

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**CONTRACTOR AGREEMENT**

**SITE ENVIRONMENTAL REMEDIATION PROJECT  
200 FEDERAL STREET, CITY OF CAMDEN  
CAMDEN COUNTY, NEW JERSEY**

AGREEMENT made as of this \_\_\_\_ day of \_\_\_\_\_, 2017, between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, with offices at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625-0990 (the "Authority" or "Owner") and \_\_\_\_\_, a corporation of \_\_\_\_\_, headquartered at \_\_\_\_\_ (the "Contractor") for Site Environmental Remediation Services located at 200 Federal Street, City of Camden, Camden, New Jersey (the "Project"):

**ARTICLE 1**

**THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Construction Conditions, the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement, Bid and other documents contained in the Bid Documents prepared by the Authority dated \_\_\_\_\_, and the attached Contractor's Bid dated \_\_\_\_\_ (which was publicly opened on \_\_\_\_\_) insofar as that Bid relates to items within the Base Bid. These documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

## **ARTICLE 2**

### **THE WORK**

The Contractor shall perform all of the Work required by the Contract Documents for the Project. In executing the Agreement, the Contractor does hereby certify that the Contractor has received and reviewed all of the Contract Documents and does hereby acknowledge and accept the conditions, whether known or unknown, of the Project site, the receipt of the specifications of the Contract, and the requirements of the General Conditions of Contract and any Addenda.

## **ARTICLE 3**

### **TIME OF COMMENCEMENT AND COMPLETION**

The Work to be performed under the Contract shall be commenced in accordance with the Notice to Proceed issued by the Authority and subject to authorized adjustments. Completion shall be achieved in accordance with the Project Schedule outlined in Section 14.0 of the Bid Documents.

The actual date of issuance of the Notice to Proceed is subject to delay. In the event of such delay, the milestone completion date(s) listed in the Project Schedule will be adjusted by the equivalent total calendar days of such delay. The equivalent total calendar days of delay is hereby defined as the difference between the date of the Notice to Proceed as listed in the Project Schedule and the actual date of issuance of the Notice to Proceed.

The Contractor shall proceed with the Work at such rate of progress as is necessary to insure full completion within the Contract time. It is expressly understood and agreed by and between the Contractor and the Authority that the Contract time for the completion of

the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work.

For reasons within the Contractor's control, if the Contractor shall fail to complete the Work, or shall be responsible for a delay which results in the failure to complete the Work within the Contract time, or any extension of time granted by the Authority when applicable, then the Contractor will pay the Authority an amount sufficient to compensate the Authority for its damages incurred as a result of such failure to complete.

The definition of "unforeseeable causes beyond the control and without the fault or negligence of the Contractor", as stated in Section 2 of the Bid Documents: General Conditions, Section 15.4.2, excludes delays associated with labor disputes and strikes between the Contractor, its subcontractors and unions.

#### **ARTICLE 4**

#### **CONTRACT PRICE**

The Authority shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions authorized by an executed Change Order as provided in the Contract Documents, the Lump Sum Contract Price of \$\_\_\_\_\_  
\_\_\_\_\_. The Contract Price represents the total Base Bid, including all Addenda, by the Contractor as represented in the Contractor's Bid Form dated\_\_\_\_\_. If not combined/included with the Base Bid at the time of the Award of the Contract may be authorized by the Authority by an executed Change Order throughout the duration of the Agreement in accordance with the prices indicated on the Bid Form, subject to additions and deductions.

## **ARTICLE 5**

### **PROGRESS PAYMENTS**

5.1 Invoicing - The Contractor shall submit one separate invoice package per month, no later than the tenth working day of each month. This invoice will represent only those charges for the preceding month. Upon Owner's confirmation that the invoice is both accurate and correct, payment will be forthcoming within thirty (30) working days from the date the Owner approved invoice is received by the Authority. All invoices must be e-mailed to [redinvoices@njeda.com](mailto:redinvoices@njeda.com). The email must include the invoice and any other documentation, as may be required by the Authority to process payment.

5.2 Documentation - The invoice package will consist of substantiating documentation for all monies being charged against the Contract Price including all compliance documentation. Invoices will not be paid until all compliance documentation is received by the Authority.

## **ARTICLE 6**

### **FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Price, shall be paid by the Authority to the Contractor when the Work has been fully completed, the Contract has been fully performed, compliance documentation has been received, and a final Certificate for Payment has been issued by the Authority.

