

RESOLUTION NO. 2014-123

A RESOLUTION AUTHORIZING THE EXECUTION OF
A WATER TREATMENT CONTRACT WITH THE STATE OF
NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL
PROTECTION FOR REMEDIATION OF WATER UTILITY
WELL NO. 4.

WHEREAS, the City of Vineland Water Utility has applied for assistance through the State of New Jersey, Department of Environmental Protection, Site Remediation Program (NJDEP), for remediation of Well No. 4 which has been impacted by ethylene dibromide contamination; and

WHEREAS, NJDEP has approved the City's request and submitted a proposed form of Water Treatment Contract confirming this funding commitment; and

WHEREAS, it is considered to be in the best interest of the City of Vineland that the execution of said agreement be authorized on behalf of the City; now, therefore,

BE IT RESOLVED by the City Council of the City of Vineland that the Mayor be and the same is hereby authorized to execute on behalf of the City a Water Treatment Contract with NJDEP, in a form to be approved by the City Solicitor, for remediation of Water Utility Well No. 4.

Adopted:

President of Council

ATTEST:

City Clerk

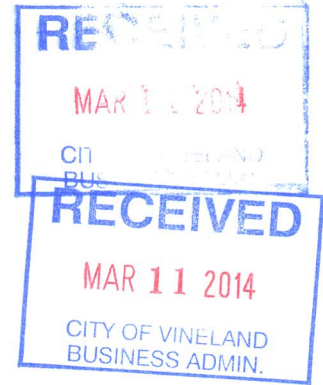


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VMWU Superintendent
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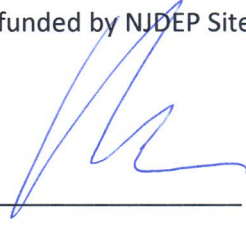
Memorandum

To: Joe Isabella, William Lutz
CC: Denise Monaco
From: Michael S. Lawler, VMWU Superintendent, CPWM.
Date: 3/10/14
Re: Well 4 NJDEP/City of Vineland contract agreement.



The City of Vineland Water Utility is respectfully requesting ordinance to enter into contract with the State of New Jersey, Department of Environmental Protection (NJDEP). The purpose is to receive funding from the NJDEP Site Remediation Program pertaining to the City of Vineland Well #4 Ethylene Dibromide remediation and treatment project. The City of Vineland Water Utility (CVWU) will act as the contractor for the project. CVWU will then hire the sub-contractors following NJ Local Public Contacts Law N.J.S.A. 40A:11-1 et seq. This project will be fully funded by NJDEP Site Remediation Program and is not a loan.

Joseph Isabella 

William Lutz 

*So Approved
to initiate action,
- M.L.*

Thank You

Michael Lawler, Superintendent, CPWM.

**CITY OF VINELAND MUNICIPAL WATER UTILITY
WELL NO. 4 TREATMENT IMPROVEMENTS
ESTIMATED CONSTRUCTION COSTS
October 10, 2013**

<u>Item No.</u>	<u>Item</u>	<u>Unit Cost</u>		<u>Quantity</u>	<u>Total Cost</u>
1	General Conditions (bonds, insurance, permitting, etc.)	\$ 10,000.00	LS	1	\$ 10,000.00
2	Site work (prep, excav., backfilling, final grading, landscaping)	10,000	LS	1	10,000.00
3	Well discharge piping modifications	10,000	LS	1	10,000.00
4	Air Stripping Tower and Appurtenant Equipment	230,000	LS	1	230,000.00
5	Air Stripping Tower concrete foundation	25,000	LS	1	25,000.00
6	Installation of new Air Stripping Tower and Equipment	20,000	LS	1	20,000.00
7	Air Stripping Tower discharge piping, valves and fittings	10,000	LS	1	10,000.00
8	Electric and Controls	80,000	LS	1	80,000.00
9	Painting, finishes, specialities	5,000	LS	1	5,000.00
10	Miscellaneous Constr and Equipment	10,000	LS	1	10,000.00
11	Disinfection, Testing and Startup	8,000	LS	1	8,000.00
<hr/>					
(1)	Total Estimated Construction Costs				\$ 418,000.00
(2)	Bureau of Water System Engineering Permit Fee				\$ 3,258.00
	Subtotal - Est. Construction Cost and Permit Fees				\$ 421,258.00
(3)	Engineering and Inspections @ 15% of Subtotal				\$ 63,188.70
(4)	Legal and Administration @ 5% of Subtotal				\$ 21,062.90
(5)	Contingencies @ 15% of Subtotal				\$ 63,188.70
	Total Estimated Project Cost				\$ 568,698.30

STATE OF NEW JERSEY
WATER TREATMENT CONTRACT
THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND

(CONTRACTOR)

CONTRACT NUMBER ICU-

GENERAL TERMS AND CONDITIONS

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DRAFT

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Contract Award Data and Signatures

CONTRACTOR:

Address:

Chief Financial Officer:

Contracting Department

Department: Department of Environmental Protection
Site Remediation Program

Address: 401 E State Street
P.O. Box 420
Mail Code: 380-01
Trenton, New Jersey 08625-0420

Contract Officer: Assistant Director
Publicly Funded Response Element

Source of Funds

Amount	Authorization #	Act. Title
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State

Total Contract Amount:

Effective Date of Contract

The effective contract date is the date the Department of Treasury executes the contract after having been signed by the CONTRACTOR and the Department of Environmental Protection.

Purpose

SIGNATURES

ACCEPTED AND AGREED:

DRAFT

CONTRACTOR

DATED: _____ By: _____
Signature

Name & Title

Municipality

STATE OF NEW JERSEY

DATED: _____ By: _____
Assistant Commissioner
Site Remediation Program - or designee
Department of Environmental Protection

Approved as to Form

Richard Engel
Deputy Attorney General – or designee

Date: _____

Prepared as to Form

Preparer

II. Approvals and Authorizations

A. Contract Approvals

1. This contract is executed under the joint authority of the Commissioner, Department of Environmental Protection (Department) or his/her designee and the Director, Division of Purchase and Property, Department of Treasury. Any Change Order for this contract must be executed by the Commissioner or his/her designee and the Director, Division of Purchase and Property or his/her designee.
2. If the CONTRACTOR is a municipal or county governmental agency, the CONTRACTOR must submit to the Department, upon its execution of this contract, a copy of an ordinance or resolution duly enacted by the governing body of that municipality or county authorizing the contract.

B. Work Authorization

The CONTRACTOR may commence work under this contract upon receipt of a written authorization signed by the Department's Assistant Director of the Publicly Funded Response Element. No work will be compensated if performed prior to receiving a Work Authorization.

III. Subcontracts

The CONTRACTOR may perform work under this contract through subcontractor(s), including suppliers and other providers.

- A. The CONTRACTOR shall be responsible for managing and paying any subcontractors and for ensuring their proper and timely completion of the work. The Department will not be responsible for any delays, delay costs, claims or other problems arising out of the CONTRACTOR's employment of subcontractors.
- B. The CONTRACTOR shall be responsible for providing a copy of this contract to each subcontractor and for the compliance by each subcontractor with the terms, conditions and requirements of this contract. In no event shall the CONTRACTOR's duties, obligations or liabilities to the State be deemed to be diminished by any subcontract. Nothing contained herein, or in any subcontract, shall be construed as creating any contractual relationship between the subcontractor and the State.
- C. The CONTRACTOR shall be responsible for any claims arising out of any subcontract hereunder and, as a condition of this contract and any subcontract hereunder, each subcontractor shall indemnify, defend, and hold the State

harmless from any claims by any subcontractor, supplier or third party which may arise hereunder.

