will enable Company to transition the Work as quickly as reasonably possible without materially impacting Contractor's ability to continue to meet the performance specifications provided in the Scope of Work during the Termination Assistance Period.
- 56.4 After the expiration of the Termination Assistance Period, Contractor agrees to: (i) answer questions from Company regarding the terminated, insourced, or resourced Work on an as-needed basis upon reasonable notice to Contractor at Contractor's then-current standard billing rates; and (ii) promptly deliver to Company any remaining Company-owned reports or documentation relating to the terminated, insourced, or resourced Work still in Contractor's possession.
- 56.5 Upon the termination or expiration of any Scope of Work, Contractor shall immediately provide to Company all final or in-process Work, including any process flows, in the possession of Contractor or its Subcontractors and all licenses granted Contractor hereunder shall terminate as of the effective date of such termination or expiration, as the case may be, with respect to such Scope of Work.

#### 57. **RETURN OF COMPANY DATA**

Upon termination or expiration of the Contract, or upon Written Notice from Company at any time, Contractor shall immediately (and in any event, no later than five (5) Business Days after the effective date of termination or expiration, or receipt of Written Notice, as applicable) return to Company all Company Data including any and all back-up data. For avoidance of doubt, Company's rights under this Article 57 shall be absolute and unqualified such that Company's access and right to possess all data and information held by Contractor on its behalf remains unfettered, notwithstanding any disputes that may exist between the Parties at the time of Company's Written Notice or, as applicable, upon termination or expiration of the Contract. In its sole discretion, Company may direct Contractor by Written Notice to destroy the Company Data using methods consistent with the requirements of Section 36.4h) in lieu of delivering Company Data to Company, in accordance with instructions given by Company at that time. Contractor shall certify in writing to Company that all Company Data in its possession or under its control has been returned to Company or destroyed in accordance with this Article 57 within forty-five (45) Days following the termination or expiration of the Contract.



**58. ESCROW OF BID DOCUMENTS**

At Company's request, copies of all Contractor's bid documents, including all data, information, documents, references, calculations, unit costs, and backup sheets, shall be preserved and placed in escrow with such third party as may be designated by Company. In the event of any disputes between Company and Contractor, said bid documents shall be released to Company upon written request to said third party. Company shall have the right to require that Contractor make the representation, supported by affidavit, that all such bid documentation has, in fact, been preserved and submitted to escrow as provided above. Contractor's failure to preserve, submit, and provide such bid documentation, at such request, as provided herein, shall constitute a default and material breach of the Contract.

**59. REQUIRED FILINGS**

Contractor agrees that all filings required to be made with any governmental body in connection with the performance of the Work have been made or shall have been made in sufficient time to permit the performance of the Work at the times agreed. Contractor agrees to make all required filings, which may be required from time to time by any governmental body having jurisdiction to ensure that Company lawfully receives the Work set forth in the Contract pursuant to the rates, terms, and conditions specified in this Contract. If Contractor fails to obtain or modify such filings necessary to meet its obligations under the Contract, Company has, in such instance, the right to terminate the Contract for cause or, if Company chooses, for convenience.

**60. ADVERTISING AND USE OF COMPANY FACILITIES**

Contractor and its Subcontractors, employees, and agents shall not use Company's Site, facilities, name, photographs, logo, trademarks, or other identifying characteristics or those of any of Company's subsidiaries or Affiliates without Company's prior written approval. Contractor shall not issue any press releases, hold press conferences, or make or issue any public communications of any kind regarding the Contract, its execution or delivery thereof, or the Work being provided hereunder, except as may be required for the execution of the Work or as may be required by Law, without the prior written consent of Company.

**61. NATURE OF COMPANY'S RIGHTS**

The rights and remedies reserved by Company in the Contract shall be cumulative and in addition to any other rights or remedies to which Company may be entitled, and the exercise of any such rights or remedies shall not exclude the exercise of any other rights or remedies to which Company may be entitled. Neither the exercise of Company's rights or remedies, nor the failure to exercise such rights or remedies, shall, in any manner, create any obligation to any third party.

**62. NO WAIVER**

- 62.1 Company's failure to insist in any one or more instances upon strict performance of any provision of this Contract, or failure or delay to take advantage of any of its rights or remedies hereunder, or failure to notify Contractor of any breach, violation, or default, shall not be construed as a waiver by Company of any such performance, provision, right, breach, violation, or default, either then or for the future. Any waiver shall be effective only if in writing and signed by Company's authorized representative and only with respect to the particular case expressly covered therein.
- 62.2 If Company receives, accepts, or makes full or partial payment for any Work that is defective, unsatisfactory, incomplete, delivered late, not performed on time, or that otherwise fails to conform to the provisions of the Contract

Documents, Company's receipt, acceptance, or payment thereof shall be deemed to be under protest and without prejudice to any of Company's rights or remedies.

63. **GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL**

63.1 The Contract shall be governed by, and construed in accordance with, the laws of the State of New Jersey, without reference to the principles of conflicts of laws. Any legal claim, suit, proceeding, or action brought against Company shall be brought in New Jersey state courts or, if the claim, suit, proceeding, or action is to be brought in federal court, in the United States District Court, District of New Jersey. Each of the Parties hereby irrevocably consents to the jurisdiction of any of the aforementioned courts in any such action or proceeding and service of process in any such action or proceeding may be accomplished by the mailing of copies thereof to it by registered or certified mail, postage prepaid, return receipt requested or by recognized overnight delivery service to each of the Parties at its address set forth herein. Each of the Parties hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any such claim, suit, proceeding, or action in such jurisdiction. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY SUIT, ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THIS CONTRACT OR ANY MATTER ARISING HEREUNDER.

63.2 Contractual Liability Act. Notwithstanding any provision in this Contract or in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to the contrary, the parties hereto agree that any and all claims made by the Contractor against the Company for damages, including, but not limited to costs and expenses, shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act.

63.3 Tort Claims Act. Notwithstanding any provision in this Contractor to the contrary, the parties hereto agree that any and all claim made by the Contractor against the Company shall be governed New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq....

64. **LIMITATION OF LIABILITY**

64.1 COMPANY'S TOTAL LIABILITY TO CONTRACTOR FOR ALL CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS, OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE PERFORMANCE OR BREACH OF THIS CONTRACT SHALL, UNDER NO CIRCUMSTANCES, EXCEED THE CONTRACT PRICE, AS MAY BE AMENDED BY AGREED UPON PRICE FOR EXTRA WORK AUTHORIZED BY WRITTEN CHANGE ORDER. COMPANY, COMPANY'S AFFILIATES AND THEIR RESPECTIVE REPRESENTATIVES, SHAREHOLDERS, OFFICERS, MANAGERS, DIRECTORS, EMPLOYEES AND SUBCONTRACTORS SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSSES, DAMAGES, COSTS, OR EXPENSES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, LOST OR REDUCED PROFITS, REVENUES, EFFICIENCY, PRODUCTIVITY, BONDING CAPACITY, OR BUSINESS OPPORTUNITIES, OR INCREASED OR EXTENDED OVERHEAD, OPERATING, MAINTENANCE, OR DEPRECIATION COSTS AND EXPENSES).

- 64.2 TO THE EXTENT THAT THIS CONTRACT INCLUDES LIQUIDATED DAMAGES, THE LIMITATION OF LIABILITY SHALL NOT APPLY TO THE LIQUIDATED DAMAGES SPECIFIED THEREIN AND THE PAYMENT OF LIQUIDATED DAMAGES SHALL NOT EXCUSE CONTRACTOR'S FAILURE TO PERFORM OR BREACH OF THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT: (i) COMPANY WILL SUFFER SIGNIFICANT DAMAGES AND SUBSTANTIAL FINANCIAL LOSS IF THE SCHEDULE GUARANTEES OR PERFORMANCE GUARANTEES, TO THE EXTENT APPLICABLE, ARE NOT MET AND SUCH DAMAGES AND FINANCIAL LOSSES WOULD BE VERY DIFFICULT TO CALCULATE; AND (ii) THE LIQUIDATED DAMAGES SPECIFIED IN THE CONTRACT ARE FAIR AND REASONABLE, IN LIEU OF ACTUAL DAMAGES, ARE NOT PENALTIES, AND REFLECT THE PARTIES' ASSESSMENT AND ESTIMATE OF THE DAMAGES AND FINANCIAL LOSSES REFERRED TO ABOVE. THE LIQUIDATED DAMAGES SPECIFIED HEREIN ARE COMPANY'S EXCLUSIVE FINANCIAL REMEDY FOR FAILURE TO ACHIEVE SCHEDULE OR PERFORMANCE GUARANTEES BUT DO NOT PREVENT COMPANY FROM EXERCISING ITS OTHER RIGHTS AND REMEDIES UNDER THE CONTRACT INCLUDING COMPANY'S RIGHTS IN THE EVENT OF TERMINATION.
- 64.3 RESERVED.
- 64.4 CONTRACTOR'S TOTAL LIABILITY TO THE COMPANY FOR ALL CLAIMS OR SUITS OF ANY KIND, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, OR OTHERWISE, FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES OF ANY KIND WHATSOEVER ARISING OUT OF, RESULTING FROM, OR RELATED TO THE PERFORMANCE OR BREACH OF THIS CONTRACT SHALL NOT EXCEED THE HIGHER OF (1) TWO (2) TIMES THE CONTRACT PRICE, OR (2), AVAILABLE INSURANCE PROCEEDS. CONTRACTOR, CONTRACTOR'S AFFILIATES, AND THEIR RESPECTIVE REPRESENTATIVES, SHAREHOLDERS, OFFICERS, MANAGERS, DIRECTORS, AND EMPLOYEES SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSSES, DAMAGES, COSTS, OR EXPENSES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, LOST OR REDUCED PROFITS, REVENUES, EFFICIENCY, PRODUCTIVITY, BONDING CAPACITY, OR BUSINESS OPPORTUNITIES, OR INCREASED OR EXTENDED OVERHEAD, OPERATING, MAINTENANCE, OR DEPRECIATION COSTS AND EXPENSES).
- 64.5 NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LIMITATION OF CONTRACTOR'S LIABILITY AND WAIVER OF CONSEQUENTIAL DAMAGES CONTAINED IN ARTICLE 64.4, SHALL IN NO EVENT, EFFECT OR APPLY TO (I) CONTRACTOR'S OBLIGATIONS WITH REGARD TO INDEMNIFICATION OR DEFENSE FOR THIRD PARTY CLAIMS, PURSUANT TO ARTICLE 12, "INDEMNIFICATION"; (II) CONTRACTOR'S FAILURE TO PROCURE AND MAINTAIN INSURANCE, PURSUANT TO ARTICLE 13, "INSURANCE"; (III) TO CLAIMS BASED UPON, RELATED TO OR CONNECTED WITH CONTRACTOR'S (A) WILLFUL MISCONDUCT OR INTENTIONAL WRONGDOING OR (B) INFRINGEMENT OF COPYRIGHT, PATENT, OR OTHER PROPRIETARY INTERESTS; OR (IV) CONTRACTOR'S BREACH OF CONFIDENTIALITY OBLIGATION OWED TO THE COMPANY.

65. **ASSIGNMENTS**

Contractor shall not assign its rights or obligations under this Contract or any part thereof to any other person, partnership, firm, corporation, or other entity without the prior written consent of Company. For purposes of this provision, an assignment shall include a change in control, a sale of all or substantially all of its assets, and/or a merger or by operation of Law. Any purported assignment or delegation in violation of this Contract shall be null and

void. Company has the unrestricted right to assign any or all of its rights, remedies, or obligations under this Contract.

66. **SURVIVAL**

All provisions providing for limitation of or protection against loss or liability of Company, including all licenses, warranties, protections, and indemnities, shall survive termination, suspension, cancellation, or expiration of the Contract.

67. **NOTICES**

67.1 Unless specifically directed otherwise by provisions within this Contract, all notices required shall be in writing and deemed to be validly given if delivered by registered or certified first class mail, postage prepaid, return receipt requested, or delivered by recognized overnight delivery service or by hand to the following addresses:

(a) To Company:

New Jersey Economic Development Authority  
Attn: Project Director  
36 West State Street, P.O. Box 990, Trenton New Jersey 08625

(b) Written Notices to Contractor will be provided to the address set forth in the Contract Signature Document or Purchase Order(s), including any electronic mail address provided by Contractor.

67.2 Notices delivered by hand, by overnight delivery service or by electronic mail shall be effective upon the date of delivery if on a Business Day or, if not on a Business Day, on the next succeeding Business Day. Notices sent by registered or certified mail as aforesaid shall be effective five (5) Days after being deposited in the United States mail.

68. **NEGOTIATED TERMS**

The Parties agree that the terms and conditions of this Contract are the result of negotiations between the Parties and that this Contract is not to be construed in favor of, or against, any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Contract.

69. **COUNTERPARTS**

The Parties may execute this Contract in one or more counterparts, each of which is an original, and all of which taken together constitute one and the same instrument.

70. **HEADINGS**

Any table of contents, section, article, attachment, and Exhibit titles and headings are inserted for convenience only and shall not be used for the purposes of interpreting this Contract.

71. **RULES OF CONSTRUCTION**

71.1 Without Limitation. The words "include" and "including" are not words of limitation and in each instance are deemed to be followed immediately by the words "but not limited to."

- 71.2 Reference to Agreement. The words "herein," "hereof," or "hereunder" or similar terms refer to this Contract as a whole, and, unless otherwise stated, not to any specific section or article.
- 71.3 Plurals; Gender. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Contract may be used interchangeably in their singular or plural form. Whenever the context may dictate, any pronouns used herein includes the corresponding masculine, feminine, or neutral forms, and the singular form of nouns and pronouns includes the plural, and vice versa.

72. **ENTIRE AGREEMENT**

The Contract Documents constitute the full, complete, and only agreement between the Parties hereto with respect to the foregoing Work. This Contract supersedes any course of performance, course of dealings, usage of trade, previous agreements, representations, and understandings, either oral or written. No terms, conditions, agreements, representations, understandings, course of performance, course of dealing, or usage of trade purporting to modify, vary, supplement, explain, or amend any provisions of this Contract shall be effective unless in writing, signed by a Company representative authorized to amend this Contract. If any part of this Contract is determined to be judicially unenforceable for any reason, the remainder of this Contract shall remain in full force and effect.

73. **MISCELLANEOUS<sup>5</sup>**

- 73.1 Pursuant to N.J.S.A. 2A:30A-1, et seq., the terms of this Contract are subject to the New Jersey Prompt Pay Act. This includes the provisions of the Act that address subcontracting, subcontractors and subcontracts. The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.
- 73.2 Pursuant to N.J.S.A. 54:49-19, and notwithstanding the provision of another 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 good 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 deduction which might be attributable to the taxpayer partner or shareholder subsection of 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 N.J.S.A. 54:49-19. No request for conference, protest or subsequent

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<sup>5</sup> Sections 73.1-73.3 were moved from 35.4, 35.5 and-35.7

appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

- 73.3 Debarment Liability. The Contractor acknowledges that it shall be rendered liable to debarment in the public interest, pursuant to procedures established by Executive Order No. 34 (1976), and updated by Executive Order No. 189 (1988), and pursuant to N.J.A.C. 19:30-2, for violating any of the following provisions:
- (a) No Contractor 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 or special Authority officer or employee, as defined by N.J.S.A. 52:13D-13(b) and (e), with which such Contractor 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-13(i), of any such officer or employee, or any 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-13(g).
  - (b) The solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by any Authority officer or employee or special Authority officer or employee from any Authority Contractor shall be reported in writing forthwith by the Vendor to the State Ethics Commission.
  - (c) No Contractor 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 Contractor to, any Authority officer or employee or special Authority officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationships subject to this subsection 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 or special 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 Contractor shall influence, or attempt to influence or cause to be influenced, any Authority officer or employee or special Authority officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
  - (e) No Contractor shall cause or influence, or attempt to cause or influence, any Authority officer or employee or special Authority officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the Contractor or any other person."

#### 74. **POLITICAL CAMPAIGN CONTRIBUTIONS**

For the purpose of this Article 74, the following shall be defined as follows:

- (a) 'Contribution' means a contribution reportable as a recipient under 'The New Jersey Campaign Contributions and Expenditures Reporting Act' P.L. 1973, c. 83 (C.10:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq., a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300 during a reporting period are deemed 'reportable' under these laws.
- (b) 'Business Entity' means:
  - (i) a for-profit entity as follows:
    - (A) in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of the corporation;
    - (B) in the case of a general partnership: the partnership and any partner;
    - (C) in the case of a limited partnership: the limited partnership and any partner;
    - (D) in the case of a professional corporation: the professional corporation any shareholder or officer;
    - (E) in the case of a limited liability company: the limited liability company and any member;
    - (F) in the case of a limited liability partnership: the limited liability partnership and any partner;
    - (G) in the case of a sole proprietorship: the proprietor; and
    - (H) in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;
  - (ii) any subsidiary directly or indirectly controlled by the business entity;
  - (iii) any political organization organized under section 527 of the Internal Revenue Code is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and
  - (iv) with respect to an individual who is included within the definition of business entity the individual's spouse or civil union partner, and any child residing with the individual, provided, however, that, this Order shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the

contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) ('Chapter 51'). PL 2005, c.51 — means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).