## **ARTICLE 7**

### **DEFINED TERMS**

7.1 Except as provided herein, terms used in this Agreement which are defined in the Contract Documents shall have the meanings designated in those Contract Documents.

## **ARTICLE 8**

### **NOTICES**

8.1 All notices required to be sent to the Authority shall be sent to:

New Jersey Economic Development Authority  
P.O. Box 990  
Trenton, New Jersey 08625-0990  
Attn: Donna T. Sullivan, Vice President  
Real Estate Development Division

8.2 All notices to be sent to the Contractor shall be sent to:

## **ARTICLE 9**

### **AFFIRMATIVE ACTION, EEO, PREVAILING WAGE AND SET-ASIDE**

9.1 The Contractor agrees to comply with the Authority's affirmative action and prevailing wage regulations which appear at N.J.A.C. 19:30-3.1 et seq. and N.J.A.C. 19:30-4.1 et seq. respectively. The Contractor must make every effort to employ minority workers and female workers at a level consistent with the applicable hiring goals.

9.2 The Contractor is required to comply with the requirements of P.L. 1975 C. 127 (N.J.A.C. 17:27), which are expressly included within the terms of the Agreement, see Exhibit A annexed hereto and made a part hereof.

9.3 Pursuant to N.J.A.C. 19:30-3.5, ten (10) percent of each disbursement shall be retained by the Authority until 50 percent of the Work is completed. Upon fifty (50) percent completion of the Work and confirmation from the AA Compliance Officer that the project is in substantial compliance with N.J.A.C. 19:30-3.5, five (5) percent of every disbursement shall be retained.

Upon completion of the Work and receipt of the Authority's Affirmative Action Completion Certificate and all required close-out documents acceptable to the Authority, the remaining retainage will be released.

9.4 The Contractor will not discriminate against any employee 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.

9.5 The Contractor is required to comply with the requirements of N.J.S.A. 52:32-17 et seq., Executive Order No. 84 (1993), and N.J.A.C. 17:13-1.1 et seq., which are included within the Contract Documents.

9.6 In accordance with the requirements of N.J.S.A. 52:32-17 et seq., N.J.A.C. 12A:10-1.2 et seq., N.J.A.C. 12A:10A-1.2 et seq., N.J.A.C. 17:13-1.2 et seq., and N.J.A.C. 17:14-1.2 et seq., the Authority is required to develop a set-aside plan for Small Businesses. The Contractor agrees that, if awarded a contract based on this plan, it shall comply with all requirements of these provisions.

9.7 The Contractor must submit a Monthly Status Report with each invoice to the NJEDA (see Exhibit F-9). Invoices will not be processed unless accompanied by the Monthly Status Report

9.8 If the Contractor fails to comply with the requirements of these provisions, the Authority may declare this Contract void.

## **ARTICLE 10**

### **INSURANCE**

In accordance with the Bid Documents (Rider D), the Contractor shall comply with the following insurance requirements:

The Contractor shall procure and maintain, at its own expense, liability insurance for damages of the kinds and in the amounts hereinafter provided, from insurance companies licensed, admitted and approved to do business in the State of New Jersey. The Contractor shall obtain this coverage from A VII or better rated companies as determined by A.M. Best Company. All liability insurance policies shall afford coverage on an occurrence rather than claims made basis. The types and minimum amounts of insurance required are as follows:

#### **WORKERS' COMPENSATION**

New Jersey Statutory Coverage and Employers' Liability Insurance. Employer's Liability shall carry limits of \$1,000,000 each accident, \$1,000,000 Disease - Each Employee and \$1,000,000 Disease - Policy Limit.

#### **COMMERCIAL GENERAL LIABILITY INSURANCE**

Contractor shall maintain Commercial General Liability Insurance (CGL), of \$1,000,000 each occurrence and \$2,000,000 in the aggregate, for products/completed operations. If such CGL insurance contains a general aggregate limit, it shall apply separately to the Project site. Limits may be provided through a combination of General

Liability and Umbrella coverages. Umbrella coverage is indicated below.

CGL insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising out of, occasioned by, or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract. This insurance must include Contractor's Independent (Contingent) Liability Coverage, Broad Form Property Damage, and Personal Injury Coverage, without an employee exclusion.

The New Jersey Economic Development Authority ("Authority") and the County of Camden shall be included as additional insureds under the CGL insurance, using ISO additional insured endorsement CG 20 10 11/85 (or a substitute form providing equivalent coverage). This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.