- D. The CONTRACTOR shall secure the written approval of the Department prior to entering into any subcontract, to ensure that use of the subcontractor will not conflict with the State's interests in exercising this contract or in recovering costs connected with this contract. Moreover, the State wants to be assured that no subcontractor has been debarred or is otherwise disqualified from contracting work with the State. Any request for approval will be acted upon expeditiously, and approval will not be unreasonably withheld.
- E. As a pre-condition of the Department's approval of a subcontractor and prior to any payments to CONTRACTOR by the Department for subcontracted work, the CONTRACTOR shall secure from the subcontractor and shall submit to the Department an executed copy of the "Subcontractor Certification," Attachment C hereto.
- F. Any contracts with subcontractors shall itemize by tasks the work to be performed and shall contain line item prices for each task.
- G. The Department must be notified in writing of any changes to the subcontract line items so that the Department may approve or disapprove such changes.

IV. Payment

- A. The CONTRACTOR shall be reimbursed for the actual costs of performing the Scope of Work approved by the Department up to the maximum of the Budget Line Item Amounts. The CONTRACTOR agrees to perform each task in the Scope of Work and to accept all the Budget Line Item Amounts as not-to-exceed limits for completing the Scope of Work.
 - 1. For purposes of executing this contract, the Budget Line Item Amounts and Total Contract Amount have been derived by agreement of the parties from an engineer's estimate of the costs. Attachment A contains the Approved Budget.
 - 2. If, subsequent to the execution of this contract, the CONTRACTOR subcontracts for some or all of the work, and the subcontract prices are determined by the Department to be reasonable, then, upon award of any approved subcontracts, Attachment A shall be modified by Change Order to reflect the competitively bid or negotiated subcontract prices, and the affected Budget Line Item Amounts and the Total Contract Amount shall be modified upward or downward accordingly.
- B. The CONTRACTOR may submit a Request for Payment and shall be paid for each Budget Line Item in Attachment A upon satisfactory completion of the

work. Upon CONTRACTOR's request, the Department may agree to partial payments either on an accrued cost basis and/or a subtask basis.

1. Each Request for Payment shall include: (a) a signed State invoice; (b) a detailed report of obligations due and owed by the CONTRACTOR, including copies of any bills received from subcontractors, suppliers and other providers; (c) a certification that all obligations for which payment is requested were incurred in accordance with the provisions of this contract and any subcontracts approved hereunder, that the work for which it is billing has been properly done, and (d) verification that all previous funds received under this contract have been used to discharge the obligations for which the funds were requested.
2. To be eligible for payment, monthly performance reports (Section X) must be complete and received by the Department for the period being invoiced.
3. As part of the payment requested for a task, the CONTRACTOR may request the engineering, legal and administrative costs associated with that task up to the limit of these costs.
4. Within sixty (60) days of receiving a properly prepared Request for Payment, the Department shall either pay the CONTRACTOR the amount of each invoice minus 2% retainage or reject the Request with reasons given. The Department may return any Request for Payment or any portion thereof which has not been properly prepared and documented.
5. All invoices must be submitted to the Department within six (6) months of substantial completion of the scope of work, as determined by the Department.

V. Retainage

The Department will retain two percent (2%) of the approved invoiced amounts submitted for work performed pursuant to this contract until all of the work has been successfully completed. Upon Final Completion of the contract, the Department will consider the substitution of an Irrevocable Letter of Credit for the retainage. Following completion of the contract, the Department will determine if an audit is to be performed. If no audit is to be performed, retainage will be released to the CONTRACTOR. If the Department determines that an audit is to be performed, and, if such audit is not initiated within two (2) years after final completion of the contract, retainage will be released to the CONTRACTOR. Any release of retainage will be without prejudice to the Department's right to reclaim the retainage, or any portion of the retainage, where the Department determines that moneys were released in error.

VI. Procurement of Services

The CONTRACTOR shall procure all equipment, materials and other goods and services, and shall engage any subcontractors, in accordance with the Local Public

Contracts Law, N.J.S.A. 40A:11-1 et seq. In addition, the CONTRACTOR shall do the following:

- A. Prior to bidding any subcontract or soliciting services: 1) the CONTRACTOR shall submit to the Department a copy of the proposed subcontract with all pertinent plans, specifications, terms, conditions and engineer's cost estimate, for the Department's review; 2) the Department will review all submittals for Spill Compensation Fund compliance (Section XXXIII), and for other information and will then determine the estimated eligible contract budget for this project, which will be determined by the Department applying the ratio of the eligible cost divided by the CONTRACTOR's estimated project cost; and 3) the Department will provide the CONTRACTOR with the eligible contract budget.
- B. Prior to either awarding any subcontract or entering into an agreement to perform the subject work with an existing subcontractor, the CONTRACTOR shall submit to the Department: 1) a copy of the subcontract, or agreement between the CONTRACTOR and the subcontractor; 2) a certification that the CONTRACTOR has taken all reasonable steps to assure that the proposed subcontractor is duly qualified to perform the subject work: and 3) a certification from the CONTRACTOR's attorney that the CONTRACTOR has duly complied with the Local Public Contracts Law in procuring any subcontractor for this work.
- C. Any subcontract shall include a Scope of Work which divides the contract into separate tasks, and provides payment for each task upon completion.
- D. If the work was publicly bid, the CONTRACTOR shall also submit a copy of the bid specifications, copies of 3 lowest bids, a spreadsheet summarizing all bids received, containing the bid amounts for each line item in the subcontract, and a written evaluation of the bids that identifies the CONTRACTOR's proposed subcontractor. If the work was not publicly bid, the CONTRACTOR shall submit a written explanation and justification of the prices agreed to with the subcontractor. The CONTRACTOR is to request in writing the Department's concurrence of the proposed subcontractor selected by the CONTRACTOR. The subcontract is not to be awarded until the Department and the CONTRACTOR concur on the selection of a subcontractor. The awarded subcontract bid is to be attached as part of this contract. The attachment is to contain the subcontractor's name, address, insurances, bonds, and a spreadsheet detailing the line items, respective quantities, unit costs, and subcontractor's total cost.

The Department will develop the final eligible contract budget by applying the ratio as set forth in Section VI A.2 to the actual bids.

- E. The CONTRACTOR may apply to the Department for permission to use employees of CONTRACTOR to perform the design, construction and/or construction oversight services. Any such application must include a proposed Scope of Services, employees' relevant qualifications, a cost proposal, and a certification from the CONTRACTOR'S attorney that use of these personnel for this contract does not conflict with any applicable law. If the Department does not approve the application, the CONTRACTOR must formally procure these services pursuant to the Local Public Contracts Law.

VII. Property Management Standards

Property furnished by the Department, or acquired in whole or in part with Department funds, or property the cost of which was charged to a project supported by Department funds, shall be utilized and disposed of in a manner consistent with the United States Code of Federal Regulations at 40 CFR 31.

VIII. Change Orders and Claims

- A. The Department and the Director, Division of Purchase and Property must jointly approve by written Change Order any modifications of the Scope of Work, the terms and conditions of this contract or an increase in the Total Contract Amount.

As stated in Section IV A. 2 of the contract, subsequent to receipt of subcontractor bids, the applicable budget line items in Attachment A, "Approved Budget", will be modified by change order, either up or down, to reflect actual bids received. A fifteen percent contingency is included in the Approved Budget for the purpose of providing additional funds for approved change orders. The release of such contingency funds will be at the discretion of the Department. These funds are not for use without a written request, detailed written explanation and the Department's ultimate approval.