- 74.1 The terms, restrictions, requirements and prohibitions set forth in P.L. 2005, c. 51 are incorporated into this Contract by reference as material terms of this Agreement with the same force and effect as if P.L. 2005, c. 51 were stated herein its entirety. Compliance with P.L. 2005, c. 51 by the Contractor shall be a material term of this Contract.
- 74.2 The Contractor hereby certifies to the Company that commencing on and after October 15, 2004, the Contractor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between the Contractor and the Company pursuant to P.L. 2005, c. 51. The Contractor hereby further certifies to the Company that any and all certifications and disclosures delivered to the Company by Contractor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Contract and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the Company shall have the right to declare this Contract to be in default.
- 74.3 The Contractor hereby covenants that the Contractor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any contributions of money, or pledge of a contribution, including in-kind contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Paragraph 13.4 are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of P.L. 2005, c. 51, the Company shall have the right to declare this Agreement to be in default.
- 74.4 In addition to any other default specified in the Contract, the Company shall have the right to declare a default under this Contract if: (i) the Contractor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) the Contractor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) the Contractor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Consultant (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to



any State or county party committee; (v) the Contractor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages or employs 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 Contractor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly would violate the restrictions of P.L. 2005, c. 51; (vi) the Contractor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) the Contractor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages in any exchange of Contributions to circumvent the intent of P.L. 2005, c. 51; (viii) the Contractor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly or indirectly through or by any other person or means, does any act which would violate the restrictions of P.L. 2005, c. 51; or (ix) any material misrepresentation exists in any Political Campaign Contribution Certification and Disclosure which was delivered by Contractor to the Company in connection with this Contract.

- 74.5 The Contractor hereby acknowledges and agrees that pursuant to P.L. 2005, c. 51, the Contractor shall have a continuing obligation to report to the Office of the State Treasurer, Political Campaign Contribution Review Unit of any Contributions it makes during the term of this Contract. If after the effective date of this Contract and before the entire Contract Price is paid by the Company, any Contribution is made by the Contractor and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of P.L. 2005, c. 51, the Company shall have the right to declare this Contract to be in default.

**[End of General Terms and Conditions]**

**EXHIBIT 14.1  
RESERVED**

DRAFT

**EXHIBIT 14.2  
RESERVED**

DRAFT

**EXHIBIT 14.3(a)  
RESERVED**

DRAFT

**EXHIBIT 14.3(b)  
RESERVED**

DRAFT

**EXHIBIT 21.9  
SPECIFIC SCOPE OF SERVICES WITH RESPECT TO ADMINISTERING  
OWNER/CONSTRUCTION MANAGER AGREEMENT**

The Owner/Construction Manager Agreement consists of A.I.A. Document A133™-2019 and A201®-2017, together with the Rider, Rider "D", Supplementary Conditions, and other Exhibits and attachments (together the "**Owner/Construction Manager Agreement**").

The Contractor shall perform the role and discharge all of the responsibilities of "Engineer" under the Owner/Construction Manager Agreement, and all references to "Engineer" in those documents is a reference to the Contractor.

The Contractor shall provide its services under this Exhibit in accordance with the professional skill and care ordinarily provided by engineers practicing in the same or similar circumstances. The Contractor shall perform these services as expeditiously as is consistent with such professional skill and care and the orderly progress of the project.

The following provisions sets forth specific obligations of the Contractor with respect to administering the Owner/Construction Manager Agreement and generally follow the numbering and headings from A.I.A. Document A133™-2019. Capitalized terms in the following provisions shall have the meaning given in the Owner/Construction Manager Agreement.

**1. INITIAL INFORMATION**

Intentionally omitted

**2. GENERAL PROVISIONS**

**2.1 The Contract Documents**

Engineer shall notify Owner if it becomes aware of any conflict, ambiguity or inconsistency between the provisions of the Contract Documents, and its assessment of which provision should prevail in light of the application of the order of precedence rules .

Engineer shall review, and advise Owner in relation to, any conflict, ambiguity or inconsistency between the provisions of the Contract Documents that is identified by Owner or Construction Manager.

**2.2 Relationship of the Parties**

Engineer shall cooperate with Construction Manager in furthering the interests of Owner. Engineer shall work with Owner to promote harmony and cooperation among Owner, Engineer, Construction Manager and other persons or entities employed by Owner for the Project.

Engineer shall coordinate its services with Construction Manager, . Engineer acknowledges that Owner has intentionally duplicated some services from Construction Manager and Engineer for independent validation and such duplication does not relieve Engineer of its obligation to provide these services to the extent necessary for the successful completion of this project.

If Owner determines to use Construction Manager for Phase Two, Engineer shall advise Owner in relation to its negotiations with Construction Manager for the price of the Preconstruction Phase services for Phase Two.

Engineer acknowledges this project is being constructed next to an operating nuclear generating power station run by PSEG Nuclear; certain additional safety and compliance precautions and processes may need to be put into place during the Preconstruction and Construction Phases to ensure compliance with safety regulations and Nuclear Regulatory Commission (NRC) regulations and standards. If requested by Construction Manager or Owner, Engineer shall advise Owner, and engage with representatives from

Construction Manager, Owner and PSEG Nuclear, through Owner, in regards to design or construction plans.

2.3 **General Conditions**

Intentionally omitted

3. **CONSTRUCTION MANAGER'S RESPONSIBILITIES**

Engineer will advise Owner, and consult with Owner and Construction Manager, in relation to whether the Construction Phase should commence prior to completion of the Preconstruction Phase, so that both phases will proceed concurrently.

3.1 **Preconstruction Phase**

3.1.1 **Extent of Responsibility**

Engineer is responsible for ensuring that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

Engineer shall review, and advise Owner in relation to, any report from Construction Manager that any portions of the Drawings and Specifications do not conform with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

3.1.2 Engineer shall review, and advise Owner in relation to, any evaluation and recommendations from Construction Manager concerning Owner's program, schedule and budget requirements, each in terms of the other.

3.1.3 **Consultation**

3.1.3.1 Engineer shall schedule coordination and design meetings with Owner and advise Owner which meetings Construction Manager should attend. In addition, Engineer shall attend meetings scheduled by Construction Manager with Construction Manager and Owner to discuss such matters as design, procedures, progress, coordination, and scheduling of the Work.

3.1.3.2 Engineer shall review, and advise Owner in relation to, any advice from Construction Manager on proposed site use and improvements, selection of materials, building systems and equipment. Engineer shall review, and advise Owner in relation to, any recommendations from Construction Manager on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. Engineer shall consult with Construction Manager regarding, and advise Owner in relation to, professional services to be provided by Construction Manager during the Construction Phase.

3.1.3.3 Engineer shall work with Construction Manager and Owner in establishing building information modeling or alternate methods approved by Owner and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data

3.1.4 **Project Schedule**

Engineer shall review, and advise Owner in relation to, the initial Project schedule prepared by Construction Manager and any updates thereto. If Project schedule updates indicate that previously approved schedules may not be met and Construction Manager makes recommendations, provide advice to Owner in relation thereto.

Engineer shall approve, such approval not to be unreasonably withheld or delayed, that portion of the Project schedule relating to the performance of the Engineer's services.

Engineer shall cooperate with Construction Manager and Owner so that the Project schedule coordinates and integrates Construction Manager's services, the Engineer's services, other Owner consultants' services, and Owner's responsibilities; and identifies items that affect the Project's timely completion. .

Without limiting the generality of its responsibility to review the Project schedule, Engineer shall review the Project schedule to ensure that it includes the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

### 3.1.5 **Phased Construction**

Engineer shall consult with Construction Manager, to enable Construction Manager to provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction, taking into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. Engineer shall review, and advise Owner in relation to, any such recommendations from Construction Manager.

Engineer shall advise Owner with respect to breaking down design and construction of Phase One into three or more work packages including but not limited to:

- Earthworks;
- Dredging; and
- Wharf and Other Port Improvements.

Engineer shall, upon request from Owner, advise NJEDA with respect to the design implications of any proposal to remove earthworks package of Phase One from the scope of the Construction Manager's work.

Engineer shall advise Owner, and consult with Construction Manager and Owner, with respect to whether portions of Phase One or Phase Two should be isolated and paid through an allowance as compared to a Guaranteed Maximum Price.

After a significant portion of the Preconstruction Phase services are completed, Engineer shall advise Owner, and shall work with Owner and Construction Manager, in relation to developing appropriate work packages and a comprehensive development budget, which Owner will use to seek State and NJEDA Board approval to proceed and secure financing.

Engineer shall review, and advise Owner in relation to:

- (1) any advice from Construction Manager on the possible selection of construction contracts for the various phases of the work in accordance with the expedited design and construction schedule;
- (2) any detailed CPM construction schedule submitted by Construction Manager for the various phases of the works which is to include site work, demolition and related remedial activities (if required).
- (3) any recommendations from Construction Manager for the procurement of materials and equipment requiring a long lead time, and coordinate such in accordance with the accelerated design and construction schedule.
- (4) any recommendations from Construction Manager to modify contract work packages to improve completeness or clarity



**3.1.6 Cost Estimates**

3.1.6.1 Engineer shall review, and advise Owner in relation to, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques prepared by Construction Manager based on the preliminary design and other design prepared by Engineer. Engineer shall review, and advise Owner in relation to, any alternative materials and systems suggested by Construction Manager and any cost evaluation of those alternative materials and system provided by Construction Manager.

3.1.6.2 As Engineer progresses with the preparation of the Schematic Design, Design Development and Construction Documents, Engineer will consult with Construction Manager and Owner to agree appropriate intervals for Construction Manager to prepare and update, an estimate of the Cost of the Work with increasing detail and refinement. Engineer shall review, and advise Owner in relation to, each such estimate of the Cost of the Work prepared by Construction Manager. Engineer shall review, and advise Owner in relation to, any notification from Construction Manager that the estimate of the Cost of the Work exceeds the latest approved Project budget and any associated recommendations from Construction Manager for corrective action.

3.1.6.3 For each phase of design and cost estimates and as part of reviewing each cost estimate prepared by Construction Manager:

(i) Engineer shall develop an independent cost estimate, which will be reconciled with the corresponding estimates prepared by Construction Manager; and

(ii) Engineer shall meet with Construction Manager and Owner after each submission to reconcile the estimates.

3.1.6.4 Engineer shall work with Construction Manager and Owner to perform cost benefit analysis for a variety of items to be agreed including, but not limited to: wharf piles, pile caps, concrete deck, scour measures, fenders and operating cost scenarios.

3.1.7 As Engineer progresses with the preparation of the Schematic Design, Design Development and Construction Documents, Engineer will consult Construction Manager with respect to constructability and schedules and shall review, and advise Owner in relation to, any recommendations from Construction Manager regarding constructability and schedules as well as material and equipment selections and current construction market conditions.

3.1.8 Engineer shall review, and advise Owner in relation to, any recommendations and information provided by Construction Manager regarding equipment, materials, services, and temporary Project facilities.

3.1.10 Engineer shall review, and advise Owner in relation to, Construction Manager's staffing plan.

**3.1.11 Subcontractors and Suppliers**

3.1.11.1 Intentionally omitted

3.1.11.2 Engineer shall provide support to Construction Manager as it develops bidders' interest in the Project.

3.1.11.3 Article 9 will apply with respect to the issue of bid packages during the Preconstruction Phase.

**3.1.12 Procurement**

Engineer shall review, and advise Owner in relation to, the Construction Manager's procurement schedule for items that must be ordered in advance of construction.

**3.1.13 Compliance with Laws**

Engineer shall notify Owner if Engineer becomes aware that Construction Manager has failed or is failing to comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under the Owner/Construction Manager Agreement.

**3.1.14 Other Preconstruction Services**

Engineer acknowledged that the Preconstruction Phase services to be provided by Construction Manager include those described in Exhibit B (RFP) to the Owner/Construction Manager Agreement.

**3.1.15 Preconstruction Control Schedule**

Engineer shall establish, in conjunction with Owner and Construction Manager a Preconstruction control schedule as early in the Preconstruction Phase(s) as possible. The control schedule shall identify individual responsibilities and required activities for all involved parties and shall be tracked in order to assure that the established milestone dates (especially as related to design issues) are met. The control schedule shall be generated, maintained and closely monitored by Construction Manager and updated on a bi-weekly basis. The schedule shall be presented in a format that is acceptable to Owner. Engineer shall review, and advise to Owner in relation to, any updates to the control schedule.

**3.1.16 Pre-Construction Progress Reports**

Engineer shall review, and advise Owner in relation to, the monthly Preconstruction progress reports provided by Construction Manager which shall include current and anticipated project progress. Engineer shall review, and advise Owner in relation to, the Construction Manager's proposal regarding the format and minimum content of the progress reports in advance of the first report.

**3.1.17 Value Engineering / Constructability Services**

Engineer shall review, and advise Owner in relation to, all value engineering and constructability services provided by Construction Manager, including with respect to (i) recommendations from Construction Manager for alternative solutions whenever design details/materials affect construction feasibility, cost or scheduling; and (ii) cost evaluations for such alternatives. Engineer shall review, and advise Owner in relation to, information, estimates and schemes provided by Construction Manager, regarding construction phasing to minimize the disruption to nearby facility (Hope Creek Nuclear Power Plant) operation during construction.

**3.2 Guaranteed Maximum Price Proposal and Contract Time**

3.2.1 Engineer shall review, and advise Owner in relation to, any Guaranteed Maximum Price proposed by Construction Manager.

3.2.2 Intentionally omitted

3.2.3 Engineer shall review, and advise Owner in relation to, the written statement submitted by Construction Manager as the basis of its proposed Guaranteed Maximum Price.

3.2.4 Intentionally omitted

3.2.5 Engineer shall meet with Construction Manager and Owner to review the Guaranteed Maximum Price proposal. Engineer shall notify Owner and Construction Manager if it discovers any inconsistencies or inaccuracies in the information presented by Construction Manager. Engineer shall review, and advise Owner in relation to, any adjustments to the Guaranteed Maximum Price proposal, its basis or both.

- 3.2.6 Upon Owner's acceptance of Construction Manager's Guaranteed Maximum Price proposal, Engineer shall review, and advise Owner in relation to, the incorporation of the Guaranteed Maximum Price proposal and its basis in the Guaranteed Maximum Price Amendment.
- 3.2.7 Engineer shall review, and advise Owner in relation to, any request from Construction Manager to incur costs as part of the Cost of the Work prior execution of the Guaranteed Maximum Price Amendment.
- 3.2.8 Engineer shall revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. Such revised Drawings and Specifications shall be furnished to Construction Manager in accordance with schedules agreed to by Owner, Engineer and Construction Manager. Engineer shall review, and advise Owner in relation to, any notice from Construction Manager regarding any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications. s.

3.2.9 Intentionally omitted

### 3.3 **Construction Phase**

#### 3.3.1 **General**

Intentionally omitted

#### 3.3.2 **Administration**

3.3.2.1 Engineer shall attend meetings scheduled by Construction Manager to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. Engineer shall promptly review and provide comments on minutes of the meetings provided by Construction Manager.

3.3.2.2 Engineer shall review, and advise Owner in relation to, the construction schedule and the submittal schedule submitted by Construction Manager upon execution of the Guaranteed Maximum Price Amendment.

#### 3.3.2.3 **Monthly Reports**

Engineer shall review, and advise Owner in relation to, written progress reports prepared by Construction Manager, showing percentages of completion and other information required by the Owner.

Engineer shall review, and advise Owner in relation to, other reports prepared by Construction Manager, including, but not limited to monthly reports relating to: purchasing status, Request for Information (RFI) log, schedule status, manpower status, financial status/cost reports, problem status, quality control, safety and progress photographs.

#### 3.3.2.4 **Daily Logs**

Engineer shall regularly, and in any case upon Owner request, review, and advise Owner in relation to, the Construction Manager's daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

#### 3.3.2.5 **Cost Control**

Engineer shall review, and advise Owner in relation to, the Construction Manager's system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Engineer shall review, and advise Owner in relation to,

and variances between actual and estimated costs reported by Construction Manager and shall review monthly reports to ensure such information is contained within those reports.

#### 3.4 **Construction Control Schedule**

Engineer shall consult with Owner and Construction Manager, for the purposes of Construction Manager developing a construction control schedule as early in the Construction Phase(s) as possible. The schedule should be prepared in a format that is acceptable to Owner.

It is understood that the control schedule shall be similar to the preconstruction control schedule prepared during the Preconstruction Phase(s). The control schedule shall identify individual responsibilities and required activities for all involved parties and shall be tracked to assure that the established milestone dates will be met.