#### **COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE**

Contractor shall maintain Comprehensive Automobile Liability Insurance covering all owned, hired, and non-owned automobiles with a minimum policy limit of \$1,000,000 Combined Single Limit per occurrence. The Authority and the County of Camden shall be included as additional insureds. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the Authority.

#### **UMBRELLA/EXCESS LIABILITY**

Contractor shall maintain Commercial Umbrella/Excess Liability Insurance with a



limit of not less than \$2,000,000 each occurrence and in the aggregate. Such coverage shall follow the underlying General Liability, Automobile, and Employers Liability policies, including but not limited to the additional insured and primary status requirements.

### **POLLUTION LIABILITY**

Pollution Liability as a result of all construction operations at the job site, while in transit or at non-owned disposal sites, including coverage for mold/fungus, asbestos and lead with minimum policy limits of ***\$5,000,000 each occurrence and \$5,000,000 aggregate***. The Authority and the County of Camden shall be included as Additional Insureds. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Additional Insureds. Coverage may be provided on a claims-made basis as long as the retroactive date is prior to commencement of work at the site (must be indicated on certificate of insurance) and continuous coverage is maintained or an extended discovery period exercised for a period of five (5) years beginning from the time the policy is terminated.

### **WAIVER OF RIGHTS**

Contractor waives all rights against the Authority and its agents for recovery of damages to the extent these damages are covered by the Commercial General Liability, Business Automobile Liability or Commercial Umbrella Liability Insurance maintained by Contractor.

If the insurance policies purchased by Contractor as required above do not expressly allow the insured to waive rights of subrogation prior to loss, Contractor shall cause them to be endorsed with a waiver of subrogation as required above.

## **CONTRACTORS EQUIPMENT INSURANCE**

Any insurance policy covering the machinery and equipment of the contractor, subcontractors and subordinate subcontractors against loss by any cause shall include an endorsement providing that the underwriters waive their right of subrogation against the owner, the architect and/or engineer, the contractor and all subcontractors and subordinate subcontractors.

## **CERTIFICATE**

Prior to the commencement of work hereunder, the Contractor shall furnish to the Authority, a Certificate of Insurance, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements set forth herein. All policies and corresponding certificates must show thirty (30) days prior written notice of cancellation to the Authority. Failure of the Authority to demand such certificate or other evidence of full compliance with these insurance requirements or failure to identify a deficiency from evidence that is provided may not and shall not be construed as a waiver of Contractor's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this contract, at New Jersey Economic Development Authority's option. Contractor shall provide certified copies of all insurance policies required within ten (10) days of the Authority's written request for such policies. If Contractor fails to maintain the insurance as set forth herein, the Authority shall have the right, but not the obligation, to purchase said insurance at Contractor's expense, and in connection therewith, including without limitation, the Authority's reasonable attorneys' fees, on demand. By requiring insurance herein, the Authority does not represent that

coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to New Jersey Economic Development Authority in the Contractor Agreement.

### **SUBCONTRACTORS**

Contractor will include all subcontractors as insureds under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors will be subject to the requirements stated herein.

## **ARTICLE 11**

### **INDEMNIFICATION**

The Contractor shall defend, indemnify, protect and save harmless the Authority and the County of Camden and their officers, agents, servants and employees from and against any and all suits, claims, demands, losses or damages of any kind arising out of or claimed to arise out of any act, error, or omission on the part of the Contractor, its officers, agents, servants, employees and subcontractors in the performance of services under this Contract. 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 or incurred in connection therewith. If any judgment shall be rendered against the Authority, or their officers, agents, servants, and employees for which indemnification is provided under this Article 11, the Contractor shall, at its own expense, satisfy and discharge the same.

The Contractor shall be liable to the Authority and the County of Camden for any reasonable costs incurred by the Authority to correct, modify, or redesign any Work performed by the Contractor that is found to be defective or not in accordance with the

provisions of the Contract as a result of any negligent act, error, or omission on the part of the Contractor, its officers, agents, servants, employees and subcontractors. The Contractor shall be given a reasonable opportunity to correct any deficiency.

The indemnification obligations set forth in the aforementioned Subparagraphs shall not in any way be limited by the insurance coverage required pursuant to Article 10 of this Contract and shall survive the terms of this contract.

## **ARTICLE 12**

### **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 Contractor to the Attorney General of New Jersey and the Executive Commission on Ethical Standards.

- 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 Executive Commission on Ethical Standards, 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.

### **ARTICLE 13**

#### **AUTHORIZATION TO DO BUSINESS**

The Contractor hereby warrants and represents that it is authorized to do business in the State of New Jersey under the name specified above and understands that if it is not so authorized, the Contract shall be voidable at the option of the Authority which shall have no obligation to the Contractor in the event that it elects to exercise that option.