- B. The CONTRACTOR shall submit any proposed Change Order to the Department through the Assistant Director, Publicly Funded Response Element, Site Remediation Program. Any proposed price change must be reflected in a revised copy of Attachment A.
- C. The State and the CONTRACTOR may agree to written Change Orders which change the work within the general Scope of Work for this contract. The State shall make an equitable adjustment to the price and schedule of the contract for any such Change Order.
- D. The State may also authorize a Change Order where the CONTRACTOR encounters work site conditions differing materially from those anticipated by the parties in the Scope of Work, and differing materially from those ordinarily encountered and generally recognized as inherent in work of the character

required in the Scope of Work. The CONTRACTOR must notify the Department of differing site conditions within (5) five days of discovery and, whenever possible, before the site has been disturbed. If the Department concurs with the CONTRACTOR'S assessment of the situation, the State will make an equitable adjustment to the price and schedule of the contract.

- E. The CONTRACTOR may not request any additional funds for work under this contract unless the Scope of Work changes as described in Paragraph C above or site conditions differ as described in Paragraph D above. The State will not be responsible for any delays, damages, liabilities or claims resulting from this contract or any subcontract hereunder. The State's sole function under this contract is to provide funding for appropriate work up to the Total Contract Amount, and to oversee the expenditure of those funds. The CONTRACTOR assumes complete responsibility for the work hereunder.

IX. Performance Monitoring

- A. The CONTRACTOR shall continuously monitor the work under this contract to assure that time schedules are being met, projected work is being completed, and other performance goals are being achieved.
- B. The CONTRACTOR shall inform the Department, as soon as they become known, of any problems, delays, or adverse conditions which could materially affect the ability of the CONTRACTOR to attain contract objectives, or could prevent the CONTRACTOR from meeting their time schedules. This disclosure shall be accompanied by a written statement of the action taken or contemplated to be taken in order to resolve the situation.
- C. The Department may, at its discretion:
 - 1. Require the CONTRACTOR to meet with Department staff.
 - 2. Visit and inspect the work site.
 - 3. Review the work and CONTRACTOR's management control systems.
 - 4. Audit the contract during its implementation.
 - 5. Provide technical evaluations.
- D. If the Department determines that the CONTRACTOR is not performing satisfactorily, the Department may require the CONTRACTOR to take remedial measures deemed necessary to fulfill the work requirements of the contract, including requiring the CONTRACTOR to submit to increased Departmental oversight of the project, or requiring the CONTRACTOR to

obtain outside technical or managerial assistance, at the CONTRACTOR's own expense.

X. Performance Reporting

- A. The CONTRACTOR shall submit Performance Reports to the Department every month following the execution of this contract. These reports shall explain what progress has been made on the project since the last report, how actual progress compares with project schedules, whether and why established goals were not met, whether any changes in the planned scope of work are proposed, whether any cost or time overruns have occurred or are anticipated and what is being considered to correct them, **and whether any claims have been received from any subcontractors or suppliers.** Reports must also include a proposed work schedule for the next reporting period.
- B. The CONTRACTOR shall submit a Final Performance Report on the overall performance and outcome of the project as a condition of Final Completion.

XI. Final Completion

The CONTRACTOR shall be deemed to have achieved Final Completion of the contract upon successfully performing the Scope of Work to the Department's satisfaction and fulfilling the following requirements:

- A. Submitting a Final Performance Report on the overall performance and outcome of the project.
- B. Refunding to the Department any funds expended on items which have been previously disallowed by the Department. Any such refund shall be made within thirty (30) days of the Department's request. In the event a final audit has not been performed prior to Final Completion, the Department retains the right to recover any expenditures ultimately disallowed as a result of an audit.
- C. Accounting for any property acquired with contract funds or received from the Department in accordance with the provisions of the "Property Management Standards" referenced in Section VII in this contract.
- D. Providing the Department with a certification that all subcontractors have been duly paid, using the Department's current model certification.
- E. Providing the Department with a written release, using the Department's current model certification, of all claims against the State of New Jersey, its instrumentalities and employees arising under this contract or by virtue of this contract. Unless otherwise provided by this contract, by New Jersey law, or as otherwise agreed to in writing by the parties, neither Final

Completion of this contract nor any settlement upon termination of this contract shall constitute a waiver of the State's claims against the CONTRACTOR or its sureties under this contract, or the State's right to continued performance of the CONTRACTOR's obligations pursuant to this contract.

- F. Providing any additional information requested by the Department to assist the State in evaluating the results of the contract.

XII. Disputes, Suspension and Termination

- A. If any dispute arises between the Department and the CONTRACTOR during the performance of the contract, the CONTRACTOR shall, unless otherwise ordered by the Department, continue to perform the contract pending final resolution of the dispute. The CONTRACTOR shall initially submit any such disputes to the Department's Assistant Director, Publicly Funded Response Element, Site Remediation Program for informal resolution. If the dispute is not resolved, it will be submitted by the Department to the Assistant Commissioner, Site Remediation Program for further consideration. The conduct of any informal resolution or administrative proceedings shall not stay the operation of the statute of limitations contained in the Contractual Liability Act, N.J.S.A. 59:13-5.
- B. If the Department determines that the CONTRACTOR is failing to perform according to the contract, or, for other cause, the Department may, upon notice to the CONTRACTOR, suspend the contract, and withhold payments to the CONTRACTOR, pending any corrections and compliance required of the CONTRACTOR. If the Department suspends the contract, the CONTRACTOR should stop work unless it wants to continue at its own expense and is not otherwise required by the Department or by law to cease.
- C. If the Department determines that the CONTRACTOR has willfully or repeatedly failed to perform according to the contract, the Department may, after providing appropriate notices and opportunity for hearing where required, terminate the contract for cause. Upon termination, the CONTRACTOR should stop work unless it wants to continue at its own expense and is not otherwise required by the Department to cease. The CONTRACTOR shall reimburse the State for any costs resulting from the default of the CONTRACTOR.
- D. If the Department no longer has available funding to continue the project, or determines that the contract is no longer in the State's interests, the Department may, upon notice to the CONTRACTOR, terminate the contract for the convenience of the State. In that event, an equitable adjustment will be made which will reflect costs reasonably incurred by the CONTRACTOR for

appropriate commitments made prior to the termination, which were not made in anticipation of termination and cannot be cancelled.

XIII. Use of Funds

The CONTRACTOR agrees that all funds provided pursuant to this contract shall be used solely to satisfy the obligations for which they have been requested, to perform the tasks for which they were allocated in the Approved Budget and Scope of Work approved by the Department, and for no other purpose.

XIV. Availability of Funds

The State of New Jersey appropriates funds on a fiscal year basis, which is a period running from July 1 through June 30. The parties hereto recognize and agree that continuation of funding under this contract is expressly dependent upon availability to the Department of funds appropriated by the State Legislature or otherwise available from State or Federal revenues or other such funding sources as may be available. The Department shall not be held liable for any termination or breach of this contract by the Department because of the absence of available funding.

XV. Ownership of Water System

As a precedent condition to receiving any funds under this contract or beginning any construction activities, the CONTRACTOR shall submit to the Department a resolution or certification agreeing to accept immediate ownership of and responsibility for the new water system.

XVI. Property Interests and Access to Property

The CONTRACTOR shall acquire any access to or interests in real property necessary for the performance of this contract. The Department will assist the CONTRACTOR whenever State owned or controlled property is involved to the extent the Department believes warranted. The CONTRACTOR shall also assure that the State, its agents and representatives, and all subcontractors performing work pursuant to this contract, are granted access to the site of the work performed under this contract.