Engineer shall closely monitor the control schedule (which should be updated weekly by Construction Manager) and shall review, and advise to Owner in relation to, any updates to the control schedule. If work falls behind schedule, Engineer shall review, and advise Owner in relation to, any plan developed by Construction Manager to recover/maintain the schedule.

#### 3.5 **Hazardous Materials**

Engineer shall consult with Owner in identifying the names and qualifications of persons or entities who may perform tests verifying the presence or absence of hazardous materials or substances or who may perform the task of removal or safe containment of such material or substance. Engineer will coordinate with any Licensed Site Remediation Professional engaged by Owner or Engineer if and when required as it relates to management of environmental concerns and export of hazardous materials or substances from the project site.

#### 3.6 **Shop Drawings, RFIs, Sketches and field Notices**

Engineer shall review and, if acceptable, approve all shop drawings, Request for Information (RFIs), sketches, field notices submitted by Construction Manager.

#### 3.7 **As-Built Plans and Record Drawings**

Engineer shall review, and advise Owner in relation to, markups of changes and as-built plans provided by Construction Manager reflecting the final condition of the works and shall prepare and submit to Owner all project Record Drawings.

#### 3.8 **Change Orders**

Engineer shall review, and advise Owner in relation to, all proposed Change Orders from Construction Manager.

#### 3.9 **Warranties**

Engineer shall review all warranty information provided by Construction Manager for all materials supplied for the project and advise Owner whether such warranties are acceptable and should be approved, noting Owner is requesting Construction Manager to secure the maximum warranties and guarantees which are available in today's market.

#### 3.10 **Commissioning**

Engineer shall engage an Independent Commissioning Agent and together develop a plan which details the procedure for evaluating, testing and accepting building systems and equipment for the base building and tenant provided. Engineer shall obtain input from Construction Manager and Owner on this plan. Engineer shall ensure that the established format with applicable procedures are incorporated into the

construction specifications and bidding documents and ensure the smooth transition from completion of the construction phase through move-in and operation of the project.

Engineer shall participate in this process during design and construction including through the review of all testing, recommendation for acceptance and/or required items for conformance. Engineer acknowledges that Construction Manager may also be asked to provide one or more commissioning agents for specific elements of the construction work, to work and collaborate with Engineer its Independent Commissioning Agent in this process and Engineer shall work in collaboration with those commissioning agents provided by Construction Manager.

Construction Manager shall execute the documentation phase of the commissioning process, including but not limited reviewing the commissioning specification, developing a commissioning schedule and creating meeting schedules for clients, Engineer, and the subcontractors. Engineer shall attend all such meetings. These meetings will continually track the commissioning progress until completion. All major activities such as equipment checkout, startup, functionality/ acceptance testing and training will be coordinated by Construction Manager. Engineer shall work with Construction Manager to ensure Owner is satisfied that the commissioning process has been performed accurately and professionally, all procedures have been followed, all readings and documentation are correct, the installation systems operate as designed and the systems operate without complaint from the owner/users.

### 3.11 **Evaluation of the Work**

Engineer shall visit the site at intervals appropriate to the various stages of construction, or as otherwise expressly required under this Exhibit, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents,

Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work and its inspections will be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment.

Engineer shall document all visits to the project with copies furnished to owner.

### 3.12 **Reporting**

Based on information obtained during site visits, observations and third party inspections and testing, Engineer shall (1) determine in general if the Work is proceeding in accordance with the Contract Documents, (2) keep Owner informed of the progress and quality of the Work completed, and (3) promptly, and in any event within 24 hours of discovery, report to Owner and Construction Manager (i) known deviations from the Contract Documents, (ii) known deviations from the most recent construction schedule submitted by Construction manager, and (iii) defects and deficiencies observed in the Work .

## 4. **OWNER'S RESPONSIBILITIES**

### 4.1 **Information and Services Required of the Owner**

4.1.1 Engineer shall provide advice to Owner in relation to, and assist in the provision of, information to be provided to Construction Manager regarding the requirements for and limitations on the Project, including with respect to a program which sets forth the Owners objectives, constraints and criteria, including schedule, space requirements and relationships, flexibility and expandability requirements. special equipment and systems, and site requirements.

4.1.2 Intentionally omitted

4.1.3 Engineer shall consult with Owner and Construction Manager to enable Owner to establish and update an overall budget for the Project, which shall include contingencies for changes in the Work and other costs which are the responsibility of Owner. If Owner significantly increases or decreases Owner's budget for the Cost of the Work, Owner shall notify Engineer and Engineer shall advise Owner in relation to a corresponding change in the Project's scope and quality.

4.1.4 **Structural and Environmental Tests, Surveys and Reports**

During the Preconstruction Phase, Engineer shall provide advice to Owner in relation to, and where applicable assist Owner in obtaining, the following information, on the basis that Construction Manager shall be entitled to rely upon the accuracy of any such information and services. Engineer shall review, and advise Owner in relation to any request from Construction Manager to furnish any other information or services under Owner's control and relevant to the Construction Manager's performance of the Work:

4.1.4.1 tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

4.1.4.2 surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark..

4.1.4.3 when such services are requested b Construction Manager, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

4.1.5 During the Construction Phase, Engineer shall advise Owner in relation to furnishing information or services required of Owner by the Contract Documents. Engineer shall review, and advise Owner in relation to any request from Construction Manager to furnish any other information or services under Owner's control and relevant to the Construction Manager's performance of the Work.

4.1.5 Engineer will be responsible for engaging all third parties required to undertake necessary inspections and testing of the work, including inspection of dredging.

4.2 **Owner's Designated Representative**

Intentionally omitted

4.3 **Engineer**

Engineer shall consult with Owner and Construction Manager to agree the time for provision of its services. Engineer consents to Owner furnishing a copy of its scope of services to Construction Manager (including any modifications to those scope of services) with the compensation provisions deleted.

5. **COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

5.1 **Compensation**

Intentionally omitted

5.2 **Payments**

Engineer shall promptly review, and provide Owner with any comments on, invoices received from Construction Manager with respect to Preconstruction Phase services.

6. **COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

6.1 **Contract Sum**

Intentionally omitted

6.2 **Guaranteed Maximum Price**

Intentionally omitted

6.3 **Changes in the Work**

6.3.1 Engineer shall advise Owner in relation to proposed changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and shall advise Owner in relation to the extent to which Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

6.3.1.1 Intentionally omitted

6.3.2 Engineer shall provide advice to Owner with respect to any proposed adjustment to the Guaranteed Maximum Price.

6.3.3 Engineer shall provide advice to Owner with respect to any proposed adjustment to subcontracts, including any required review of subcontracts.

6.3.4 Intentionally omitted

6.3.5 Engineer shall advise Owner in relation to the extent to which Construction Manager may be entitled to an equitable adjustment of its Fee as a result of changes in the Work (on the same basis that was used to establish the Fee for the original Work), and the extent to which the Guaranteed Maximum Price should be adjusted accordingly.

7. **COST OF THE WORK FOR CONSTRUCTION PHASE**

7.1 **Costs to be Reimbursed**

7.1.1 Engineer shall promptly review invoices from Construction Manager for "Cost of the Work" amount and advise Owner in relation to whether such amounts are permitted under the Owner/Construction Manager Agreement.

7.1.2 Engineer shall review, and advise Owner in relation to, any cost that is subject to the Owner's prior approval under the Contract Documents.

7.1.3 Intentionally omitted

7.2 **Labor Costs**

Intentionally omitted

7.3 **Subcontract Costs**

Intentionally omitted

7.4 **Costs of Materials and Equipment Incorporated in the Completed Construction**

Intentionally omitted

7.5 **Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

Intentionally omitted

7.6 **Miscellaneous Costs**

Intentionally omitted

7.7 **Other Costs and Emergencies**

Intentionally omitted

7.8 **Related Party Transactions**

Intentionally omitted

7.9 **Costs not to be Reimbursed**

Intentionally omitted

8. **DISCOUNTS, REBATES AND REFUNDS**

Intentionally omitted

9. **SUBCONTRACTS AND OTHER AGREEMENTS**

Engineer shall review, and advise Owner in relation to, any subcontractor bidders list including any list of prequalified bidders submitted by Construction Manager, including MBE, SBE and WBE firms.

Engineer shall review, and advise Owner in relation to, the bidding schedules and bid documents and shall coordinate the pre-bid conferences with Owner and Construction Manager. Engineer shall assist Construction Manager manage the receipt of questions from the Bidders and with issuance of all Addenda.

Engineer shall review, and advise Owner in relation to, bid analysis and recommendations provided by Construction Manager.

9.1 Engineer shall advise Owner in relation to whether Owner should designate specific persons or entities from whom Construction Manager shall obtain bids. Engineer shall review, and advise Owner in relation to, bids obtained by Construction Manager from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work. Engineer shall advise Owner whether it should object to any subcontractor or supplier from the bids Construction Manager intends to accept. Engineer shall review, and advise Owner in relation to, any objections received from Construction Manager with respect to anyone Owner requires Construction Manager to contract with. Engineer shall assist Owner and Construction Manager in preparation of the necessary bidding information and bidding forms.

9.1.1 If a specific subcontractor or supplier (1) is recommended to Owner by Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but Owner requires that another bid be accepted, Engineer shall review, and advise Owner in relation to, any demand from Construction Manager that a Change Order be issued to adjust the Guaranteed Maximum Price.

9.2 Intentionally omitted



10. **ACCOUNTING RECORDS**

Intentionally omitted

11. **PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

11.1 **Progress Payments**

11.1.1 Engineer shall promptly (and in any case within seven (7) days) review each Application for Payment and supporting information submitted by Construction Manager for compliance with the Owner/Construction Manager Contract and, where applicable, certify the amounts due to the Construction Manager as progress payments by issuing Certificates for Payment to Owner for such amounts. Engineer shall maintain a record of the Applications for Payment and Certificates for Payment.

Engineer's certification for payment shall constitute a representation to Owner, based on Engineer's evaluation of the Work and on the data in the Construction Manager's Application for Payment, that, to the best of Engineer's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. These representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualification expressed by Engineer.

11.1.2 Intentionally omitted

11.1.3 Intentionally omitted

11.1.4 Intentionally omitted

11.1.5 Intentionally omitted

11.1.5.1 Engineer shall notify Owner and Construction Manager as to the required form of the schedule of values and the supporting data to be provided substantiate its accuracy. This schedule shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

11.1.5.2 Intentionally omitted

11.1.5.3 Intentionally omitted

11.1.6 Intentionally omitted

11.1.7 Intentionally omitted

11.1.8 **Retainage**

Intentionally omitted

11.1.9 Intentionally omitted

11.1.10 Engineer shall review, and advise Owner in relation to, any request from Construction Manager to make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

11.1.11 Engineer shall advise Owner in relation to procedures to be agreed by owner and Construction Manager for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts.

11.1.12 In taking action on Construction Manager's Applications for Payment, Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by Construction Manager and such action shall not be deemed to be a representation that (1) Engineer has made a detailed examination, audit or arithmetic verification of the documentation or data submitted; (2) Engineer has made exhaustive or continuous on-site inspections; or (3) Engineer has made examinations to ascertain how or for what purposes Construction Manager has used amounts previously paid on account of the Owner/Construction Manager Agreement . Such examinations, audits and verifications, if required by Owner, will be performed by Owner's auditors acting in the sole interest of Owner.

11.2 **Final Payment**

11.2.1 Intentionally omitted

11.2.2 Intentionally omitted

11.2.2.1 If Owner conducts an audit of the Cost of the Work, Engineer shall review and provide comments on the written report submitted by Owner.

11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that Owner will not conduct an audit, and provided that the other conditions of the Owner/Construction Manager Agreement have been met, Engineer will either issue to Owner a final Certificate for Payment with a copy to Construction Manager, or notify Construction Manager and Owner in writing of Engineer's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. Engineer is not responsible for verifying the accuracy of Construction Manager's final accounting.

11.2.2.3 Intentionally Omitted

11.2.3 Intentionally Omitted

11.2.4 Intentionally Omitted

11.3 **Interest**

Intentionally Omitted

12. **DISPUTE RESOLUTION**

With respect to any Claim between Owner and Construction Manager, Engineer perform the duties allocated to Engineer under Article 15 of A201®-2017 as set forth in the Supplementary Conditions to A201-2017 that forms part of the Owner/Construction Manager Agreement.

13. **TERMINATION AND SUSPENSION**

13.1 Intentionally omitted

13.1.1 In the event of termination of the Owner/Construction Manager Agreement, Engineer shall assist Owner in determining compensation payable to Construction Manager under the Owner/Construction Manager Agreement.

13.1.2 If the Owner or Construction Manager terminates the Contract after commencement of the Construction Phase Engineer shall, in addition to the advice under Section 13.1.1, provide advice to Owner with respect to:

- (a) whether Owner should exercise its right to elect to purchase or rent any equipment owned by Construction Manager which is not otherwise included in the Costs of the Work, together with what would constitute fair compensation with respect to such purchase or rental;
- (b) whether Owner should elect to take legal assignment of subcontracts and purchase orders. Engineer shall promptly review executed papers delivered by Construction Manager to Owner for the purpose of fully vesting in Owner the rights and benefits of Construction Manager under such subcontractors and purchase orders.

13.2 Intentionally Omitted

13.3 Intentionally Omitted

13.4 **Suspension**

Engineer shall provide advice to Owner with respect to suspending the Work as provide in Article 14 of AIA Document A201-2017. If Owner exercises its right to, without cause, order Construction Manager to suspend, delay or interrupt the Work, Engineer shall advise Owner with respect to adjustments to Guaranteed Maximum Price and Contract Time to be made under the Owner/Construction Manager Agreement.

14. **MISCELLANEOUS PROVISIONS**

14.1 Intentionally Omitted

14.2 Intentionally Omitted

14.3 Intentionally Omitted

14.4 Intentionally Omitted

14.5 **Other Provisions**

14.5.1 Intentionally Omitted

14.5.2 Intentionally Omitted

14.5.3 Engineer shall provide advice to Owner with respect to approving certain work i.e. concrete, masonry, demolition, and carpentry work performed by Construction Manager's own forces.

14.5.4 Intentionally Omitted

14.5.5 Intentionally Omitted

14.5.6 Intentionally Omitted

14.5.7 Intentionally Omitted

14.5.8 Intentionally Omitted

15. **SCOPE OF THE AGREEMENT**

15.1 Upon request Engineer shall provide advice to Owner with respect to any proposed amendment to the Owner/Construction Manager Agreement.

15.2 Engineer acknowledges that the following documents, attachments and Exhibits are attached and included within the Owner/Construction Manager Agreement and form part of the Contract Documents

and represents that it has reviewed and familiarized itself with these documents in order to perform its services diligently:

- 1 A.I.A. Document A133TM-2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- 2 Rider to Document A.I.A. - A133TM-2019.
- 3 A.I.A. Document, A-201®-2017 "General Conditions of the Contract for Construction".
- 4 Supplementary Conditions to A-201®-2017.
- 5 Rider "D", Insurance Requirements.
- 6 A.I.A. Document A133TM-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- 7 Exhibit B - RFP.
- 8 Exhibit C - Fee Proposal.
- 9 Exhibit D - NJEDA Affirmative Action Regulations.
- 10 Exhibit E - NJEDA Prevailing Wage Regulation.
- 11 Exhibit F and G - Requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27.
- 12 Exhibit H - Monthly Status Reporting Form.
- 13 Exhibit I - NJEDA Contract Debarment Liability Provisions.
- 14 Exhibit J - Business Registration Requirements.
- 15 Exhibit K - Certificates of Insurance.
- 16 Exhibit L - Additional Mandatory Construction Contract Language as per N.J.S.A. 52:40-1 et seq.
- 17 Exhibit M - PSEG Facilities Usage Policies.

**EXHIBIT 34.14  
KEY CONTRACTOR PERSONNEL**

<u>Name</u>	<u>Title</u>
Mark Faeth	Vice President
Joshua Signer	Project Director
Fernando Chana	Project Manager
Rob Davies	Assistant Project Manager
Mark Faeth	Quality Assurance/Quality Control Manager
Mehedi Rashdi	Marine / Structural Engineering
Eric Smith	Coastal Design / Navigation
Jeff Oskamp	Coastal / Sediment Analysis
Gwen Lawrence	Navigation / Access Channel
William Philips	Civil Design
Tom Shafer	Surcharge Program / Logistics Plan
David Wills	Electrical Engineer

**EXHIBIT 36.2  
CONFIDENTIALITY AND NON-DISCLOSURE**

1. CONTRACTOR AGREES TO ACCEPT, RECEIVE, OR HOLD IN TRUST AND CONFIDENCE COMPANY'S CONFIDENTIAL INFORMATION (AS DEFINED BELOW), WHETHER OF ORAL, WRITTEN, VISUAL, MAGNETICALLY STORED, AND/OR ELECTRONICALLY RETRIEVABLE NATURE, AS WELL AS ANY PHYSICAL SAMPLES THEREOF, AND TO LIMIT THE USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION BY CONTRACTOR TO ANY THIRD PARTY AS SET FORTH IN THIS AGREEMENT.