### **ARTICLE 14**

#### **CONSTRUCTION LIENS**

Contractor agrees that no construction or other liens or any other notices of claims, including, without limitation any Notice of Unpaid Balance and Right to File Lien under the Construction Lien Law, N.J.S.A. 2A:44-64 et seq., (collectively, "construction liens") shall be filed or maintained against the Project site or the improvements which are the subject of this Work for or on account of any work or labor done or materials furnished under this Agreement. Contractor hereby expressly waives and relinquishes the right to have, file or maintain construction liens against the Project site or the improvements which are the subject of the Work for or on account of any work or labor done or materials furnished under this Agreement. Contractor covenants and agrees to include in every subcontract

between it and any subcontractor or materialman a provision by which each such subcontractor or materialman shall agree to waive its rights to have, file, or maintain construction liens against the Project site or the improvements which are the subject of this Work for or on account of any work or labor done or materials furnished under this Agreement.

## **ARTICLE 15**

### **CONTRACTUAL LIABILITY ACT**

Notwithstanding any provision in this Agreement 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 County of Camden and/or the Authority 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.

## **ARTICLE 16**

### **GENERAL CONDITIONS**

A. To the extent that there is any conflict between the terms and conditions of Contractor's Bid and the terms and conditions of the Contract and the Authority's Bid Documents, the Contract and Bid Documents shall control.

B. All reports and other information produced or generated by Contractor pursuant to this Agreement shall become the sole property of the Authority and may be used in its entirety or in part at the sole discretion of the Authority without additional compensation to or approval from the Contractor. Whenever such information is used, credit shall be given as to the author/source of the information.

C. In accordance with Public Law 2004, Chapter 57, all subcontractors shall provide a copy of their business registration to the Contractor who shall forward it to the Authority. No contract with a subcontractor shall be entered into by any contractor unless the subcontractor first provides proof of valid business registration. The Contractor shall provide written notice to all subcontractors that they are required to submit a copy of their business registration to the Contractor. The Contractor shall maintain a list of the names of any subcontractors and their current addresses, updated as necessary during the course of the contract performance and submit to the Authority a copy of the list of subcontractors, updated as necessary during the course of performance of the contract. The Contractor shall submit a complete and accurate list of the subcontractors to the Authority before a request for final payment is made to the Authority. The Contractor and any subcontractor providing goods or performing services under this 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 their sales of tangible personal property delivered into the State.

D. In accordance with the Public Works Contractor Registration Act, no contractor or subcontractor is permitted to bid on or engage in any contract for public work unless that contractor/subcontractor is registered with the New Jersey Department of Labor and Workforce Development. Certificates of registration for all subcontractors must be submitted to the Authority. Applications for registration will not be accepted as a substitute for a certificate of registration.



E. Pursuant to N.J.S.A. 52:34-13.2, all Work, and all subcontractor services performed in connection with or as part of the Work, shall be performed within the United States.

F. The Authority shall have the right without cause and in its complete discretion to terminate the Contract at any time upon seven (7) days' advance written notice to the Contractor. In such event, absent a default on the part of the Contractor, the Contractor shall be entitled to compensation for all services properly provided to the Authority pursuant to the Contract prior to such termination.

In addition to other remedies available under law to the non-defaulting party, this Contract may be terminated by either party upon seven (7) days' advance written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

G. This Agreement shall be construed under the laws of the State of New Jersey.

H. This Contract constitutes the entire agreement between the parties. Any changes or amendments to the Agreement must be in writing and signed by the Contractor and an authorized representative of the Authority.

I. This Contract shall be construed without any presumptions against the drafter and shall be considered as though it were drafted cooperatively by both parties.

J. In the event that any portion of this Contract is found to be contrary to law and unenforceable, the validity of remaining covenants, agreements, terms, and provisions contained in this Contract shall be in no way affected, prejudiced, or disturbed thereby.

K. The parties hereto represent that they have the proper authority to sign on

behalf of the entities entering this Contract and they fully intend for the Authority and Contractor to be legally bound.

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

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\(d\)](#).

M. The Owner reserves the right to audit the records of the firm in connection with all matters related to this Contract. The Contractor agrees to maintain records in accordance with generally accepted accounting principles, for period of not less than five (5) years after receipt of final payment.