XVII. Permits

The CONTRACTOR shall secure any necessary local, State and Federal permits required by law for the performance of CONTRACTOR's obligations set forth in this contract. The Department will assist the CONTRACTOR in regard to acquiring State and Federal permits. The CONTRACTOR shall, however, be responsible for developing any models, preparing any material, and making any presentations required by permitting officials. Copies of all permits must be submitted to the Department immediately upon receipt. Fees reasonably incurred

by the CONTRACTOR for any necessary Local, State and Federal permits shall be considered proper project costs. However, if the CONTRACTOR is a local governmental entity, the CONTRACTOR agrees to waive all local government permit fees for this project.

XVIII. Insurance

A. The CONTRACTOR shall obtain and maintain, at its own expense, insurance for liability for damages imposed by law or assumed under this contract, of the kinds and in amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey, or through formal fully funded self-insurance programs authorized by law and acceptable to the Department. The CONTRACTOR expressly understands and agrees that any insurance protection required by this contract shall in no way limit the CONTRACTOR's obligations assumed in this contract, and shall not be construed to relieve the CONTRACTOR from liability in excess of such coverage, nor shall it preclude the Department from taking such other actions as available to it, under this contract or at law.

1. Comprehensive General Liability insurance as broad as the standard coverage currently in use in the State of New Jersey, which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability, an endorsement for completed operations liability and an endorsement for broad form property damage coverage. The State of New Jersey and State employees shall be named as additional insureds. The policy shall be specifically endorsed to eliminate any exclusions for explosion, collapse, and underground hazards. Limits of liability shall not be less than one million dollars per occurrence for bodily injury liability and general liability combined.

The CONTRACTOR may satisfy this requirement through CGL coverage provided by one or more of its subcontractors. Each such subcontractor shall supply coverage in the full amount specified above.

2. Comprehensive Automobile Liability insurance covering owned, non-owned and hired vehicles with minimum limits of one million dollars per occurrence for bodily injury and property damage liability combined. The CONTRACTOR may satisfy this requirement through Automobile Liability coverage provided by one or more of its subcontractors. Each such subcontractor shall supply coverage in the full amount specified above.
3. Worker Compensation insurance as required by the laws of the State of New Jersey and any other State where the CONTRACTOR will be active under this contract, and Employers Liability insurance with a limit of not less than \$500,000.00. The policy shall be endorsed to include coverage

under the United States Longshoremen's and Harbor Worker's Compensation Act and any other Federal Workers Compensation Law to the extent that it applies to the CONTRACTOR's operations.

The CONTRACTOR may satisfy this requirement through Workers Compensation coverage provided by one or more of its subcontractors. Each such subcontractor shall supply coverage in the full amount specified above.

4. Architects or Engineers Professional Liability insurance for each employee and subcontractor of the CONTRACTOR who will be supplying engineering and/or design services.

Such insurance shall protect against any liability arising out of the professional obligations performed pursuant to the requirements of this contract. This insurance shall provide for a limit of liability of no less than the limit of liability coverage for each such person's professional liability coverage in effect at the time of the execution of this contract, or one million dollars, whichever is greater. The policy shall be specifically endorsed to eliminate any exclusion for underground testing and contractual liability, and the policy shall be endorsed to provide contractual liability coverage for the indemnification requirements of this contract. If the services to be performed under this contract include construction supervision, the policy shall be specifically endorsed for coverage of such supervision. Should the person change carriers during the term of this contract, he/she shall obtain from its new insurance company an endorsement for retroactive coverage.

The CONTRACTOR may satisfy this requirement for any engineering work performed by subcontractors through architects and engineering liability insurance supplied by those subcontractors. Each such subcontractor shall supply coverage in the full amount specified above.

- B. Within thirty (30) days of the date of the execution of this contract, the CONTRACTOR shall provide the Department with valid certificates of insurance as evidence of the CONTRACTOR's coverage or other person's insurance coverage, in accordance with the foregoing provisions. Where the Department has agreed to allow the CONTRACTOR to satisfy the insurance requirements through coverage carried by subcontractors, CONTRACTOR may provide the insurance certificates to the Department within thirty (30) days of the execution of subcontract. No field work shall commence prior to the Department's receipt of all insurance certificates.
- C. Certificates of insurance shall provide for thirty (30) days written notice to the Department prior to any cancellation, expiration, or non-renewal during the term the insurance is required in accordance with this contract. The

CONTRACTOR shall further be required to provide the Department with valid certificates of renewal of the insurance upon expiration of the policies.

The CONTRACTOR shall also, upon request, provide the Department with copies of each policy required under this contract certified by the agent or underwriter for the carrier to be true and complete copies of the policies provided to the CONTRACTOR. All certificates and copies shall be forwarded to the Department's Contract Officer as designated in Section I.

- D. In the event that the CONTRACTOR provides evidence of insurance in the form of certificates of insurance valid for a period of time less than the period during which the CONTRACTOR is required by the terms of this contract to maintain insurance, said certificates may nevertheless be determined by the Department to be acceptable, but, the CONTRACTOR shall be obligated to renew its insurance policies as necessary and to provide new certificates of insurance from time to time, so that the Department is continuously in possession of evidence of the CONTRACTOR's continuous uninterrupted insurance in accordance with the foregoing provisions.
- E. In the event the CONTRACTOR fails or refuses to renew any of its insurance policies as necessary, or, in the event any policy is cancelled, terminated, suspended, amended or modified so that the insurance does not meet the requirements of this contract, the Department may refuse to make payment of any further monies under this contract. The Department, in its sole discretion, may use monies retained under this paragraph to renew insurance for the periods and amounts referred to above. During any period when the required insurance is not in effect, the Department may, at its option, either suspend work under this contract, or proceed to default the CONTRACTOR and terminate this contract.

XIX. Indemnification

The CONTRACTOR shall defend, indemnify, protect and save harmless the State, its agents, servants and employees from and against any and all suits, claims, liability, losses, actions, demands, or damages of whatever kind or nature arising out of or alleged to arise out of any act, error or omission in the performance of this contract resulting from the negligence, gross negligence, willful misconduct, intentional tort, fraud, bad faith, or criminal behavior of the CONTRACTOR, its agents, servants, employees, and subcontractors. The CONTRACTOR shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim incurred in connection therewith. If any judgment shall be rendered against the State for which indemnification is provided under this paragraph, the CONTRACTOR shall, at its own expense, satisfy and discharge the same.

The State will, as soon as practicable after a claim has been made against it, provide written notice thereof to the CONTRACTOR, along with complete particulars of the claim. If evidence of such suit is served upon the State or any of its agents, servants, and employees, the State shall expeditiously forward or have forwarded to the CONTRACTOR every demand, complaint, notice, summons, pleading or other process received by the State or its representatives.

It is expressly agreed and understood that any approval by the State of services performed and/or reports, plans or specifications provided by the CONTRACTOR shall not operate to limit the obligations of the CONTRACTOR assumed under this section or under any other provisions of this contract.

The CONTRACTOR shall not assert any defense which would be available to the State but not to the CONTRACTOR, whether pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:8-1 et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., or otherwise, without having first obtained the written approval of the New Jersey Department of Law & Public Safety, Division of Law.

CONTRACTOR's agreement to indemnify shall continue in full force and effect after the termination, expiration or suspension of this agreement.

XX. Performance and Payment Bonds

CONTRACTOR shall furnish to the Department performance and payment bonds each in an amount at least equal to the Total Contract Amount for any construction work required under this contract as security for the faithful performance and payment of all of CONTRACTOR's obligations.