2. THE TERM "CONFIDENTIAL INFORMATION" MEANS INFORMATION REGARDING COMPANY OR COMPANY'S REPRESENTATIVES (WHICH MEANS COMPANY DIRECTORS, OFFICERS, AND AUTHORIZED EMPLOYEES, AGENTS, CONTRACTORS, ATTORNEYS, ADVISORS AND FINANCING SOURCES) THAT IS (I) DISCLOSED TO CONTRACTOR BY OR ON BEHALF OF COMPANY, OR (II) DERIVED BY CONTRACTOR FROM INFORMATION DESCRIBED IN (I) OR THROUGH AN INSPECTION OF PROPERTY, OPERATIONS OR DOCUMENTS.

3. "PERSONAL INFORMATION" MEANS ANY INFORMATION RELATING TO AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL, WHETHER SUCH INFORMATION IS IN INDIVIDUAL OR AGGREGATE FORM AND REGARDLESS OF THE MEDIA IN WHICH IT IS CONTAINED, THAT IS (I) DISCLOSED OR SUPPLIED TO CONTRACTOR BY OR ON BEHALF OF COMPANY OR REPRESENTATIVE, (II) ACCESSED, COLLECTED, PROCURED, GENERATED, RECORDED, PROCESSED, STORED, REPORTED, OR TRANSMITTED BY CONTRACTOR OR ITS SUBCONTRACTORS AND INDEPENDENT CONTRACTORS, OR (III) DERIVED BY CONTRACTOR OR ITS SUBCONTRACTORS AND INDEPENDENT CONTRACTORS FROM THE INFORMATION DESCRIBED IN (I) OR (II) ABOVE. FOR AVOIDANCE OF DOUBT, PERSONAL INFORMATION INCLUDES, BUT IS NOT LIMITED TO, FIRST AND LAST NAME; HOME OR OTHER PHYSICAL ADDRESS INCLUDING STREET NAME AND NAME OF A CITY OR TOWN; EMAIL ADDRESS OR OTHER ONLINE CONTACT INFORMATION (SUCH AS AN ONLINE USER ID OR SCREEN NAME); TELEPHONE NUMBER; DATE OF BIRTH; SOCIAL SECURITY NUMBER (OR ITS EQUIVALENT); DRIVER'S LICENSE NUMBER (OR OTHER GOVERNMENT-ISSUED IDENTIFICATION NUMBER, SUCH AS MILITARY IDENTIFICATION, PASSPORT, OR OTHER PERSONAL IDENTIFICATION NUMBER); ACCOUNT INFORMATION (INCLUDING FINANCIAL ACCOUNT INFORMATION); TAX INFORMATION; PAYMENT CARD DATA (INCLUDING PRIMARY ACCOUNT NUMBER, EXPIRATION DATE, SERVICE CODE, FULL MAGNETIC STRIPE DATA OR EQUIVALENT ON A CHIP, CAV2/CVC2/CVV2/CID AND PIN NUMBER); ACCESS CODE, PASSWORD OR SECURITY QUESTIONS AND ANSWERS; SHARED SECRETS OR SECURITY TOKENS USED FOR AUTHENTICATION; BIRTH OR MARRIAGE CERTIFICATE; HEALTH OR MEDICAL INFORMATION, INCLUDING DEMOGRAPHIC DATA, THAT RELATES TO AN INDIVIDUAL'S PAST, PRESENT, OR FUTURE PHYSICAL OR MENTAL HEALTH OR CONDITION, THE PROVISION OF HEALTHCARE TO AN INDIVIDUAL, OR THE PAST, PRESENT, OR FUTURE PAYMENT FOR THE PROVISION OF HEALTHCARE TO AN INDIVIDUAL; HEALTH INSURANCE INFORMATION; BIOMETRIC DATA; A PERSISTENT IDENTIFIER, INCLUDING A CUSTOMER NUMBER HELD IN COOKIES, PROCESSOR OR DEVICE SERIAL NUMBER, UNIQUE DEVICE IDENTIFIER, OR INTERNET PROTOCOL (IP) ADDRESS; GEOLOCATION OR INFORMATION THAT CAN BE USED TO DERIVE GEOLOCATION; ANY INFORMATION THAT IS COMBINED WITH ANY OF THE DATA ELEMENTS ABOVE INCLUDING, BUT NOT LIMITED TO, INFORMATION REGARDING AN INDIVIDUAL CUSTOMER'S ENERGY USAGE. PERSONAL INFORMATION MAY RELATE TO A COMPANY OR REPRESENTATIVE EMPLOYEE, CUSTOMER, INVESTOR, SUPPLIER, CONTRACTOR, SERVICE PROVIDER, BUSINESS PARTNER OR ANY OTHER INDIVIDUAL.

**4. EXCEPT WITH RESPECT TO PERSONAL INFORMATION, "CONFIDENTIAL INFORMATION" DOES NOT INCLUDE ANY INFORMATION THAT:**

(a) at the time of receipt was already possessed by Contractor without restriction or was already in the public domain (other than as a result of a disclosure, directly or indirectly, in violation of this Agreement);

(b) after being provided by Company, entered the public domain without any action or fault of Contractor;

(c) is obtained from any individual, firm, or entity that had the unrestricted right to disclose it;

(d) subject to the requirements contained in Section 5 below, is required to be disclosed under applicable law, regulatory process, a court or governmental order (which disclosure Contractor shall use reasonable efforts to avoid or minimize by providing prior notice to Company so that Company may have the opportunity to intervene, contest such disclosure or seek a protective order, agreement, or otherwise with respect to such Confidential Information), or;

(e) as is shown by written records to have been independently developed by Contractor without knowledge of, or access to Company's Confidential Information.

**5. IF CONTRACTOR BELIEVES THAT IT IS REQUIRED TO DISCLOSE CONFIDENTIAL INFORMATION PURSUANT TO APPLICABLE LAW, REGULATORY PROCESS, A COURT ORDER, OR OTHER GOVERNMENTAL ORDER PURSUANT TO SECTION 4(D) ABOVE, CONTRACTOR SHALL PROMPTLY NOTIFY COMPANY IN WRITING AND PROVIDE COMPANY WITH THE BASIS FOR ITS BELIEF THAT IT IS REQUIRED TO DISCLOSE CONFIDENTIAL INFORMATION. PRIOR TO ANY SUCH DISCLOSURE, CONTRACTOR SHALL: (I) PROVIDE COMPANY WITH WRITTEN NOTICE AT LEAST TEN (10) DAYS PRIOR TO ANY SUCH DISCLOSURE TO ENABLE COMPANY TO RESPOND TO SUCH NOTICE BY SEEKING A PROTECTIVE ORDER OR SIMILAR MEASURE TO PROTECT THE CONFIDENTIAL INFORMATION FROM DISCLOSURE; (II) PROVIDE AN OPINION OF CONTRACTOR'S LEGAL COUNSEL THAT DISCLOSURE IS NOT REQUIRED BY APPLICABLE LAW, REGULATORY PROCESS, A COURT ORDER, OR GOVERNMENTAL ORDER, OR DISCLOSE ONLY THAT PORTION OF THE CONFIDENTIAL INFORMATION THAT CONTRACTOR IS ADVISED BY LEGAL COUNSEL IS LEGALLY REQUIRED; (III) USE ITS REASONABLE BEST EFFORTS TO CAUSE THE APPLICABLE GOVERNMENTAL ENTITY TO TREAT SUCH INFORMATION IN A CONFIDENTIAL MANNER AND TO PREVENT SUCH INFORMATION FROM BECOMING PART OF THE PUBLIC DOMAIN; AND (IV) COOPERATE WITH COMPANY'S ATTEMPTS TO ENSURE CONFIDENTIAL HANDLING OF SUCH INFORMATION.**

**6. THIS AGREEMENT DOES NOT OBLIGATE COMPANY TO PURCHASE ANY GOODS OR SERVICES FROM CONTRACTOR AND DOES NOT OBLIGATE CONTRACTOR TO SELL OR PROVIDE ANY GOODS OR SERVICES TO COMPANY. CONTRACTOR ACKNOWLEDGES THAT COMPANY HAS NOT MADE ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF ANY CONFIDENTIAL INFORMATION AND THAT CONTRACTOR IS NOT ENTITLED TO RELY ON THE ACCURACY OR COMPLETENESS OF ANY CONFIDENTIAL INFORMATION AND THAT CONTRACTOR MAY ONLY RELY ON SUCH WARRANTIES OR REPRESENTATIONS AS MAY BE CONTAINED IN A DEFINITIVE AGREEMENT WITH RESPECT TO THE BUSINESS RELATIONSHIP.**

**7. CONTRACTOR SHALL TREAT AND MAINTAIN CONFIDENTIAL INFORMATION AS CONFIDENTIAL AND PROPRIETARY AND SHALL NOT FOR ANY PURPOSE OR IN ANY MANNER USE OR DISCLOSE CONFIDENTIAL INFORMATION, IN WHOLE OR IN PART, WITHOUT COMPANY'S PRIOR WRITTEN CONSENT.**

**8. CONTRACTOR SHALL LIMIT THE POSSESSION AND USE OF CONFIDENTIAL INFORMATION TO INDIVIDUALS ON A "NEED-TO-KNOW" BASIS. CONTRACTOR SHALL**

ENSURE THAT ITS EMPLOYEES, AGENTS, ADVISORS, SUBCONTRACTORS AND INDEPENDENT CONTRACTORS PROVIDED WITH ACCESS TO CONFIDENTIAL INFORMATION ARE ADVISED OF THE OBLIGATIONS OF THIS AGREEMENT. CONTRACTOR SHALL CAUSE ITS EMPLOYEES, AGENTS, ADVISORS, SUBCONTRACTORS AND INDEPENDENT CONTRACTORS WHO OBTAIN OR GAIN ACCESS TO CONFIDENTIAL INFORMATION TO PROMISE TO ABIDE BY THE TERMS AND CONDITIONS OF THIS AGREEMENT; PROVIDED, HOWEVER, CONTRACTOR SHALL CAUSE EACH CONTRACTOR SUBCONTRACTOR OR INDEPENDENT CONTRACTOR TO EXECUTE A CONFIDENTIALITY AGREEMENT THAT CONTAINS PROVISIONS NO LESS RESTRICTIVE THAN THOSE SET FORTH HEREIN PRIOR TO PROVIDING ANY SUCH SUBCONTRACTOR OR INDEPENDENT CONTRACTOR ACCESS TO CONFIDENTIAL INFORMATION. CONTRACTOR SHALL NOT PROVIDE ANY CONFIDENTIAL INFORMATION TO ANY ENTITY OR INDIVIDUAL OTHER THAN CONTRACTOR'S EMPLOYEES, AGENTS, ADVISORS, SUBCONTRACTORS, OR INDEPENDENT CONTRACTORS WITHOUT COMPANY'S PRIOR WRITTEN CONSENT. ANY SUCH DISCLOSURE TO THIRD PARTIES SHALL BE ON A STRICT "NEED-TO-KNOW" BASIS. CONTRACTOR SHALL REMAIN FULLY RESPONSIBLE FOR ANY BREACH OF THE AGREEMENT BY ITS EMPLOYEES, AGENTS, ADVISORS, SUBCONTRACTORS, OR INDEPENDENT CONTRACTORS.

9. IF CONTRACTOR DIRECTLY OR INDIRECTLY OBTAINS ANY CONFIDENTIAL INFORMATION PERTAINING TO ANY EMPLOYEE OF COMPANY OR REPRESENTATIVES, CONTRACTOR SHALL HOLD SAID INFORMATION IN TRUST AND CONFIDENCE AND COMPLY WITH ALL COMPANY OR REPRESENTATIVE REQUESTS AND REQUIREMENTS PERTAINING TO SUCH INFORMATION IN ACCORDANCE WITH THIS AGREEMENT AND WITH ALL APPLICABLE FEDERAL AND STATE PRIVACY AND IDENTITY THEFT REGULATIONS.

10. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT DOES NOT PREVENT CONTRACTOR OR ITS EMPLOYEES, NOR SHOULD CONTRACTOR OR ITS EMPLOYEES BE HELD CIVILLY OR CRIMINALLY LIABLE UNDER ANY LAW, IF CONTRACTOR OR ITS EMPLOYEES DISCLOSES A TRADE SECRET: (I) IN CONFIDENCE TO A FEDERAL, STATE, OR LOCAL GOVERNMENT OFFICIAL, EITHER DIRECTLY OR INDIRECTLY, OR TO AN ATTORNEY SOLELY FOR THE PURPOSE OF REPORTING OR INVESTIGATING A SUSPECTED VIOLATION OF LAW; (II) IN A COMPLAINT OR OTHER DOCUMENT FILED IN A LAWSUIT OR OTHER PROCEEDING, IF SUCH FILING IS MADE UNDER SEAL; (III) TO ITS ATTORNEY IN CONNECTION WITH A LAWSUIT ALLEGING RETALIATION BY AN EMPLOYER FOR REPORTING A SUSPECTED VIOLATION OF LAW; OR (IV) IN CONNECTION WITH A LAWSUIT DESCRIBED IN SUBPARAGRAPH (III) ABOVE, PROVIDED THAT CONTRACTOR OR ITS EMPLOYEE: (A) FILES ANY DOCUMENT CONTAINING THE TRADE SECRET UNDER SEAL; AND (B) DOES NOT DISCLOSE THE TRADE SECRET, EXCEPT PURSUANT TO A COURT ORDER. FURTHERMORE, NOTHING CONTAINED IN THIS AGREEMENT PREVENTS CONTRACTOR OR ITS EMPLOYEES FROM DISCLOSING A PERCEIVED VIOLATION OF LAW TO ANY FEDERAL, STATE, OR LOCAL GOVERNMENTAL AGENCY OR ENTITY INCLUDING, BUT NOT LIMITED TO, THE SECURITIES AND EXCHANGE COMMISSION, OR MAKING OTHER DISCLOSURES THAT ARE PROTECTED UNDER THE WHISTLEBLOWER PROVISION OF ANY LAW.

11. CONTRACTOR HAS ESTABLISHED POLICIES AND PROCEDURES TO IDENTIFY INDICATIONS OF POSSIBLE IDENTITY THEFT RISKS ("RED FLAGS") TO COMPANY'S OR REPRESENTATIVE'S EMPLOYEES THAT MAY ARISE IN THE PERFORMANCE OF CONTRACTUAL UNDERTAKINGS ON BEHALF OF COMPANY. CONTRACTOR SHALL TAKE STEPS TO MITIGATE AND PREVENT IDENTITY THEFT. CONTRACTOR SHALL IMMEDIATELY NOTIFY COMPANY IF IT IS REASONABLE TO BELIEVE THAT A BREACH OF SECURITY HAS OCCURRED.

12. TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY, REPRESENTATIVES AND EACH OF THEIR RESPECTIVE OFFICERS, AGENTS, SERVANTS, REPRESENTATIVES,



SUBCONTRACTORS, EMPLOYEES, SHAREHOLDERS, SUCCESSORS, ASSIGNS, AND CUSTOMERS AGAINST ANY CLAIMS, COMPLAINTS, SUITS, PROCEEDINGS, DEMANDS, DISPUTES, ACTIONS, OR ALLEGATIONS OF ANY KIND, WHETHER JUST OR UNJUST, INCURRED BY COMPANY, OR REPRESENTATIVES AND THEIR OFFICERS, AGENTS, SERVANTS, REPRESENTATIVES, SUBCONTRACTORS, EMPLOYEES, SUCCESSORS, OR ASSIGNS AS A RESULT OF CONTRACTOR'S FAILURE TO TREAT SUCH COMPANY, OR REPRESENTATIVE EMPLOYEE, SHAREHOLDER, OR CUSTOMER INFORMATION IN ACCORDANCE WITH THIS AGREEMENT.

13. CONTRACTOR SHALL NOT MAKE ANY COPY OR IN ANY WAY REPRODUCE OR EXCERPT CONFIDENTIAL INFORMATION EXCEPT FOR PURPOSES SPECIFICALLY AUTHORIZED BY COMPANY.

14. AT COMPANY'S REQUEST AND OPTION REGARDING ANY AND ALL INFORMATION DISCLOSED PURSUANT TO THIS AGREEMENT, CONTRACTOR SHALL IMMEDIATELY EITHER (I) RETURN SUCH INFORMATION TO COMPANY OR (II) DESTROY SUCH INFORMATION AT COMPANY'S REQUEST. IF COMPANY REQUESTS THE DESTRUCTION OF INFORMATION DISCLOSED PURSUANT TO THIS AGREEMENT, CONTRACTOR SHALL PROVIDE COMPANY WITH CERTIFICATION THAT ALL SUCH INFORMATION HAS BEEN DESTROYED.

15. CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER SHALL AT ALL TIMES REMAIN, AS BETWEEN THE PARTIES, THE PROPERTY OF COMPANY. NO LICENSE UNDER ANY TRADE SECRETS, COPYRIGHTS, OR OTHER INTELLECTUAL PROPERTY RIGHTS IS GRANTED BY THIS AGREEMENT OR BY ANY DISCLOSURE OF CONFIDENTIAL INFORMATION HEREUNDER.

16. CONTRACTOR'S OBLIGATIONS HEREUNDER ARE IN ADDITION TO, AND NOT EXCLUSIVE OF, ANY AND ALL OTHER OBLIGATIONS AND DUTIES OWED TO COMPANY AND SHALL REMAIN IN EFFECT FOR THE GREATER OF (I) FIVE (5) YEARS FROM THE DATE OF CONTRACTOR'S RECEIPT OF SUCH INFORMATION OR (II) THE TERM OF ANY AGREEMENT ENTERED INTO BETWEEN CONTRACTOR AND COMPANY OR ITS SUBSIDIARIES; PROVIDED, HOWEVER, THAT WITH RESPECT TO COMPANY'S OR EMPLOYEE INFORMATION, CONTRACTOR'S OBLIGATIONS AND DUTIES HEREUNDER SHALL CONTINUE AS PROVIDED UNDER APPLICABLE LAW AND COMPANY POLICIES AND PRACTICES.

17. SUBJECT ONLY TO ITS CONFIDENTIALITY AND NON-DISCLOSURE OBLIGATIONS AS SET FORTH HEREIN, CONTRACTOR'S RIGHT TO DEVELOP, USE, AND MARKET PRODUCTS AND SERVICES SIMILAR TO OR COMPETITIVE WITH THE CONFIDENTIAL INFORMATION OF THE COMPANY SHALL REMAIN UNIMPAIRED.

18. EXCEPT AS OTHERWISE MUTUALLY AGREED TO, CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AND AGENTS SHALL NOT USE COMPANY'S, OR REPRESENTATIVE'S SITE, FACILITIES, NAME, PHOTOGRAPHS, LOGO, TRADEMARKS, OR OTHER IDENTIFYING CHARACTERISTICS WITHOUT COMPANY'S PRIOR WRITTEN APPROVAL. CONTRACTOR SHALL NOT ISSUE ANY PRESS RELEASES, HOLD PRESS CONFERENCES, OR MAKE OR ISSUE ANY PUBLIC COMMUNICATIONS OF ANY KIND REGARDING THE PARTIES' RELATIONSHIP, EXCEPT AS MAY BE REQUIRED BY LAW, WITHOUT THE PRIOR WRITTEN CONSENT OF COMPANY.

19. NO FAILURE OR DELAY BY COMPANY IN EXERCISING ANY RIGHT, POWER OR PRIVILEGE HEREUNDER WILL OPERATE AS A WAIVER THEREOF, NOR WILL ANY SINGLE OR PARTIAL EXERCISE THEREOF PRECLUDE ANY OTHER OR FURTHER EXERCISE THEREOF, OR THE EXERCISE OF ANY RIGHT, POWER OR PRIVILEGE HEREUNDER.

20. IN THE EVENT OF A BREACH OF THIS EXHIBIT, CONTRACTOR AGREES THAT COMPANY WILL SUFFER IRREPARABLE INJURY THAT COULD NOT ADEQUATELY BE

**COMPENSATED BY MONETARY DAMAGES, THAT COMPANY'S MONETARY DAMAGES WOULD BE EXCEEDINGLY DIFFICULT TO MEASURE, AND THAT COMPANY'S REMEDY AT LAW WOULD BE INADEQUATE. ACCORDINGLY, CONTRACTOR CONSENTS TO AN ENTRY OF AN ORDER OF A COURT OF COMPETENT JURISDICTION GRANTING AN INJUNCTION AGAINST SUCH BREACH WITHOUT ANY REQUIREMENT TO PROVIDE OR POST A BOND OR OTHER SECURITY AS A CONDITION OF SUCH RELIEF. COMPANY'S RIGHT TO INJUNCTIVE RELIEF SHALL BE IN ADDITION TO ANY AND ALL OTHER RIGHTS AND REMEDIES COMPANY MAY HAVE.**

DRAFT

**EXHIBIT 37.2  
COMPANY VPN AGREEMENT**

This agreement (hereinafter "User Agreement") is made and will be effective as of the date indicated below by and between New Jersey Economic Development Authority ("Company") and \_\_\_\_\_ ("Remote Access User") an authorized employee of \_\_\_\_\_ ("Contractor") (hereinafter collectively referred to as Parties).

**WHEREAS**, Company will provide certain employees of Contractor with remote access ("virtual private network") to the Company network ("remote access capability") (hereinafter individually referred to as "Remote Access User") utilizing Company-owned, Contractor-owned, or individually-owned computer equipment;

**WHEREAS**, Remote Access User understands and acknowledges that Company will be required to establish and maintain certain security measures in connection with providing remote access capability to the Company network to preserve the integrity and safety of the Company network; and **WHEREAS**, Remote Access User further understands that Company will be willing to provide Remote Access User with remote access capability to the Company network subject to the Remote Access User's compliance with Company security practices, Company Standards of Conduct, and any agreements between Remote Access User's employer and Company.

**NOW THEREFORE**, for good and valuable consideration, the receipt of which is acknowledged, the Parties hereby agree as follows:

1. **Company shall provide Remote Access User with remote access capability to the Company network.**
2. **Remote Access User shall establish and maintain, while remotely accessing the Company network using the remote access capabilities, the following security measures ("Security Measures") established by Company:**
  - a) **Remote Access User shall use the remote access capability to access the Company network only to conduct business for and/or on behalf of Company.**
  - b) **Remote Access User shall safeguard user ID codes/passwords so as to prevent use of such ID numbers by individuals other than the Remote Access User.**
  - c) **Remote Access User shall not connect or be connected to any third-party network at the time the Remote Access User is connected to the Company network, except for the third-party network being used to connect to Company.**
  - d) **Remote Access User utilizing a non-Company personal computer to remotely access the Company network shall install and maintain real time anti-virus software with current virus signature protection and a personal firewall that is configured to start automatically when the computer is powered on.**
  - e) **Remote Access User's use of the Company network shall be conducted pursuant to and in accordance with Company security practices and the Company Standards of Conduct and, to the extent applicable and not in conflict with the Company security practices, Contractor's security practices. Remote Access User will access the Company network only from United States locations. Access to the Company network from locations other than U.S. locations will require written approval from an authorized representative of Company.**

- 3. **Company has the right to monitor Remote Access User use of the Company network utilizing remote access capability.**
- 4. **Company reserves the right to suspend or revoke Remote Access User's use of the Company network for any violation by the Remote Access User of: (i) Company security practices; (ii) Company Standards of Conduct; or (iii) this User Agreement. Company reserves the right to revoke the Remote Access User use of the Company network in case of a termination of the agreement between the Remote Access User's employer and Company.**

**Remote Access User Approval**

**User Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Name (written): \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Phone Number: \_\_\_\_\_

Work Phone Number: \_\_\_\_\_

Work Location: \_\_\_\_\_

**Company Approval**

**Company Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

\_\_\_\_\_

Name (written): \_\_\_\_\_

\_\_\_\_\_

Department: \_\_\_\_\_

\_\_\_\_\_

**Contractor Approval**

*Contractor Principal or Officer for Contractor – Signature indicates approval*

**Contractor Mgr. Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

\_\_\_\_\_

Name (written): \_\_\_\_\_

**EXHIBIT 40.1  
CHANGE ORDER FORM**

**TO: Contractor**

Moffatt & Nichol, Inc.  
529 5th Avenue #14  
New York, NY 10017

**FROM: NEW JERSEY ECONOMIC**

**DEVELOPMENT AUTHORITY (NJEDA)**  
P.O. Box 990  
36 West State Street  
Trenton, NJ 08625-0990

**PROJECT: Hope Creek Generating Station Marine Terminal Project, New Jersey**

**NJEDA Contract No. \_\_\_\_\_ Contract Change Order No. \_\_\_\_\_**

Contract Date \_\_\_\_\_ Contract Time (increased/decreased) by \_\_\_\_\_ (days)

Original Completion Date \_\_\_\_\_ New Completion Date \_\_\_\_\_

Below are listed the Contract Bulletins included in this Contract Change Order

Contract Bulletin	Amount
No. _____	\$[ ]
No. _____	\$[ ]
<b>TOTAL AMOUNT OF THIS CHANGE ORDER</b>	<b>\$[ ]</b>

Not valid until signed by both the NJEDA and Contractor. Signature of the Contractor indicates its agreement herewith, including any adjustment in the contract sum or contract time. The work covered by this contract change order shall be performed under the same terms and conditions as included in the original contract.

Original Contract Amount	\$[ ]
Previously Authorized Contract	\$[ ]
Change Orders _____	
Accumulated Contract Amount Contract	\$[ ]
Change Order No. _____	\$[ ]
<b>TOTAL ADJUSTED CONTRACT AMOUNT</b>	<b>\$[ ]</b>

\_\_\_\_\_  
Contractor's Representative

\_\_\_\_\_  
Date

\_\_\_\_\_

\_\_\_\_\_

NJEDA Chief Executive Officer

Date

\_\_\_\_\_

\_\_\_\_\_

NJEDA Real Estate Development Director

Date

\_\_\_\_\_

\_\_\_\_\_

NJEDA Senior Project Officer

Date

**EXHIBIT 40.3A  
CHANGE REQUEST FORM**

CONTRACT BULLETIN

FROM: Moffatt & Nichol, Inc.

Contractor's Name

529 5th Avenue #14  
Street Address

New York, NY 10017  
City, State, Zip Code

TO: NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

PROJECT: Hope Creek Generating Station Marine Terminal Project, New Jersey

NJEDA Contract No. \_\_\_\_ Contract Bulletin No. \_\_\_\_\_

**Description of Work Performed/Not Performed:**

The work covered by this Bulletin shall be performed under the same terms and conditions as included in

the original Contract.

The contents of this Contract Bulletin have been:

- A. Professionally reviewed and are accurate and correct.
- B. Discussed with and agreed to by the NJEDA's Director.

\_\_\_\_\_  
Contractor's Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
NJEDA Real Estate Development Director

\_\_\_\_\_  
Date





**EXHIBIT 40.3B  
FIELD CHANGE DIRECTIVE (SAMPLE)**

[RELEVANT NJEDA FORM TO BE ATTACHED]<sup>6</sup>

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<sup>6</sup> NJEDA to confirm if they have a form of field change directive.

**EXHIBIT 44.1  
PROJECT SCHEDULE**

[Attached]

**EXHIBIT 45.3  
NON-LUMP SUM WORK**

The following terms and conditions shall apply to any Work compensated on a basis other than lump sum:

1. **NON-LUMP SUM WORK**

- 1.1 As full and complete compensation for the performance of any Work other than lump sum Work, Company shall pay Contractor at the amounts stipulated in the Contract. For Work to be reimbursed with a fee, such fee shall be paid on the basis of Contractor's cost statements as approved by Company.
- 1.2 As may be requested by Company, Contractor shall submit a statement of expenses, showing all expenses for which it is to be reimbursed both with and without fee ("Statement of Expenses"). Said Statement of Expenses shall be in a format and level of detail acceptable to Company and be supported by such data and documentation as Company deems appropriate, including the original, certified payroll, showing straight time and overtime hours, if any, for each employee separately, as well as invoices for all Material provided.
- 1.3 Contractor agrees to collect all allowable refunds, rebates, and discounts on Materials, containers, and other items received in connection with the Work and to pay all invoices in time to take advantage of all cash discounts. Contractor further agrees that all such refunds, rebates, and discounts shall accrue to the benefit of Company. All applications for payment shall certify that all such refunds, rebates, and discounts have been credited to Company, said credit being shown as a separate line item. If Contractor fails or neglects to take any discount or collect any refund or rebate offered, Contractor shall be responsible for reimbursing Company for the sum so lost, either by paying Company directly or by deduction from the Contract Price, as determined by Company.

2. **LABOR RATES**

- 2.1 Before starting Work, Contractor shall furnish for approval by Company a schedule of rates, including fringe benefits and overtime rates that it will pay employees in the various trades who would be engaged in the Work, and a list of the recognized holidays and method of providing remuneration for them. Company shall have the option to reimburse Contractor for labor based on the following:
  - a) Labor rate sheets for each craft, itemizing all direct and indirect costs, including overhead and profit, as approved in advance by Company; or
  - b) Flat labor rates for each craft that include all direct and indirect costs, including overhead and profit, as approved in advance by Company.
- 2.2 In the case of travel allowances, premium rates, or other special provisions, Company's written approval of the terms thereof shall be obtained by Contractor prior to incurring such expense.

3. **CONTRACTOR'S COSTS TO BE REIMBURSED WITH FEE**

- 3.1 Company shall reimburse Contractor for all costs listed hereunder that are approved in advance by Company as necessarily incurred for the proper prosecution of the Work and that are paid directly by Contractor. The fee, as stated in the Contract, shall apply to the following costs:
  - a) Base labor rate, excluding any benefits, fringes, and taxes paid at straight time rates to labor employed directly by Contractor in the performance of the Work;

- b) Salaries, at rates previously approved by Company, of Contractor's employees stationed at the Site of the Work, in whatever capacity employed;
  - c) Remuneration, at rates previously approved by Company, for the time actually spent at the Site by Contractor, or a member of the firm or officer of Contractor, in the capacity of job supervisor when requested by Company;
  - d) The previously approved cost to Contractor of Materials provided under the Contract, except those included in rental rates;
  - e) Expense of loading, unloading, erecting, dismantling, and hauling Contractor's equipment and tools from Contractor's office, storeroom, or yard to the Site of the Work and return.
  - f) The cost of equipment or tools purchased or rented by Contractor, with the approval in advance of such purchase or rental by Company, to be used exclusively on the Work, less salvage or resale value approved by Company.
  - g) The rental of construction trailers and portable sanitary facilities approved in advance of rental by Company.
  - h) The cost to Contractor of all Subcontracts, but not fees paid to Subcontractors doing Work on a reimbursable basis (see Section 4, "Contractor's Costs to be Reimbursed Without Fee," below); and
  - i) The rental cost of vehicles, trucks, or equipment not owned by Contractor or any of its Affiliates incurred in the performance of the Work at rates approved by Company is set forth below:
    - 1. Rental rates for vehicles, trucks, or equipment shall in all cases include necessary fuel, maintenance, lubricants, and other consumables, as approved by Company prior to use thereof. The base labor rate of drivers shall be itemized separately and not be included in the rental rate. Where an operator trained in the use of a unit of construction equipment is required, said operator's base labor rate may be included on the rental rate, if requested by Contractor and approved by Company.
    - 2. Where overtime use is made of a vehicle, truck, or other piece of equipment that includes the straight time pay of its driver or operator in its rental rate, the pay of the driver or operator for the overtime period above his/her straight time shall be shown separately on any bill.
- 3.2 For Contractor-owned vehicles, trucks, or equipment, the rate charged to Company shall include Contractor's fee. Company's total liability for Contractor-owned or rented vehicles, trucks, or equipment shall, under no circumstances, exceed the fair market value of any vehicles, trucks, equipment, or any other items rented, whether such rented items are provided by Contractor directly or through a third party.
- 3.3 Rental rates shall be based on one hundred seventy six (176) hours per month. Company shall only be billed on an hour-by-hour basis for the time the equipment was actually used in the performance of the Work, or, in the case of stand-by time, at rates specified in the Contract.
- 3.4 Rental rates shall include any and all component, consumables, accessory, constituent, adjunct, and subordinate parts of equipment or machinery that may be necessary or required to perform the Work.

4. **CONTRACTOR'S COSTS TO BE REIMBURSED WITHOUT FEE**

- 4.1 Company shall reimburse Contractor, without fee, all of the costs described hereunder that are approved by Company as necessarily incurred for the proper prosecution of the Work and paid directly by Contractor. For Work that will be paid with federal funds, e.g., under a grant from the United States government, the costs to be reimbursed to Contractor shall be limited to those costs that are allocable and allowable under Federal Acquisition Regulation Part 31 (48 CFR Part 31) and applicable federal agency FAR supplements.
- a) All applicable federal, state, and local taxes or charges levied on Contractor and based on wages or salaries of labor employed for said Work that Contractor is required by Law to pay, provided that: (i) at any time during a tax year, when the combined payments to any employee, whether on Work for Company or for others, shall equal the amount fixed by Law on which such taxes are levied, Contractor shall make no further charge to Company for this purpose on account of such employee; and (ii) unemployment taxes shall be computed at the statutory rate or at Contractor's merit rate, whichever is lower. Contractor shall notify Company immediately of any change in its merit rate and the date it becomes effective;
  - b) Fees paid to Subcontractors doing Work on a reimbursable basis, which fees shall not exceed the percentage fee paid to Contractor;
  - c) Permit fees, royalties, Worker's Compensation, and insurance premiums;
  - d) Sales, transportation, and all other direct taxes, including those paid by Subcontractors;
  - e) Overtime premium rates and associated extra costs; and
  - f) Payments for telegraph and telephone service, water, utilities, express, cartage, freight, and postage incurred in the performance of the Work.