The CONTRACTOR may satisfy this by requiring performance and payment bonds from any construction subcontractors performing under this contract. These bonds shall conform to the requirements of N.J.S.A. 2A:44-143 et seq. and/or N.J.S.A. 40A:11-22, as applicable, and shall be executed by sureties licensed to conduct business in the State of New Jersey. All bonds signed by an agent must be accompanied by a certification of the agent's authority to act.

XXI. Financial Management System

- A. The CONTRACTOR's Chief Financial Officer, as designated in Section I of this contract, shall be responsible for maintaining an adequate financial management system.
- B. CONTRACTOR's financial management system shall provide for:
 - 1. Accurate, current and complete disclosure of the financial status of this contract.

2. Records that adequately identify the source and expenditure of funds for activities supported by this contract. These records shall contain information pertaining to contract awards and authorizations, obligations, invoices, procurements, liabilities, and outlays.
 3. Effective internal and accounting controls over all funds, property, and other assets related to this contract. The CONTRACTOR shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
 4. Comparison of actual outlays with budgeted amounts for the contract.
 5. Accounting records that are supported by source documentation.
 6. Procedures to minimize the time elapsing between the disbursement of any funds by the State and the disbursement of these funds by the CONTRACTOR.
 7. Procedures for determining reasonableness, allowability, and allocability of costs generally consistent with the provisions of the Federal regulations published in the Code of Federal Regulations at 40 CFR 31.
- C. The Department may review the adequacy of the CONTRACTOR's financial management system, and require changes in that system, at CONTRACTOR's expense, to meet the requirements of paragraph B above, at any time subsequent to the execution of this contract.

XXII. Audit Requirements

- A. This contract may be audited upon Final Completion by State auditors in accordance with generally accepted auditing standards including Federal General Accounting Office Standards for Audit of Governmental Organizations, Program and Functions. The Department or an authorized representative of the State of New Jersey shall have the right to examine and audit all records and other evidence sufficient to properly reflect all costs claimed to have been incurred or anticipated to be incurred, directly or indirectly, in performance of this contract.
- B. If the audit indicates any noncompliance by the CONTRACTOR with material terms and conditions of this contract, the CONTRACTOR shall take immediate corrective actions as required under this contract, or as otherwise required by law. If the audit indicates that any expenditures by the CONTRACTOR: 1) lack sufficient supporting documentation, 2) are excessive, 3) are beyond the scope or purpose of this contract, or 4) are contrary to law, the Department may require the CONTRACTOR to return those funds. The CONTRACTOR shall

return to the Department any disallowed expenditures no later than thirty (30) days from the request.

- C. Copies of any audit reports performed by or on behalf of the CONTRACTOR involving this contract must be forwarded to the DEP Publicly Funded Response Element as soon as such report become available.

XXIII. Records

- A. The CONTRACTOR shall maintain books, records, documents and other materials pertinent to the performance of the work, in accordance with generally accepted accounting principles and practices consistently applied, and shall make them available for inspection by the State for a period of no less than three (3) years from the date of conclusion of the final audit hereunder, with the following qualifications:
 - 1. If any litigation regarding this contract or the subject site is initiated before the expiration of the above three (3) year period, the records shall be retained until the litigation is completed.
 - 2. Records for non-expendable property acquired with State funds shall be retained for three (3) years after its final deposition.
 - 3. Prior to destroying any records, the CONTRACTOR shall notify the Department in writing of its intentions and shall provide the Department with an opportunity to possess the records.
- B. All inspections and audits, including visits by the State and State requests for documentation, shall, as a general rule allow for prior notice when reasonable and practical for the Department to do so. However, the State retains the right to make unannounced visitations, inspections, and audits as deemed necessary.
- C. The Department reserves the right to have access to records of any subcontractor as may be necessary to monitor and audit the subcontractor's work on the project, and therefore requires the CONTRACTOR to provide the Department with access to such records.
- D. The Department reserves the right to have access to all work papers produced in connection with audits performed by the CONTRACTOR or by independent Certified Public Accountants or licensed public accountants hired by the CONTRACTOR to perform such audits.
- E. The Department may request transfer of certain records to its custody from the CONTRACTOR when it determines that the records possess long-term retention value, and will use its best efforts to make arrangements with the CONTRACTOR to retain records that are continuously needed for joint use.

- F. The CONTRACTOR shall assure that the requirements of the above provisions (subsections A through E) shall also be complied with by any of its subcontractors by including the appropriate provisions in all subcontracts the CONTRACTOR executes, in order to carry out this contract.

XXIV. Disclaimer of Agency Relationship

The CONTRACTOR's status shall be that of an independent principal and not as an agent or employee of the State. Nothing contained in the contract shall be construed to create, either expressly or by implication, the relationship of agency between the State and the CONTRACTOR or its subcontractors.

XXV. Governing Law

All questions, disputes and claims between the CONTRACTOR and the Department arising out of this contract shall be submitted to the Department and resolved according to the laws of the State of New Jersey governing this contract.

XXVI. Compliance with Existing Laws and Policies

The CONTRACTOR agrees in the performance of this contract to comply with all federal, state and municipal laws, rules, regulations, executive orders, circulars and written policies generally applicable to the activities by whomsoever performed in which CONTRACTOR is engaged in the performance of this contract. CONTRACTOR's failure to comply with such law, rules, regulations, orders, circulars or policies shall be grounds for termination of this contract. The CONTRACTOR shall include these same provisions in any subcontract executed hereunder. Such laws, rules, regulations, orders, circulars and policies include, but are not limited to the following:

- A. The New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. is hereby made a part of this contract. The CONTRACTOR's signature on this contract is its guarantee that neither it nor any subcontractors it might employ to perform the work covered by this contract are listed, or are on the record in the Office of the Commissioner, Department of Labor, as one who has failed to pay prevailing wages in accordance with the provisions of this Act.
- B. The New Jersey Law Against Discrimination N.J.S.A. 10:2-1 et seq., N.J.S.A. 10:5-1 et seq., N.J.S.A. 10:5-31 et seq., and N.J.A.C. 17:27-1 et seq., are hereby made part of this contract. The CONTRACTOR agrees and guarantees to afford equal opportunity in the performance of the contract in accordance with an affirmative action program approved by the State Treasurer.

- C. The Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). The CONTRACTOR also agrees that it will comply with and also require all subcontractors to comply with the Americans With Disabilities Act.
- D. The act codified at N.J.S.A. 52:13D-12 et seq., the “New Jersey Conflicts of Interest Law” and the act codified at N.J.S.A. 40A:9-22.1 et seq., the Local Government Ethics Law, are by this reference incorporated as part of this contract. The CONTRACTOR represents and affirms that none of its employees, subcontractors, subcontractor’s employees, or the CONTRACTOR itself is engaged in any conduct which constitutes a conflict of interest under, or a violation of, the New Jersey Conflicts of Interest Law or the Local Government Ethics Law.
- E. The provisions of Executive Order 215 (Governor Thomas H. Kean, September 11, 1989), which require an environmental assessment for certain construction work performed with State funds, are hereby incorporated by reference into this contract. The CONTRACTOR shall comply with Executive Order 215.
- F. The CONTRACTOR represents and warrants:
 - 1. that no person or selling agency has been employed or retained to solicit or secure this agreement in violation of N.J.S.A. 52:34-15,
 - 2. that it has not made, and knows nothing of, any compensation or gratuities made in violation of N.J.S.A. 52:34-19,
 - 3. that it is, and will remain, in full compliance with N.J.S.A. 40A:11-1 et seq., the Local Public Contract Law, where applicable,
 - 4. that it is, and will remain, in full compliance with N.J.S.A. 14A:13-1 et seq. and N.J.S.A. 15A:13-1 et seq. (both regarding out-of-state corporations), where applicable, and
 - 5. that it is, and will remain, in full compliance with N.J.S.A. 2A:44-143 (regarding additional bonds on construction and public works contracts), where applicable.
- G. The CONTRACTOR shall not influence, attempt to influence or cause to be influenced, any State officer or employee, or special State officer or employee, in his or her official capacity in any manner which might tend to impair the objectivity, independence or judgment of said officer or employee.
- H. The CONTRACTOR warrants that it or its subcontractor will obtain and maintain, during the term of this agreement, all permits, licenses, certifications, authorizations, or any documents required by the Federal, State, County or municipal governments and international authorities, whenever necessary, to

perform this agreement. The CONTRACTOR shall promptly notify the State of any disciplinary action or any change in the status of any license, permit, or other authorizations required by law or this agreement.