5. **CONTRACTOR'S COSTS NOT TO BE REIMBURSED**

- 5.1 Company will not reimburse Contractor for, nor pay it a fee on, any of the following costs:
- a) Salary of any employee or officer of Contractor, except as covered by Section 3, "Contractor's Costs to be Reimbursed with Fee," above;
  - b) Salary and expenses of any person employed in Contractor's main office;
  - c) Overhead, or general costs or expenses of any kind, except those that may be properly included under Section 3, "Contractor's Costs to be Reimbursed With Fee"; or Section 4, "Contractor's Costs to be Reimbursed Without Fee";
  - d) Interest on capital employed either in plant or in expenditures on the Work, including Materials;
  - e) All taxes of any kind, such as, but not limited to, income tax, franchise tax, or tax imposed for the general privilege of doing business;
  - f) Cost of repairs or replacement of construction equipment used on the Work that is owned, rented, or leased by Contractor or costs of rental of any equipment from any supplier, unless specifically approved by Company;
  - g) Losses and expenses incurred through fault or neglect of Contractor, its employees, contractors, agents, or Subcontractors including theft of tools or equipment, excessive

labor cost, warranty work, and repair of damage to property of Company or of others occasioned by Contractor, its employees, contractors, agents, or Subcontractors;

- h) All costs or expenses incurred by Contractor or any Subcontractor due to infringement or violation of patents, copyrights, or other proprietary interests;
- i) All costs or expenses incurred by Contractor or any Subcontractor in connection with any defense, indemnification, and hold harmless provisions of the Contract; and
- j) All other costs or expenses of any kind not specifically specified under the Contract as reimbursable, either with or without fee.

6. **COSTS PAID DIRECTLY BY COMPANY**

- 6.1 The cost of the following items will be paid for directly by Company, and no fee shall be paid to Contractor thereon:
  - a) Material that Company may elect to purchase directly;
  - b) Contracts placed by Company with others; and
  - c) Equipment supplied by Company.

**EXHIBIT 45.4<sup>7</sup>  
BUILT UP WAGE RATE SHEETS**

**F. Labor Rate Breakdown**

**RC-CON-001.3B**

These rates are fully loaded (including fringe benefits, applicable taxes, applicable insurance, overhead and profit, small tools (valued at \$3,000 or less), consumables, PPE and any other costs associated with labor that are in accordance with the prevailing wages of the trade having jurisdiction in areas where the work is performed. The wage rates shall be valid for the life of the project.

**F. Labor Rates**

	<b>Labor Classification</b>	<b>Straight Time (\$/hour)</b>	<b>Overtime (\$/hour)</b>	<b>Doubletime (\$/hour)</b>
F.1	Laborer Foreman (LF)			
F.2	Laborer (L)			
F.3	Operating Engineer (OE)			
F.4	Electrical Foreman			
F.5	Electrical Journeyman			
F.6	Apprentice Electrician			
F.7	Carpenter			
F.8	Carpenter Foreman			
F.9	Ironworker			
F.10	Ironworker Foreman			
F.11	General Foreman			
F.12	Welder			
F.13	Welder Foreman			
F.14	Superintendent			
F.15				
F.16				
F.17				

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<sup>7</sup> DF to confirm applicability.

**EXHIBIT 45.5  
EQUIPMENT RENTAL RATES**

CONTRACTOR NAME: [ \_\_\_\_\_ ]

Item #	Description of Equipment (year, manufacturer, model and serial number, description and fuel type)	Equipment ID # (1)	Monthly Rental Rate (2) (\$/Month)	Operating Cost (3) (\$/hr)	Adjusted Rate up to 176 hours (4) (\$/hr)	Adjusted Rate > 176 hours (5) (\$/hr)	Stand by Cost (6) (\$/hr)	In/Out Cost (7) (\$)	Fair Market Value (8) (\$)
1									
2									
3									
4									

Notes:

7. Equipment ID # - The unique identifying number for a particular piece of Equipment that must be included on the daily record of Equipment usage and the invoice.
8. Monthly Rental Rate - The monthly rate at which a piece of equipment is charged based on 176 hrs/month and includes the total Contractor's cost of ownership.
9. Operating Cost - The hourly cost of operating a piece of equipment used in the performance of the Work including fuel, consumables and maintenance.
10. Where equipment is equipped with an hour meter, readings shall be taken at the beginning and ending of each shift and documented on a usage log.
11. Adjusted Rate Up to 176 hours per month - The sum of the pro-rated (hourly) monthly rental rate and the hourly operating cost reflecting the charge to the Company for the actual usage/operation of equipment.
12. Adjusted Rate >176 hours - The hourly charge to the Company in the event actual usage/operation of Equipment exceeds 176 hours in a calendar month.
13. Stand by Cost - The charge to the Company for equipment requested by the Company to be left on Site to maintain the continuity of the Work, not to exceed 8 hrs in any 24 hr period. In no event shall Contractor be paid Stand By Cost in excess of the In/Out cost



14. Fair Market Value - means the Fair Market Value of the Equipment at the time of Contract execution which shall be adjusted downward to account for depreciation. Once monies paid by the Company for the Equipment equals the Fair Market Value, no further payment shall be made except for Operating Costs.

**EXHIBIT 46.1  
CONTRACTOR'S AFFIDAVIT AND INTERIM WAIVER OF LIENS**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, [CONTRACTOR] ("Contractor"), does hereby:

16. Certify that as of the date of [Contractor's] invoice to which this Affidavit and Waiver of Liens is attached (the "Invoice"), Contractor has paid to all persons, firms, associations, corporations or other entities furnishing labor, materials, equipment, or supplies to Contractor with respect to the contract ("Purchase Order") between [Company] ("Company") and Contractor all amounts then due such persons, firms, associates, corporations or other entities, and shall use the amount to be paid by [ ] in connection with the Invoice first to pay any amounts to become due to such persons firms, associations, corporations or other entities after the date of the Invoice;

17. Certify that Contractor has no outstanding claims against Company and/or their sureties in connection with the Work performed by Contractor in connection with any Company project or the Purchase Order, except for claims made, if any, in accordance with the requirements of the Contract and described on the attached Exhibit A (if applicable);

18. Remise, release, waive, relinquish and forever quitclaim unto Company, their successors and assigns, all rights that presently exist or hereafter may accrue to Contractor based on the delivery of materials or equipment and/or the performance of services in connection with the Invoice to assert a lien upon Company's property (real or personal), facilities or any part thereof by virtue of law in the jurisdiction in which the property or facility is situated or any amendment of said law regarding the rights of a contractor, subcontractor, laborer, supplier or materialman to assert a claim against Company's property (real or personal), facilities or any part thereof, subject, however, to Contractor's receipt of payment in the amount of the Invoice. Contractor has not and will not assign any right to perfect a lien against Company's property (real or personal), facilities or any part thereof based upon materials or equipment delivered and/or services performed in connection with the Invoice, and Contractor has the right, power and authority to execute this Affidavit and Waiver of Liens, again, however, subject to Contractor's receipt of payment in the amount of the Invoice;

19. Warrant that all persons, firms, associations, corporations or other entities furnishing labor, materials, equipment, or supplies to Contractor with respect to the Purchase Order, and any lien or bond claimant relating to the Invoice, have been paid in full (or will be paid in full upon Company's payment, whichever is applicable, of the Invoice) and that none of such laborers, subcontractors, suppliers, materialmen, or claimants has any claim, demand or lien against Company's property (real or personal), facilities or any part thereof. Contractor further warrants that all applicable taxes, fees and benefits relating directly or indirectly to the Invoice have been paid in full (or will be paid in full upon Company's payment, whichever is applicable, of the Invoice).

IN WITNESS WHEREOF, this Affidavit and Interim Waiver of Liens has been executed pursuant to due authority on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Contractor:  
By:  
Title:  
(Corporate Seal)

Subscribed and sworn to me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Notary Public)  
My commission expires:

Exhibit A

Claims

[List and describe any outstanding claims]

**EXHIBIT 46.2  
REQUISITION FOR PAYMENT**

From: <u>Insert from whom here</u>	Application Date: <u>Insert Application Date</u>
To: <u>Insert who to here</u>	Invoice No.: <u>Insert Invoice Number</u>
Attn: <u>Insert attention to here</u>	Payment No.: <u>Insert Payment Number</u>
	Period From: <u>Insert Date From</u>
	Period To: <u>Insert Date To</u>

Double click on tables to edit. Click anywhere else to exit.

**Table 1**

Original Contract Value	\$-
Approved Change Order Value	\$-
Current Contract Value	\$-
Approved Contract Progress PTD	0.00%
Approved Change Order Progress PTD	0.00%

**Table 2\*\***

[A]	Progress Invoice Amount (PTD*)		\$-
[B]	Change Order Invoice Amount (PTD*)		\$-
[C]	Invoice Amount (A+B)		\$-
[D]	Less Retention (C*10%)	10.0%	\$-
[E]	Subtotal Invoice Amount (C-D)		\$-
[F]	Less Previous Invoices		\$-
	- Current Invoice Amount (E-F)		\$-

\*PTD = Project To Date

\*\* Purchase Order (PO) Line Item details in the form attached to this Requisition for Payment or otherwise provided by Company must be submitted with each invoice for the referenced PO.

Requisition is made for current payment as shown in Table 2 above, which is based on the Schedule of Values which is contained in Section 1.3, "Pricing" of the Contract.

Contractor certifies that this Requisition for Payment and all other information submitted and attached is true, accurate, and in accordance with the provisions of the Contract.

Contractor certifies that the above is a true statement of account of the Contract to date and releases Company, its agents, heirs, successors, or assigns, from any claim or claims for payment of whatever nature for materials furnished, labor performed, or expense incurred to date which is not included in the above amounts, or for which Contractor has not provided Company with Written Notice.

Contractor:

Signature:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractor Rep:

Title:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT 47.4  
CONTRACTOR'S AFFIDAVIT AND FINAL WAIVER OF LIENS**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, [CONTRACTOR] ("Contractor"), does hereby:

20. Certify that as of the date of [Contractor's] invoice to which this Affidavit and Waiver of Liens is attached (the "Invoice"), Contractor has paid to all persons, firms, associations, corporations or other entities furnishing labor, materials, equipment, or supplies to Contractor with respect to the Contract between [Company] ("Company") and Contractor all amounts then due such persons, firms, associates, corporations or other entities, and shall use the amount to be paid by Company in connection with the Invoice first to pay any amounts to become due to such persons firms, associations, corporations or other entities after the date of the Invoice;

21. Certify that Contractor has no outstanding claims against Company and/or its sureties in connection with the Work performed by Contractor in connection with any Company project or the Contract;

22. Remise, release, waive, relinquish and forever quitclaim unto Company, their successors and assigns, all rights that presently exist or hereafter may accrue to Contractor based on the delivery of materials or equipment and/or the performance of services in connection with the Invoice to assert a lien upon Company's property (real or personal), facilities or any part thereof by virtue of law in the jurisdiction in which the property or facility is situated or any amendment of said law regarding the rights of a contractor, subcontractor, laborer, supplier or materialman to assert a claim against Company's property (real or personal), facilities or any part thereof, subject, however, to Contractor's receipt of payment in the amount of the Invoice. Contractor has not and will not assign any right to perfect a lien against Company's property (real or personal), facilities or any part thereof based upon materials or equipment delivered and/or services performed in connection with the Invoice, and Contractor has the right, power and authority to execute this Affidavit and Waiver of Liens, again, however, subject to Contractor's receipt of payment in the amount of the Invoice;

23. Warrant that all persons, firms, associations, corporations or other entities furnishing labor, materials, equipment, or supplies to Contractor with respect to the Contract, and any lien or bond claimant relating to the Invoice, have been paid in full (or will be paid in full upon Company's payment, whichever is applicable, of the Invoice) and that none of such laborers, subcontractors, suppliers, materialmen, or claimants has any claim, demand or lien against Company's property (real or personal), facilities or any part thereof. Contractor further warrants that all applicable taxes, fees and benefits relating directly or indirectly to the Invoice have been paid in full (or will be paid in full upon Company's payment, whichever is applicable, of the Invoice).

IN WITNESS WHEREOF, this Affidavit and Final Waiver of Liens has been executed pursuant to due authority on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Contractor:

By:

Title:

(Corporate Seal)

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Notary Public)

My commission expires:

**Exhibit B**

**Proposal for Additional Professional and Construction Administrative Services**

**PROPOSAL FOR  
ADDITIONAL PROFESSIONAL AND CONSTRUCTION  
ADMINISTRATION SERVICES  
NEW JERSEY WIND PORT  
LOWER ALLOYS CREEK, NJ**

*Prepared For:*



36 West State Street  
Trenton, NJ 08625

*Prepared By:*



180 Wells Avenue, Suite 302  
Newton, MA 02459

[to be updated]

Brain Sabina  
New Jersey Economic Development Authority (NJEDA)  
36 West State Street  
Trenton, NJ 08625

Re: **Additional Professional and Construction Administration Services at New Jersey Wind Port, Lower Alloys Creek, NJ**



Brian,

Moffatt & Nichol (M&N) is pleased to submit this proposal for additional professional services (for the part of Phase 1 (including Parcel G) not included within the existing detailed design work referred to below and for all of Phase 2) and for Construction Administration Services (for Phase 1 and Phase 2) of the New Jersey Wind Port, located in Lower Alloys Creek, NJ.

## PROJECT UNDERSTANDING

Phase 1 consists of the design and the construction of the following improvements:

- A dredged vessel approach channel between the Federal Delaware River Channel and the Port site (approximately 5,000 feet), dredged to a depth of -32.38 feet relative to Mean Lower-Low Water with 1.5 feet of over dredge;
- A vessel turning basin dredged to a depth of -32.38 feet relative to Mean Lower-Low Water with 1.5 feet of over dredge and two berthing pockets (combined length of 1,280 linear feet);
- Parcel A, a 30-acre area developed for offshore wind marshalling and assembly, which includes a heavy lift wharf and high-load upland areas;
- Parcel G, an approximately 25-acre area developed for tier-1 offshore wind component manufacturing (but which may be utilized as additional storage or staging area for Parcel A in the short-term); and
- A heavy lift corridor between Parcel A and Parcel G to enable components to be moved back and forth between the heavy lift wharf and Parcel G.

Phase 2 is expected to consist of the design and construction of the following improvements:

- Expansion of the Phase 1 wharf and berth pockets from 1,280 linear feet to 1,400 linear feet.
- An expanded turning basin and an additional two berth pockets (additional combined length of approximately 1,400 linear feet);
- Parcel B, a 99-acre area with a portion to be developed for expanded offshore wind marshalling and tier-1 offshore wind component manufacturing; this site will likely include an additional heavy lift wharf and high-load upland areas;
- Parcel C, a 32-acre area to be developed for additional tier-1 offshore wind component manufacturing; and
- Parcel D, a 20-acre area to be developed for additional tier-2 offshore wind manufacturing, centralized parking, and other port services.
- Design of a CDF on Parcel E

The timetable for the completion of the improvements on these Parcels varies, with the earliest (Parcel D) being approximately mid-2024 and the latest (Parcel B and C) being approximately early-2026.

M&N is currently performing the detailed design for part of Phase 1 consisting of the offshore wind (OSW) marshalling port (Parcel A) adjacent to the PSEG generating station in Lower Alloys Creek, NJ, which includes the 30 acres of uplands as well as the +/- 1080 LF of wharf and 200 LF of associated mooring dolphins. This work is being performed pursuant to the "PSEG Power Nuclear Generation Department Engineering and Technical Services Division Offshore Wind Development, Detailed Scope of Work GEN-HOP-YARD-ENGRG-SPEC-202-1 Scope of Work for Engineering Design, Hope Creek Generating Station Marine terminal Construction Project, Revision No. 3, dated July 22, 2020".<sup>8</sup>

The purpose of this proposal is to define the scope of services M&N and its subcontractors will provide during design, bidding and construction phases of the proposed work.

Attached to this proposal is an outline of professional services to be provided by M&N with respect to the initial feasibility planning and detailed design services for the balance of Phase 1 and an option to provide initial feasibility planning and detailed design services for all of Phase 2.

The required services for Construction Administration are detailed below. Subject to receipt of a notice to proceed from NJEDA, M&N has agreed to provide these Construction Administration services for Phase 1 and subject to NJEDA exercising the option to design Phase 2 and receipt of a notice to proceed from NJEDA, will provide them for Phase 2. In addition, attached to this proposal is an outline of professional services to be provided by M&N with respect to the initial feasibility planning and detailed design services

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<sup>8</sup> To be confirmed this is the last version.

for the balance of Phase 1 and an option to provide initial feasibility planning and detailed design services for all of Phase 2.