- I. The CONTRACTOR warrants that in performing its responsibilities under this contract, the CONTRACTOR will comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the work to be performed hereunder. Failure to comply will constitute a material breach of this agreement.

XXVII. Conflict of Interest

The CONTRACTOR agrees not to employ any subcontractor who may have a conflict with the State's interest in recovering the costs of this contract from parties responsible for contamination of the site.

If the CONTRACTOR becomes aware, at any time, of the existence of any contractual or other business relationship occurring during the preceding five (5) years between any subcontractor and any person or entity who is or may be responsible for the cleanup costs at the site, the CONTRACTOR will immediately convey this information in writing to the State.

For the purpose of this provision, a subcontractor shall be deemed to have had a business relationship with an alleged or known responsible party, if subcontractor has had such a relationship with the party, including the party's parent, subsidiary, predecessor or successor, subcontractor, or, if subcontractor has been engaged by independent legal representatives on behalf of any of such parties as so defined.

It is agreed and understood that the CONTRACTOR shall terminate any subcontractor, without liability to the State, if and when the State determines that a conflict of interest or the appearance of a conflict of interest exists between the subcontractor and the State's interest in the performance of this contract or in seeking financial recovery for the cleanup of the site. The State will make such a determination on a case-by-case basis using information supplied by the CONTRACTOR or otherwise obtained. The CONTRACTOR hereby agrees to accept as final any determination by the State on this issue.

XXVIII. Collusion of Payment to Secure Contract

If the State finds, after notice and an opportunity for hearing, that the CONTRACTOR, or any of the CONTRACTOR's agents or representatives, offered or provided gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the State in an attempt to secure a contract or favorable treatment in awarding, amending or making any determinations related to the performance of this contract, the State may terminate this contract. The State may pursue other rights and remedies that the law or this contract provides.

However, the existence of the facts on which the State bases such findings may be an issue that may be reviewed in proceedings under the Disputes section of this contract.

In the event this contract is terminated as provided above, the State may pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR, and, as a penalty, in addition to any other damages to which it may be entitled by law, the State will be entitled to exemplary damages in an amount determined by the State, which shall be not less than three times nor more than ten times the costs that the CONTRACTOR incurred in providing any such gratuities to any such officer or employee. Nothing herein shall limit the State from pursuing any criminal or quasi-criminal remedy against the CONTRACTOR, or from taking any action to debar, suspend or disqualify the CONTRACTOR from State contracting.

XXIX. Solicitation of Contract

If the State finds, after notice and opportunity for hearing, that the CONTRACTOR or any of the CONTRACTOR's agents or representatives employed a person or selling agency to solicit or secure this contract for a contingent fee, commission or other contingent payment, the State may annul this contract without liability or, at its discretion, continue the contact but adjust the contract price.

XXX. National Contingency Plan

All work performed under this contract shall be, to the greatest extent possible, performed in accordance with the National Contingency Plan, 40 CFR 300.

XXXI. Restoration

Unless the Scope of Work (Attachment B) expressly provides otherwise, the CONTRACTOR, at its or its own expense, shall return the site to its previous condition and the CONTRACTOR shall remediate to the satisfaction of the Department, any problems at and around the site caused by work performed by or on behalf of the CONTRACTOR.

XXXII. Legal Assistance

If the State so requests in writing, the CONTRACTOR shall provide assistance to the State in legal actions by the State against the parties deemed responsible for contaminants at and/or emanating from a project site to recover the costs of this contract and/or to prosecute violations of State and Federal environmental laws at the site. This assistance may include the preparation of reports, assisting the State and/or the Federal government in the preparation of the government's case, testimony in court, (expert and/or other types of testimony), testimony at deposition, the preparation and execution of the (official) public record and other

similar activities. Failure of the CONTRACTOR to meet these requirements shall be considered a material breach of contract. Where the State believes such assistance involves an inordinate amount of work, the State will reimburse the CONTRACTOR for such assistance at the prevailing hourly rates for the employee's primary classification at the time of the request.

XXXIII. Ineligible Costs, New Jersey Spill Compensation Regulations

The CONTRACTOR acknowledges that this contract does not fund any costs that the Department believes to be ineligible under the New Jersey Spill Compensation Fund Regulations, N.J.A.C. 7:1J, particularly N.J.A.C. 7:1J-3.1 et seq, "Water Supply Systems Claims". Moreover, the Spill Compensation Fund will not fund more than the Total Contract Amount for this project.

ATTACHMENT A

APPROVED BUDGET

The CONTRACTOR will be paid for its actual cost up to the amount of each BUDGET LINE ITEM. The initial budget for this contract has been derived by agreement of the parties from an engineer's estimate of the costs of the work. If the CONTRACTOR has subcontracted any portion of the work, then, upon written approval of a change order by the Department, that portion of the budget will be modified in accordance with Section VIII A to reflect the prices publicly bid or negotiated. The rate of payment is based on actual costs unless otherwise stated.

BUDGET LINE ITEMS

BUDGET
AMOUNT

1. CONSTRUCTION

Construction of State approved water system

2. PERMITS FEES

All Federal, State, & Local Permits necessary to complete the project, except permit fees that are part of the Construction line item

3. ENGINEERING & INSPECTION

Costs necessary for the, design, plans, specifications and inspection, of all portions of the project outlined in the Scope of Work. The total of these services shall not exceed 15% of the projects actual construction & permit cost.

4. LEGAL & ADMINISTRATIVE

Legal & Administrative costs of performing this contract. Based upon Contractors hourly rates listed in Attachment D and any actual Administrative cost incurred by Township. The total of these services shall not exceed 5% of the projects actual construction & permit cost.

5. CONTINGENCY

The Contingency is 15 percent of the original estimated budget for line items 1 through 4. It is only to provide funding for a change order approved by the Department.

TOTAL CONTRACT AMOUNT

ATTACHMENT B

SCOPE OF WORK

The CONTRACTOR, by entering into this contract, is required to perform the following tasks in accordance with the terms and conditions of contract:

1. The Contractor shall design the water system and prepare the plans and specifications. The water system is to include an *{air stripper with blowers, clear well with pumps and control, all plumbing, valves fittings, building addition complete with lighting and HVAC, site work and electrical upgrade}*. The design, as approved by the Department, will be included as an attachment to this contract and will serve as the detailed construction scope of work.
2. CONTRACTOR shall obtain all permits, easements and site access agreements necessary for the construction of the water system and related structures.
3. The CONTRACTOR shall obtain all necessary agreements with local and State authorities for the operation and maintenance of the water system.
4. CONTRACTOR shall solicit and review bids for the construction of the water system and award the construction contract in accordance with the provisions of Section VI of this contract entitled "Procurement of Services".
5. Contractor shall supervise and inspect the construction of the water system and supervise all subcontractors.
6. CONTRACTOR shall operate and maintain the water system as part of the CONTRACTOR's water system.