Once design is completed to a sufficient level for the construction work for to be bid (currently anticipated to be at 90% design), the construction work will be let out to bid, one or more contractors will be selected, and construction will begin. At the time of this proposal the start date for construction has not been confirmed.

Below are the specific tasks forming part of M&N services.

M&N will be providing Construction Administration and professional engineering services as described below and in Attachment A respectively. M&N will not act as the construction manager. The NJEDA will be retaining a third party as the Construction Manager (CM) to perform construction management services for the duration of the construction of this project. M&N will interact with this CM as well as the selected subcontractors during construction of the project.

M&N will coordinate with the Construction Manager (CM) retained by the NJEDA when finalizing the design and assist with the bidding of construction work as described in this proposal and in the Terms and Conditions.

It is noted that certain early works may commence prior to the selection of the CM firm. If this occurs, such construction will not be the responsibility of the CM but M&N will still be required to provide construction administration services with respect to those early works.

It is understood that the construction work may be bid out in multiple packages. However, for the purposes of this proposal, M&N understands that the submitted drawing and specification package will not need to be segregated for purposes of bidding multiple construction packages. The bid packages will be created by the CM using the submitted set of drawings and specifications. The CM will also add package specific front end specifications and a scope of construction work. M&N will assist the CM in identifying ways to effectively package the construction work to multiple contractors.

If required, NJEDA may engage or request M&N to engage a Licensed Site Remediation Professional. The services for this site remediation professional are not currently included in this scope of work. This scope and associated fee will be developed when this service is requested by the NJEDA. M&N will coordinate with the Licensed Site Remediation Professional if and when required as it relates to management of environmental concerns and export of materials from the project site.

## 1. ADDITIONAL PROFESSIONAL SERVICES

M&N will provide the additional professional services for Phase 1 and Phase 2 set forth in the attached Appendix A " Additional Professional Services; Scope of Work"

## 2. CONSTRUCTION ADMINISTRATION SERVICES

Below are the specific tasks required to complete the Construction Administration portion of the requested work.

### TASK 2.1 – PRE BIDDING AND AWARD

M&N will review and discuss with the CM, and advise the NJEDA in relation to, any recommendations from the CM with respect to value engineering or constructability issues.

If requested by NJEDA, M&N will incorporate into the drawings and specifications any such recommendations from the CM.

### TASK 2.2 – BIDDING AND AWARD

M&N will assist the CM in identifying ways to effectively package the construction work to multiple contractors and advise NJEDA with respect to those packages.

It is anticipated that there will be three distinct bidding packages and associated processes for the construction work for Phase 1 (site stabilization, wharf construction, dredging).

M&N will answer technical requests for information (RFI) submitted by the approved bidders during the bidding process for the construction work. These questions will be collected by the NJEDA or the CM and sent to M&N. It is assumed that the bidder RFIs will be answered by email or via a construction management software supplied by the NJEDA or the CM. It is also assumed that the bidder RFIs will be aggregated and then answers sent to all bidders by a set deadline.

M&N will be responsible for technical RFIs only. Administrative RFIs and/or questions pertaining to the package specific front end specifications and to the terms of the contracts will be answered by others. Drawings and/or technical specifications will not be amended during the bidding process unless a material omission is identified. In all other cases, M&N will produce additional sketches, drawing updates, or specification updates to clarify RFI questions, to address any inconsistencies identified during the bidding process, and to facilitate issuance of addenda for the bid packages, with the actual amendments to the drawings and/or technical specifications being undertaken as part of Task 3 (Production of Conformed Drawing Set) .

M&N will review the received bids and provide a memo in response to the bids identifying any issues or concerns with the various bids received. The letter shall be sent to the CM to integrate into a recommendation to award letter.

### TASK 2.3 – RESIDENT ENGINEER SERVICES

The M&N representative will be considered the site Resident Engineer (RE). The RE will observe the installation of the work to monitor compliance with the contract documents. If the work is not in compliance with the documents the RE will make recommendations to the CM and relevant contractor to bring the work within compliance. The RE will work with both the CM and general contractor to work towards this compliance.

The RE will deal with technical issues only. The CM will be in charge of all site logistics and construction scheduling issues. The RE will attend meetings on site with the contractor as needed as well as a bi-weekly meetings with the NJEDA and the CM.

The RE shall prepare all minutes of meetings at which it is in attendance. Meeting minutes shall be distributed as directed by the NJEDA, within five (5) days of each meeting.

M&N shall maintain a complete file of all written records prepared by or submitted to M&N or the RE in connection with the Project.

### TASK 2.4 – PRODUCTION OF CONFORMED DRAWING SET

Within two weeks of the bidding process ending, M&N will produce a conformed drawing set and technical specifications for the project. This conformed set of documents will incorporate required changes identified during the bidding process including as a result of the bidder RFIs. This conformed drawing set and technical specifications will be reviewed by the NJEDA and the CM and then be used as the for construction documents.

### TASK 2.5 – CONSTRUCTION CONTRACT ADMINISTRATION

M&N will consult with the NJEDA, provide administration of the contract between the NJEDA and the CM, and act as the NJEDA's representative, as provided in the Terms and Conditions. The extent and limitations of the duties, responsibilities, and authority of M&N as set forth in the Terms and Conditions will not be modified, except as M&N and NJEDA agree in writing.

### TASK 2.6 – PRECONSTRUCTION CONFERENCE

M&N will participate in and chair a Pre-Construction Conference prior to commencement of Work at the Site. M&N will ensure Resident Engineer attends the Pre-Construction Conference. The Resident Engineer will be responsible for taking minutes of the meeting and distributing those minutes to the participants.

## TASK 2.7 – REVIEW SCHEDULES

M&N will receive, review, and advise the NJEDA on the acceptability of any and all schedules that the CM is required to submit to the NJEDA or M&N, including, but not limited to, the progress schedule, schedule of submittals, and schedule of values.

## TASK 2.8 – BASELINES AND BENCHMARKS

M&N will, as appropriate, establish in the field property boundaries, baselines and benchmarks for locating the construction work which in M&N's judgment are necessary to enable the CM to proceed. M&N will provide the relevant plans and the CM will then establish those in the field.

## TASK 2.9 – REVIEW OF SUBMITTALS AND SHOP DRAWINGS

The project technical specifications will require the selected contractors to submit various types of information and shop drawings for review, including testing information. M&N will review and take appropriate action with respect to these submittals.

The purpose of this review is to establish if the submitted materials meet the requirements of the contract documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. M&N shall meet any CM's submittal schedule that M&N has accepted.

M&N will use the following system for review of the submittals:

- Approved or No Exceptions Taken
- Approved as Noted
- Approval Not Required
- Revise and Resubmit
- Submit Specified Item
- Rejected

M&N will review and return each submittal (other than shop drawings) within 10 business days of receipt.

M&N will review and return each shop drawing submittal within 10 business days of receipt.

It is assumed that submittals and shop drawings will be answered by email or via a construction management software supplied by the NJEDA or the site CM.

## TASK 2.10 – RESPONSE TO CONTRACTOR CONSTRUCTION PHASE RFIs

M&N will coordinate with the CM to provide responses to RFIs from contractors during the construction process. If required, M&N will provide an updated drawing in CAD format or hand sketch to clarify the RFI response. M&N will review and respond to each RFI within 7 business days of receipt.

It is assumed that RFIs will be answered by email or via a construction management software supplied by the CM.

## TASK 2.11 – FIELD VISITS, THIRD PARTY INSPECTION AND TESTING, AND REPORTING

M&N will make field visits to the site to monitor and inspect the work during the construction phase.

M&N will make visits to the site at intervals appropriate to the various stages of construction, to observe as an experienced and qualified design professional the progress and quality of the work. M&N will make such visits during the construction phase as may be necessary to discharge its responsibilities.

Without limiting the above, M&N will be on site to monitor the installation of significant components of the work. For this project this may include but not be limited to:

- Surcharge and Compaction of upland soils
- Driving of wharf foundation piles
- Installation of wharf superstructure
- Driving of the steel sheet pile bulkheads
- Installation of drainage structures and outfalls
- Installation of pile supported relieving platforms
- Installation of electrical infrastructure
- Dewatering of CDF3
- Installation of channel markers

M&N will be on site for the full installation of the items described above, including being present for the kickoff of the activity, during the initial installment period and making such visits as necessary to inspect the work. M&N will coordinate with the CM to ensure it is aware of the construction activities so that M&N may properly coordinate site visits with the installation of the work. Under certain circumstances M&N will be available on an emergency basis and without warning.

M&N will be available at the site to answer technical questions that arise in the field during the installation of the work. For unexpected issues and/or questions that arise M&N will be on site within 48 hours of the request.

M&N will document each site visit with a site visit report. This report will summarize the activities witnessed during the visit and document and any direction given to the contractor or CM. This report will include digital photographs of the viewed work.

M&N will be responsible for engaging all third parties required to undertake necessary inspections and testing of the work, including inspection of dredging.

M&N will document any issues with the installation of the work and the proposed resolutions in a bi-weekly field report. These reports will be delivered on the 15<sup>th</sup> and last day of each month during the construction phase. This report will summarize the work performed during the weeks under consideration. It will also address any issues with issues with the work installation and summarize the agreed upon solution to these issues.

In addition, M&N will recommend to NJEDA that CM's work be rejected while it is in progress if, on the basis of M&N's observations or third party inspections and testing, M&N believes that such work does not conform to the contract documents.

M&N will alert the NJEDA and the CM if it discovers any defects in the work, within 24 hours of discovery of the defect.

## TASK 2.12 – CHANGE ORDERS AND CHANGE WORK DIRECTIVES

M&N will review, and advise the NJEDA in relation to, any proposed change orders from the CM. The CM will prepare the change orders and M&N will review and advise the NJEDA with respect to those change orders. If appropriate, in M&N's professional judgment, M&N will also recommend change orders to NJEDA (even if not proposed by the CM). In these cases, M&N will prepare any change orders approved by the NJEDA.

Each change order will be signed by the NJEDA and the CM, with one or more change order bulletins attached. The NJEDA, the CM, and M&N will sign each change order bulletin to be attached to a change order. M&N will sign the change order bulletin to confirm that the contents have been professionally reviewed, are accurate and correct.

## TASK 2.13 – CERTIFICATE FOR PAYMENT TO CONSTRUCTION MANAGER

M&N shall review applications for payment and accompanying supporting documentation from the CM, and certify to the NJEDA the amount to be paid to the CM. Such certification will constitute M&N's representation to the NJEDA, based on such observations and review, that, to the best of M&N's knowledge, information and belief, the CM's work has progressed to the point indicated, that the work

is in accordance with the contract documents, and that the CM is entitled to the payment in the amount certified.

## TASK 2.14 – CONTRACTOR COMPLETION DOCUMENTS

M&N will receive, review, and transmit to the NJEDA maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the contract documents, certificates of inspection, tests and approvals, shop drawings, samples and other data approved, and the annotated record documents, all of which are to be assembled by CM in accordance with the contract documents to complete the work and obtain final payment.

## TASK 2.15 – INSPECTIONS, TESTING, COMMISSIONING AND PUNCH LIST INSPECTION

M&N will undertake site inspections, attend all onsite testing and engage third parties required to undertake necessary inspections and testing of the work as required by Task 2.11.

For any buildings included in the scope, M&N will engage the services of an Independent Commissioning Agent, who will have overall responsibility to work with M&N to develop a plan, with input from the CM firm and the NJEDA, that details the procedure for evaluating, testing and accepting the construction work including building systems and equipment for the base building and tenant provided. The established format with applicable procedures will be incorporated into the construction specifications and bidding documents. M&N will be part of this process during design and construction including the review of all testing, recommendation for acceptance or required items for conformance.

The CM may also be asked to provide one or more commissioning agents for specific elements of the works to work with M&N and its Independent Commissioning Agent in this process. If so, the M&N team will work in collaboration with the others. The intent of this exercise is to ensure the smooth transition from completion of the construction phase through move-in and operation of the project. In addition, 1 year after acceptance, the M&N team will be required to make evaluations/provide assistance, to the building owner/manager as part of its scope of basic services.

Once the CM determines that a phase of work is ready for use, M&N will, promptly after notice from CM, conduct a site inspection and develop a punch list of outstanding items. The punch list will be distributed to the CM and the NJEDA.

## TASK 2.16 – CERTIFICATE OF FINAL COMPLETION

M&N will, in company with the NJEDA, conduct a final inspection to determine if all the work of the CM is complete and acceptable, including all punch list items, so that M&N may provide a certificate of final completion (in a form to be agreed) certifying that, to the best of M&N's knowledge, information and belief, the construction work has been completed in accordance with the contract documents and certifying the final payment to the CM

## TASK 2.17 – RECORD DRAWINGS

M&N will obtain contractor markups of changes and as-built plans from the CM reflecting the final condition. M&N will prepare and furnish to the NJEDA a set of Project Record Drawings in PDF and AutoCAD (or approved equivalent) showing appropriate record information based on the as-built plans and other Record Drawing information from the CM.

## TASK 2.18 – DIVE INSPECTIONS

M&N will perform underwater inspections of the installed in water work. Dive inspections will be performed by a 3 person dive crew and led by a professional engineer/diver. All M&N divers are certified by the Association of Diving Contractors International (ADC1). Ten dive inspections have been included in the fee for this work.

These dive inspections will investigate whether the work below the waterline was installed according to the contract documents. M&N will document each dive inspection with a dive inspection report. This

report will summarize the activities witnessed during the visit and document and any direction given to the contractor or the CM. This report will include digital photographs of the viewed work.

## TASK 2.19 – SUSTAINABILITY

It is anticipated that the project will seek to meet green infrastructure goals.

## ASSUMPTIONS AND EXCLUSIONS

1. M&N will not act as the construction manager for this project. The NJEDA will procure a CM for the project. This CM will be responsible for running the site on a daily basis. This includes project budgets and schedules.
2. M&N will review submittals and shop drawings for compliance with the contract documents and coordinate the submittal process with the CM. However, M&N cannot control the contractors means and methods for the installation of the work.
3. Without limiting M&N's responsibilities under this proposal, the CM will have ultimate responsibility for installing the work as shown on the contract documents.
4. M&N will not hold or update the project schedule during the construction period. This will be performed by the NJEDA designated CM. M&N will be responsible for reviewing, and advising the NJEDA in relation to, schedule updates.
5. M&N is not responsible for the contractor invoicing. M&N will be responsible for reviewing and providing certifications with respect to contractor invoices.
6. M&N will not be on site to receive deliveries and/or concrete truck visits to the site.

## PROPOSED SCOPE AND FEE

M&N will perform the initial feasibility planning and detailed design for the balance of Phase 1 on a lump sum price basis for each of the following: (1) preliminary design services for Parcel G to accommodate a manufacturing facility and the heavy lift corridor between Parcel A and Parcel G to enable components to be moved back and forth between the heavy lift wharf and Parcel G, (2) detailed design for the same and (3) if NJEDA exercises the option, preliminary and detailed design for a specific manufacturing facility. The lump sum fees for the preliminary design services for Parcel G and the road connecting Parcel G and A are detailed in Appendix B. The detailed design fee for Parcel G and the road connecting Parcel A and G will be submitted upon the completion of the preliminary engineering of these areas. The hourly rates and allotted hours that have been used to calculate the lump sum fee are detailed in Appendix B. M&N will use these same rates to prepare the fee for the detailed design of Parcel G and the road connecting Parcel A and G.

Prior to starting initial feasibility planning and additional detailed design work for Phase 2, M&N will provide a proposed lump sum price for each part of that work (together with the hourly rates and allotted hours that have been used to calculate the proposed lump sum fee). If the proposed lump sum is approved by the NJEDA, M&N will perform that work on a lump sum basis, except for any work that NJEDA and M&N agree to be delivered under a separate purchase order prior to an overall lump sum being agreed. The hourly rates that M&N will use to calculate a proposed lump sum are detailed in Appendix B.

M&N will perform the construction administration services for Phase 1 and Phase 2 on a **time and materials, not to exceed basis**. There will be a separate "not to exceed fee" for each of Phase 1 and Phase 2. This will allow for the maximum flexibility and ensure that the fee will reflect actual work performed in the field or office. M&N will allot hours and corresponding fees to each task of the construction administration services based on our experience with projects of similar scope and complexity. M&N will notify the client once the billings reach 75% of the total "not to exceed fee" stated in this proposal. The hourly rates, allotted hours and corresponding fees for each task, together with the "not to exceed" fee for Phase 1 is detailed in Appendix B. These rates (with indicated yearly escalation) will be used to create the fee for the Phase 2 construction administration services once the detailed design scope for the Phase 2 parcels is established.

Sincerely,  
**MOFFATT & NICHOL**

Joshua Singer, PE

## APPENDIX A

### OUTLINE OF AND OPTIONAL ADDITIONAL PROFESSIONAL SERVICES

#### Additional Services for Phase 1.

- M&N will provide preliminary design services for Parcel G to accommodate a manufacturing facility and the heavy lift corridor between Parcel A and Parcel G to enable components to be moved back and forth between the heavy lift wharf and Parcel G, and subject to the NJEDA providing a notice to proceed for detailed design will provide detailed design services for the same, with an option to provide preliminary and detailed design for a specific manufacturing facility. Preliminary services are intended to support the application of the various permits minimum requirements and shall include as a minimum:
  - Land survey (topo, utilities, OH wire survey elevations)
  - Develop preliminary site layout, including building and roadway footprint and storage/laydown areas
  - Preliminary Subsurface Investigation to determine geotechnical design parameters
    - Incorporate results from previous investigation programs
    - Sufficient soil sampling (e.g. Shelby tubes) & laboratory testing to obtain consolidation parameters
    - Consider CPT to obtain shear strength parameters with dissipation testing to develop horizontal rate of consolidation (for wick drain considerations)
  - Develop Geotechnical Recommendations for:
    - foundations
    - bearing capacity (storage areas and live load areas)
    - surcharge or other ground improvement methods
  - Perform preliminary environmental screening/sampling for contaminants in possible excavation areas
  - Develop Building blocking/program with design criteria (i.e. X SF is warehouse with required bearing of Y, Y SF is nacelle clicking with required bearing of Z)
  - Develop preliminary site grading to meet nacelle storage area criteria
  - Develop preliminary settlement criteria for proposed structures, storage areas, and live load areas
    - Based on previous input obtained from OEM's and others.
  - Coordinate with PSEG on the relocation of the Combo Shop, Fukushima Site, Hazmat Building and the Salt Storage facility to Site E.

#### OPTION: Additional Services for Phase 2.

- Option to provide preliminary design services for Phase 2, including refiguration of heavy haul road, and subject to NJEDA providing a notice to proceed for detailed design, will provide detailed design for same. Certain of these services may be provided on an "as needed" basis before the Phase 2 option is exercised to accommodate the time line for Phase 2. Preliminary services are intended to support the application of the various permits minimum requirements and shall include as a minimum:
  - Area B (possible blade manufacturing)
    - Develop preliminary site layout, including building and roadway footprint and storage/laydown areas
    - Preliminary Subsurface Investigation to determine geotechnical design parameters
    - Incorporate results from previous investigation programs
    - Sufficient soil sampling (e.g. Shelby tubes) & laboratory testing to obtain consolidation parameters
    - Consider CPT to obtain shear strength parameters with dissipation testing to develop horizontal rate of consolidation (for wick drain considerations)
    - Develop Geotechnical Recommendations for:
      - foundations



- bearing capacity (storage areas and live load areas)
- surcharge or other ground improvement methods
- Perform preliminary environmental screening/sampling for contaminants in possible excavation areas
- Develop Building blocking/program with design criteria (i.e. X SF is warehouse with required bearing of Y, Y SF is nacelle clicking with required bearing of Z)
- Develop preliminary site grading to meet criteria
- Develop preliminary settlement criteria for proposed structures, storage areas, and live load areas
- Area C (component production)
  - Land survey (topo, utilities, pool bottom elevations)
  - See Bullets b thru f for Area G; apply to Area C
- Area D (component production)
  - See Bullets a thru f for Area G; apply to Area D
  - Assess impact to overhead lines and towers, maintain access to towers
- Area E (relocated/new CDF)
  - Land survey (topo, utilities, OH wire survey elevations)
  - Establish dike alignment
  - Assess location of existing overhead lines and towers
  - Clearance of lines
  - Locate dikes to minimize impact on towers or consider tower relocation
  - Determine CDF air capacity per foot of dike elevation increase
  - Determine preliminary maximum dike height and slopes based on available fill within Area E
  - From leveling of CDF footprint and excavation of interior of proposed CDF as dike borrow material (if suitable/clean)
  - Identify potential borrow sources
  - Including USACE Artificial Island CDF Cells 1 & 2
  - If borrow needed, obtain samples of dredged material within Cells 1 & 2 to assess if suitable/clean for use as dike fill
  - Determine conceptual life cycle capacity / needs of CDF (dredging needs vs. air capacity over time), account for dike settlement vs. interior base settlement over time
  - Develop & Perform Preliminary Subsurface Investigation Program
  - Review existing borings/CPT information and incorporate results
  - Borings/CPTs at representative spacing along the proposed CDF dikes
  - Boring/CPT depths to extend at least 2x the dike height below ground surface, e.g. 40-foot dikes = 80-foot deep borings
  - Obtain sufficient soil sampling & laboratory testing to obtain consolidation parameters
  - Consider dissipation testing if wick drains are considered or determine if dike settlement over time is acceptable based on planned CDF operations
  - Shallow sampling of CDF interior to determine suitability of use as potential dike fill
  - Including laboratory testing for contaminants
  - Sampling to extend to at least the limits of possible excavation
  - Determine preliminary maximum dike height and slopes based on preliminary slope stability analyses, including seepage considerations
  - Perform preliminary environmental screening/sampling for contaminants in possible excavation areas

Notes:

1. Note that environmental sampling should be adequate to help facilitate discussion on which materials will be exported from the site versus which materials will be analyzed for on-site or off-site reuse.

2. Additional site investigation to satisfy Preliminary Assessment Areas of concerns will be evaluated separately.

3. MN is not responsible to obtain the permits. MN is expected to work with the responsible party in the preparation of the permit applications. MN will provide support as necessary until permits are issued.

**APPENDIX 2**

**Design Agreement**

*Available to committee members upon request*

# ATTACHMENT 2

Assignment and Assumption Agreement

by and among

Moffatt & Nichol

and

PSEG Services Corporation

and

New Jersey Economic Development Authority

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (this "**Agreement**") is made and entered into as of [ ], 2020 (the "**Effective Date**") by and among PSEG SERVICES CORPORATION, a New Jersey corporation with its principal office at 80 Park Plaza, Newark, NJ 07102 ("**PSEG**"), NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the authority of N.J.S.A. 34:1B-1 et seq. with offices at 36 West State Street, Trenton, NJ 08625-0990 ("**NJEDA**"), and MOFFATT AND NICHOL, a California corporation with offices at 529 5<sup>th</sup> Avenue #14, New York, New York 10017 ("**M&N**").

**RECITALS:**

- (A) PSEG and M&N are parties to that certain Contract for Detailed Engineering for the Hope Creek Generating Station Marine Terminal Project (Contract No. MA00006732) dated as of June 16, 2020 and attached hereto as Appendix 1 (the "**Design Agreement**"), pursuant to which M&N has agreed to supply and PSEG agreed to purchase detailed design services in relation to development of a Wind Turbine Generation Marine Terminal at Hope Creek (the "**Services**").
- (B) NJEDA wishes to assume (i) PSEG's right, title and interest in the Design Agreement as well as (ii) all obligations arising thereunder after the Effective Date.
- (C) To facilitate overall management and development of the Hope Creek Wind Marine Terminal Generating Station, PSEG wishes to assign all of its rights, title and interest in the Design Agreement to NJEDA in consideration of M&N releasing PSEG from its obligations and liabilities in respect of the Design Agreement arising after the Effective Date.
- (D) Therefore, in consideration of the mutual covenants contained herein and other valuable consideration received, and with the intent to be legally bound, the parties agree as follows.

**THE PARTIES AGREE AS FOLLOWS:**

**1. CONSTRUCTION AND INTERPRETATION**

- (a) All capitalized terms used in this Agreement but not otherwise defined herein are given the meanings set forth in the Design Agreement.
- (b) The section and paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provision hereof.
- (c) Unless otherwise expressly specified, the terms, provisions and obligations contained in the Appendices attached hereto shall have the same force and effect as if herein set forth in full.
- (d) Each of the parties hereto acknowledges and agrees that:
  - (i) it is an experienced and sophisticated party and has been given the opportunity to independently review this Agreement with legal counsel;
  - (ii) it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of this Agreement; and
  - (iii) if there is an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement will not be interpreted or construed against the party that prepared it.

2. **ASSIGNMENT AND ASSUMPTION**

2.1 **Assignment**

PSEG hereby assigns and conveys to NJEDA for the benefit of NJEDA and its successors and assigns all of PSEG's right, title and interest in and to the Design Agreement, together with all rights, privileges and benefits appertaining thereto (the "**Assigned Rights**").

2.2 **Assumption**

NJEDA hereby (i) accepts the assignment and conveyance of the Assigned Rights, and (ii) assumes all of PSEG's obligations under the Design Agreement, arising from and after the Effective Date.

2.3 **Release**

M&N hereby releases PSEG from all its obligations and liabilities under the Design Agreement arising from and after the Effective Date.

3. **CONSENT, CONFIRMATION AND ACKNOWLEDGEMENT**

Each of the parties hereto consents to the assignment of the Design Agreement.

4. **REPRESENTATIONS AND WARRANTIES**

4.1 **Representations and warranties**

The representations and warranties in Sections 4.2 to 4.4 are made as of the Effective Date.

4.2 **PSEG's Representations and Warranties**

PSEG represents and warrants to each other party to this Agreement that:

- (a) Attached hereto as Appendix 1 is a true and correct copy of the Design Agreement. It has not been amended or modified nor has any change order or purchase order been issued in respect thereof except as attached in Appendix 1.
- (b) PSEG owns all right, title and interest to the Assigned Rights and has not previously encumbered or assigned any of its interests under the Design Agreement and has full right, power and authority to assign the Assigned Rights as provided herein.
- (c) The Design Agreement is in full force and effect and is enforceable against PSEG in accordance with its terms, subject in all respects to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and general equitable principles (whether considered in a proceeding in equity or at law) (the "**Bankruptcy and Equity Exceptions**").
- (d) PSEG has neither received nor provided any notice of force majeure event pursuant to Article 30 of the Design Agreement, and PSEG is unaware of any default thereunder or any dispute between M&N and PSEG thereunder.
- (e) Attached hereto as Appendix 2 are all materials, documents, and information related to Change Orders #3 (Hazard Analysis Support Services), #5 (Pile Driving Vibration Analysis at the LS Power Transmission Lines) and #6 (Early Start Detailed Design Effort) that have been exchanged between PSEG and M&N.
- (f) Attached hereto as Appendix 3 is a true and complete copy of the Project Basis (as such term is defined in the Design Agreement). The Project Basis expressly sets forth (i) all

of the assumptions and principals on which the design in the Design Agreement is based as well as (ii) all material information, materials and documentation delivered by PSEG to M&N on which M&N is permitted to rely without independent verification in connection with the performance of its obligations under the Design Agreement.

- (g) This Agreement is enforceable against PSEG in accordance with its terms, subject in all respects to the Bankruptcy and Equity Exceptions. This Agreement and all transactions contemplated thereby do not contravene any applicable law or any of its obligations or undertakings by which it or any of its assets are bound or require any consent, approval or permit other than those which have been obtained and are in full force and effect.
- (h) The Design Agreement has been fully performed by the parties thereto in compliance with the terms thereof and all amounts payable thereunder have been paid in full (other than [***to be inserted***]).

#### 4.3 **NJEDA's Representations and Warranties**

NJEDA represents and warrants to each party to this Agreement that this Agreement is enforceable against NJEDA in accordance with its terms. This Agreement and all transactions contemplated thereby do not contravene any applicable law or any of its obligations or undertakings by which it or any of its assets are bound or require any consent, approval or permit other than those which have been obtained and are in full force and effect.

#### 4.4 **M&N's Representations and Warranties**

M&N represents and warrants to each other party to this Agreement that:

- (a) Attached hereto as Appendix 1 is a true and correct copy of the Design Agreement. It has not been amended or modified nor has any change order or purchase order been issued in respect thereof except as attached in Appendix 1.
- (b) The Design Agreement is in full force and effect and is enforceable against M&N in accordance with its terms, subject in all respects to the Bankruptcy and Equity Exceptions.
- (c) M&N has neither received nor provided any notice of force majeure event pursuant to Article 30 of the Design Agreement, and M&N is unaware of any default thereunder or any dispute between M&N and PSEG thereunder.
- (d) Attached hereto as Appendix 2 are all materials, documents, and information related to Change Orders #3 (Hazard Analysis Support Services), #5 (Pile Driving Vibration Analysis at the LS Power Transmission Lines) and #6 (Early Start Detailed Design Effort) that have been exchanged between PSEG and M&N.
- (e) Attached hereto as Appendix 3 is a true and complete copy of the Project Basis (as such term is defined in the Design Agreement). The Project Basis expressly sets forth (i) all of the assumptions and principals on which the design in the Design Agreement is based as well as (ii) all material information, materials and documentation delivered by PSEG to M&N on which M&N is permitted to rely without independent verification in connection with the performance of its obligations under the Design Agreement.
- (f) This Agreement is enforceable against M&N in accordance with its terms, subject in all respects to the Bankruptcy and Equity Exceptions. This Agreement and all transactions contemplated thereby do not contravene any applicable law or any of its obligations or undertakings by which it or any of its assets are bound or require any consent, approval or permit other than those which have been obtained and are in full force and effect.

- (g) The Design Agreement has been fully performed by the parties thereto in compliance with the terms thereof and all amounts payable thereunder have been paid in full (other than [**to be inserted**]).

5. **MISCELLANEOUS**

5.1 **Severability**

If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either PSEG or NJEDA of material benefits derived from this Agreement or make performance under this Agreement unreasonably difficult, then PSEG and NJEDA shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to PSEG, NJEDA and M&N.

5.2 **Governing Law**

This Agreement and any claim, dispute or controversy arising out of, under or related to this Agreement, the relationship of the parties under this Agreement, and the interpretation and enforcement of the rights and obligation of the parties under this Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of New Jersey, without regard to choice of law principles.

5.3 **Jurisdiction**

Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be submitted for resolution to a Court of competent jurisdiction in the County of Mercer in the State of New Jersey.

5.4 **Counterparts**

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. Delivery of a counterpart of this Agreement by email attachment or fax constitutes an effective mode of delivery.

5.5 **Notices**

- (a) All notices shall be delivered in accordance with Article 67 of the Design Agreement.
- (b) Notices shall be provided to M&N and PSEG at the addresses provided in the Design Agreement.
- (c) Notices shall be provided to NJEDA at the following address: Attn: Project Director, 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625.

5.6 **No Waiver**

No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Agreement shall constitute an impairment or waiver of any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed



as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations.

5.7 **Authority**

Each person executing this Agreement represents and warrants that he or she has the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners', members', managers', and other approvals have been obtained.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, PSEG, M&N and NJEDA have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**M&N**

MOFFATT & NICHOL

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

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

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

**NJEDA**

NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY

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

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

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

**PSEG**

PSEG SERVICES CORPORATION

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

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

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

**APPENDIX 1**

**Design Agreement**

***Available to committee members upon request***

**Appendix 2**

**All materials, documents, and information related to Change Orders #3, #5 and #6**

**Appendix 3**  
**Project Basis**

**BOARD MEMORANDA -FYI ONLY**





**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan, Chief Executive Officer  
**DATE:** September 9, 2020  
**SUBJECT:** Credit Underwriting Projects Approved Under Delegated Authority –  
**For Informational Purposes Only**

The following projects were approved under Delegated Authority in August 2020:

**Micro Business Loan Program:**

- 1) Invincible City Farms LLC (PROD-00192556), located in Hopewell Township, Cumberland County, is a farm that was formed in 2017. The Company focuses on building a local food system to eliminate food deserts and cultivate nutrition, economy, and dignity for the people in distressed urban environments such as Camden, NJ and the surrounding region. The NJEDA approved a \$49,201 loan to purchase equipment. Currently, the Company has two employees and plans to create one new job within the next two years.

**Small Business Fund Program:**

- 1) Laundry Solutions of Mercer LLC (PROD-00192541), located in Trenton City, Mercer County, was formed in 2007 to operate a commercial laundry, dry cleaning and pressing service. The NJEDA approved a \$352,610.45 loan under the Direct Small Business Loan Program. Proceeds will be used to refinance existing business debts. The Company currently has fourteen employees and plans to create sixteen new positions within the next two years.

**NJ Main Street Program:**

- 1) Tetrus Corp. and Tetra Ventures, LLC (PROD-00218891), located in East Brunswick Township, Middlesex County, was founded in 2013 to provide information sharing and analysis products and services to public safety, homeland security and justice and corrections stakeholders. Provident Bank approved a \$300,000 working capital line of credit contingent upon a two-year, 50% Authority guarantee of principal outstanding, not to exceed \$150,000. Currently, the Company has sixteen employees and plans to create five additional jobs over the next two years.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is written above a horizontal line.

Tim Sullivan, CEO