ATTACHMENT C

A CONTRACT BETWEEN
STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND

(CONTRACTOR)

CONTRACT NUMBER ICU –

SUBCONTRACTOR CERTIFICATION

As a condition of the State's consent to the subcontract entered into between (the "subcontractor") and (the "CONTRACTOR") such subcontract, (the "subcontract") for work in furtherance of the contract with the State of New Jersey (the "State") captioned above (the "contract") and in consideration of any payment or benefit the subcontractor may receive for its performance of the subcontract, the subcontractor agrees that the following terms, provisions, and conditions ("terms") shall be additional terms of the subcontract, shall insure to the benefit of the State, and shall not be modified in any way without the written agreement of the State:

1. ACCEPTANCE OF CONTRACT

With respect to all services and goods the subcontractor provides pursuant to the subcontract or in furtherance of the contract, the subcontractor shall comply with, and shall be bound by, all terms of the contract (excepting only those terms, if any, requiring the provision of goods or services not required by the contract) as though it were the CONTRACTOR and as though all such terms were explicit terms of the subcontract for the benefit of the State as third party beneficiary. The subcontractor acknowledges that the CONTRACTOR has given it a complete copy of the contract and that it is familiar with all of the contract's terms.

2. DISCLAIMER OF AGENCY RELATIONSHIP

The subcontractor acknowledges and accepts that it is an independent principal working for the CONTRACTOR and has no relationship with the State in connection with the contract as its agent, servant, employee, grantee, contractor or otherwise.

3. NO CLAIM AGAINST STATE

The subcontractor shall make no claim or demand against the State, its officers, its agents, servants, or employees (the "State or its agents") (a) which arises out of or is in connection with, or which is based on: (i) the subcontract or the contract, (ii)

any services or goods that the subcontractor provides pursuant to the subcontract or in furtherance of the contract, or (iii) the relationship between the subcontractor and the CONTRACTOR in connection with the subcontract; or (b) which would not exist if the subcontract did not exist . The subcontractor shall look solely to the CONTRACTOR for satisfaction of any claims, and the CONTRACTOR shall not sponsor any claims against the State or its agents on behalf of the subcontractor.

4. INSURANCE

- A. The subcontractor shall obtain and maintain, at its own expense, insurance for liability for damages imposed by law or assumed under this contract, of the kinds and in amounts hereinafter provided, from insurance companies admitted or approved to do business in the State of New Jersey or through formal fully funded self-insurance programs authorized by law and acceptable to the Department. The subcontractor expressly understands and agrees that any insurance protection required by this contract shall in no way limit the subcontractor's obligations assumed in this contract, and shall not be construed to relieve the subcontractor from liability in excess of such coverage, nor shall it preclude the Department from taking such other actions as available to it, under this contract or at law.
1. Comprehensive General Liability insurance as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability, and an endorsement for completed operations liability and an endorsement for broad form property damage coverage. The State of New Jersey and State employees shall be named as additional insureds. The policy shall be specifically endorsed to eliminate any exclusions for explosion, collapse, and underground hazards. Limits of liability shall not be less than one million dollars per occurrence for bodily injury liability and for general liability combined.
 2. Comprehensive Automobile Liability insurance covering owned, non-owned and hired vehicles with minimum limits of one million dollars per occurrence for bodily injury and property damage liability combined.
 3. Worker Compensation insurance as required by the laws of the State of New Jersey and any other State where the subcontractor will be active under this contract, and Employers Liability insurance with a limit of not less than \$500,000.00. The policy shall be endorsed to include coverage under the United States Longshoremen's and Harbor Worker's Compensation Act and any other Federal Workers Compensation Law to the extent that it applies to the subcontractor's operations.

4. Architects or Engineers Professional Liability insurance for each employee and subcontractor of the subcontractor who will be supplying engineering and/or design services.

Such insurance shall protect against any liability arising out of the professional obligations performed pursuant to the requirements of this contract. This insurance shall provide for a limit of liability of no less than the limit of liability coverage for each such person's professional liability coverage in effect at the time of the execution of this contract, or one million dollars, whichever is greater. The policy shall be specifically endorsed to eliminate any exclusion for underground testing and contractual liability, and the policy shall be endorsed to provide contractual liability coverage for the indemnification requirements of this contract. If the services to be performed under this contract include construction supervision, the policy shall be specifically endorsed for coverage of such supervision. Should the person change carriers during the term of this contract, he/she shall obtain from its new insurance company an endorsement for retroactive coverage.

- B. Within thirty (30) days of the date of the execution of this contract, the subcontractor shall provide the Department with valid certificates of insurance as evidence of the subcontractor's insurance coverage, in accordance with the foregoing provisions. Where the Department has agreed to allow the subcontractor to satisfy the insurance requirements through coverage carried by subcontractors, subcontractor may provide the insurance certificates to the Department within thirty (30) days of the execution of subcontract. No field work shall commence prior to the Department's receipt of all insurance certificates.
- C. Certificates of insurance shall provide for thirty (30) days written notice to the Department prior to any cancellation, expiration, or non-renewal during the term the insurance is required in accordance with this contract. The subcontractor shall further be required to provide the Department with valid certificates of renewal of the insurance upon expiration of the policies.

The subcontractor shall also, upon request, provide the Department with copies of each policy required under this contract certified by the agent or underwriter for the carrier to be true and complete copies of the policies provided to the subcontractor. All certificates and copies shall be forwarded to the Department's Contract Officer.

- D. In the event that the subcontractor provides evidence of insurance in the form of certificates of insurance valid for a period of time less than the period during which the subcontractor is required by the terms of this contract to maintain insurance, said certificates may nevertheless be determined by the Department to be acceptable, but, the subcontractor shall be obligated to renew its insurance.

policies as necessary and to provide new certificates of insurance from time to time, so that the Department is continuously in possession of evidence of the subcontractor's continuous and uninterrupted insurance in accordance with the foregoing provisions.

- E. In the event the subcontractor fails or refuses to renew any of its insurance policies as necessary, or, in the event any policy is cancelled, terminated, or modified so that the insurance does not meet the requirements of this contract, the Department may refuse to make payment of any further monies under this contract. The Department, in its sole discretion, may use monies retained under this paragraph to renew insurance for the periods and amounts referred to above. During any period when the required insurance is not in effect, the Department may, at its option, either suspend work under this contract, or proceed to default the CONTRACTOR and terminate this contract.

5. INDEMNIFICATION

The subcontractor shall defend, indemnify, protect and save harmless the State, its agents, servants and employees from and against any and all suits, claims, liability losses, actions, demands, or damages of whatever kind or nature arising out of or alleged to arise out of any act, error or omission in the performance of this subcontract resulting from the negligence, gross negligence, willful misconduct, intentional tort, fraud, bad faith, or criminal behavior of the subcontractor, its agents, servants, employees, and subcontractors. The subcontractor shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim incurred in connection therewith. If any judgment shall be rendered against the State for which indemnification is provided under this paragraph, the subcontractor shall, at its own expense, satisfy and discharge the same.

The State will, as soon as practicable after a claim has been made against it, provide written notice thereof to the subcontractor, along with complete particulars of the claim. If evidence of such suit is served upon to the State or any of its agents, servants, and employees, the State shall expeditiously forward or have forwarded to the subcontractor every demand, complaint, notice, summons, pleading or other process received by the State or its representatives.

It is expressly agreed and understood that any approval by the State of services performed and/or reports, plans or specifications provided by the subcontractor shall not operate to limit the obligations of the subcontractor assumed under this section or under any other provisions of this subcontract.

The subcontractor shall not assert any defense which would be available to the State but not to the subcontractor, whether pursuant to the New Jersey Tort Claims Act, N.J.S.A. 59:8-1 et seq., the New Jersey Contractual Liability Act, N.J.S.A.

59:13-1 et seq., or otherwise, without having first obtained the written approval of the New Jersey Department of Law and Public Safety Division of Law.

This agreement to indemnify shall continue in full force and effect after the termination, expiration or suspension of this agreement.

6. COVENANT OF NON-COLLUSION

The subcontractor does hereby warrant and represent that this agreement has not been solicited, secured, or prepared directly or indirectly, in a manner contrary to the laws of the State of New Jersey and that said laws have not been violated and shall not be violated as they relate to the procurement or the performance of the contract by any conduct, including the paying or giving of any fee, commission, gift, gratuity or consideration of any kind, directly or indirectly, to any state employee, officer or official.

7. CONVENANT AGAINST CONTINGENT FEES

The subcontractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bonafide employees or bonafide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business.

8. NON-DISCRIMINATION

There shall be no discrimination against any employees who are employed in the work covered by this contract or against any applicant for such employment because of sex, race, religion, color or national origin. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training including apprenticeship, and the subcontracts for services covered by this contract. The subcontractor must also comply with, as appropriate, N.J.S.A. 10:2-1 through 10:2.4, N.J.S.A. 10:5-1 et seq. and 10:5-31 through 10:5-38 and all rules and regulations issued hereunder.

9. PREVAILING WAGE ACT

New Jersey Prevailing Wage Act P.L. 1963, Chapter 150 is made part of every contract entered into by the State where applicable. The subcontractor guarantees that neither it nor any subcontractors it might employ to perform the work covered by this proposal are listed or are on record in the Office of the Commissioner of the Department of Labor as one who failed to pay prevailing wages in accordance with the provisions of this Act.

10. COMPLIANCE WITH LAWS

In performing its responsibilities under this contract, the subcontractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the work to be done hereunder. Failure to comply will constitute a breach of this contract.

11. DISSEMINATION OF INFORMATION

Notwithstanding any other provision of the contract, the subcontractor shall not publish, permit to be published or distribute, use, or disclose to anyone for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the State.

12. CONFLICT OF INTEREST

It is agreed and understood that the CONTRACTOR may void this subcontract, with no liability to the State, if and when the State determines that a conflict of interest or the appearance of a conflict exists between a subcontractor and the State's interest in seeking financial recovery from a party deemed potentially responsible for the cleanup of a hazardous waste site. The State can seek recovery of the costs of the cleanup of specific sites from some or all responsible parties and must anticipate the possibility of litigation with one or more of these parties. In order to avoid a conflict, all subcontractors must disclose any previous or existing work at the site and any relationship with any potentially responsible party.

In view of the foregoing, all work performed pursuant to this contract will conform to the following procedures: (a) the subcontractor must disclose any contractual or other business relationship occurring during the preceding five (5) years between the subcontractor and any person or entity who is or may be responsible for the cleanup costs at the site and any work whenever done at the site of this contract; (b) parties believed to be responsible will be named by DEP before engagement and thereafter as information becomes available; (c) additionally, if, any time after engagement by the State, the subcontractor becomes aware of any contractual or other business relationship occurring during the preceding five (5) years between the subcontractor and any person or entity who is or may be responsible for the cleanup costs at the site, the subcontractor will immediately convey this information to the State.

The subcontractor will be deemed to have had a business relationship with an alleged or known responsible party, for purposes of this section, if it has had such a relationship with a parent, subsidiary, predecessor, or successor of such a party, or if it has been engaged by independent legal representatives on behalf of any such parties as so defined.

The State shall make conflict of interest determinations on a case –by-case basis. The subcontractor agrees to accept as final any determination by the State on this issue.

13. STATE ENERGY CONSERVATION PLAN

The subcontractor shall conform its operations under this contract to the mandatory standards and policies relating to energy efficiency which are contained in the New Jersey Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163). The subcontractor shall include provisions in any subcontract imposing the same requirements on the subcontractor.

14. LEGAL ASSISTANCE

The subcontractor and its personnel shall provide assistance to the State in legal actions by the State against the parties deemed responsible for the site to recover the costs of this contract and/or to prosecute violations of State and Federal environmental laws at the site. This assistance may include the preparation of reports, assisting State and/or Federal government in the preparation of the government's case testimony in court (expert and/or other types of testimony), testimony at deposition, the preparation and execution of the (official) record and other similar activities. Failure of the subcontractor to meet these requirements shall be considered a material breach of the subcontract. Where such assistance involves extra work by an employee, the State will reimburse the subcontractor for such assistance at the prevailing hourly rates for the employee's primary classification at the time of request.

15. LICENSES, PERMITS AND CERTIFICATIONS

The subcontractor shall obtain and maintain, during the term of this contract, all licenses, certifications, authorizations, or any documents required by the Federal government, State government, County and Municipal governments, and international authorities, wherever necessary, to perform this contract.

16. ADVERSE NOTIFICATION

The subcontractor shall notify the State immediately of any disciplinary action or change of status with regard to any license or permit required for the work hereunder.

DATED: _____

(Type or Print Name of Subcontractor)

BY: _____
(Signature)

(Type or Print Name and Title)

(Number and Street)

(Municipality, State and Code)

(Telephone Number)

ATTEST:

(Signature)

(Type or Print Name and Title)

ATTACHMENT D

CONTRACTOR'S PERSONNEL HOURLY RATES

ENGINEERING

HOURLY RATES *

Engineer Employed by CONTRACTOR

Inspector

ADMINISTRATIVE

Administrator

Administrative Secretary

LEGAL

Municipal Attorney

* Hourly rates must be **certified** by the Chief Financial Officer that they reflect actual rates of pay.

NOTE: During contract negotiations, the Contractor will add or delete the titles of Municipal personnel that will be working on and billing toward the project. The hourly rates must also be included at this time. Attachment D is not for contracted professionals such as engineering firms.

ATTACHMENT E

MANDATORY SUBMITTALS

A. Contract Deliverables to be submitted with the Executed Contract

1. Approved Ordinance or Resolution duly enacting the governing body of that municipality or county authorizing the contract; Section II A
2. Resolution accepting ownership and responsibility for the water system; Section XV
3. Insurance declaration- statement indicating whether: 1) the CONTRACTOR will provide insurance; or 2) the CONTRACTOR will require the subcontractor(s) to supply required insurance.
4. The CONTRACTOR's Chief Financial Officer's certification of the hourly rates listed in Attachment D.

B. Subcontracts: Pre Bid

1. Contractor must submit proposed subcontract agreement to State for concurrence before it is released for bids.; Section VI A
2. Request for bid package is to include a copy of the contract.; Section III B

C. Subcontracts: Pre-Award

1. Certification from the Contractor that all reasonable steps to assure that the subcontractors are duly qualified to perform the subject work. Section VI B
2. Certification from the CONTRACTOR's attorney that the CONTRACTOR has duly complied with the Local Public Contracts Law in procuring the subcontractors. Section VI B
3. Submit a copy of the bid specifications. Section VI D
4. Submit a summary of all bids received with the Contractor recommendation of award: Section VI D
5. Letter requesting the State's concurrence with the CONTRACTOR's selection of a subcontractor: Section VI D
6. Insurance: If subcontractor is providing insurance the following proof of insurance must be submitted: Section XVIII
 - a) comprehensive general liability
 - b) auto insurance
 - c) workers compensation
 - d) Architects and Professional Liability Insurance
7. Submit performance and payment bonds: Section XX
8. Submit subcontractor certification: Attachment C