N. Pursuant to N.J.S.A. 2A:30A-1 et seq., and N.J.S.A. 52:32-40 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.

O. 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 appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

## **ARTICLE 17**

### **CONFIDENTIAL INFORMATION OF THE AUTHORITY**

In connection with performing the Work, the Contractor, its employees and subcontractors may receive, review and become aware of proprietary, personnel, commercial, marketing and financial information of the Authority, its employees, members, borrowers or business associates that is confidential and/or proprietary in nature ("Confidential Information"). The Contractor agrees that the use and handling of Confidential Information by the Contractor, its employees and subcontractors, shall be done in a responsible manner and solely for furtherance of the Work. Other than to its employees and subcontractors who have a need to know Confidential Information in connection with performance of the Work, the Contractor agrees not to disclose any Confidential Information, without the prior written consent of the Authority. The Contractor shall be responsible to assure that its employees and subcontractors do not

disclose any Confidential Information without the prior written consent of the Authority. The Contractor shall inform each of its employees and subcontractors that receives any Confidential Information of the requirements of this *Article 17 Confidential Information of the Authority*, of the Contract and shall require each such employees and subcontractors to comply with such requirements.

Notwithstanding the foregoing, the term Confidential Information shall not include information which: (i) is already known to the Contractor, its employees and subcontractors from sources other than the Authority; (ii) is or becomes generally available to the public other than as a result of a disclosure by the Contractor or its employees; or (iii) is required to be disclosed by law or by regulatory or judicial process.

Pursuant to *Article 11 Indemnification* of the Contract, the Contractor shall indemnify and hold the Authority, its employees and members harmless for any breach of this *Article 17 Confidential Information of the Authority*, by the Contractor or its employees or subcontractors.

## **ARTICLE 18**

### **POLITICAL CAMPAIGN CONTRIBUTIONS**

**The word "Vendor" in this section means "Contractor".**

18.1 For the purpose of this Section 11.8, 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 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 N.J.S.A. 19:44A-20.1, et seq. (C.19:44A-20.1 et seq.) ("Chapter 51").
- c) N.J.S.A. 19:44A-20.1, et seq. – 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).

18.2 The terms, restrictions, requirements and prohibitions set forth in N.J.S.A. 19:44A-20.1, et seq. are incorporated into this Agreement by reference as material terms of this Agreement with the same force and effect as if N.J.S.A. 19:44A-20.1, et seq. were stated herein its entirety. Compliance with N.J.S.A. 19:44A-20.1, et seq. by Vendor shall be a

material term of this Agreement.

18.3 Vendor hereby certifies to the Owner that commencing on and after October 15, 2004, Vendor (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 Vendor and the Owner pursuant to P.L. 2005, c. 51. Vendor hereby further certifies to the Owner that any and all certifications and disclosures delivered to the Owner by Vendor (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 Agreement 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 Owner shall have the right to declare this Agreement to be in default.

18.4 Vendor hereby covenants that Vendor (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 18.4 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 Vendor (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 Owner shall have the right to declare this Agreement to be in default.

18.5 In addition to any other Event of Default specified in the Contract Documents, the Owner shall have the right to declare an event of default under this Agreement if: (i) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits a Contribution in violation of N.J.S.A. 19:44A-20.1, et seq., (ii) Vendor (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) Vendor (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) Vendor (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) Vendor (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 Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly would violate the restrictions of N.J.S.A. 19:44A-20.1, et seq.; (vi) Vendor (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) Vendor (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 N.J.S.A. 19:44A-20.1, et seq.; (viii) Vendor (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 N.J.S.A. 19:44A-20.1, et seq. or (ix) any material misrepresentation exists in any Political Campaign Contribution Certification and Disclosure which was delivered by Vendor to the Owner in connection with this Agreement.

18.6 Vendor hereby acknowledges and agrees that pursuant to N.J.S.A. 19:44A-20.1, et seq., Vendor 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 Agreement. If after the effective date of this Agreement and before the entire Contract Price is paid by the Owner, any Contribution is made by Vendor and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of N.J.S.A. 19:44A-20.1, et seq., the Owner shall have the right to declare this Agreement to be in default.”

18.7 In accordance with N.J.S.A. 19:44A-20.27, Annual Disclosure Statement by Business Entities of Contributions filed with ELEC, any business entity making a contribution of money or any other thing of value, including an in-kind contribution, or pledge to make a contribution of any kind to a candidate for or the holder of any public

office having ultimate responsibility for the awarding of public contracts, or to a political party committee, legislative leadership committee, political committee or continuing political committee, which has received in any calendar year \$50,000 or more in the aggregate through agreements or contracts with a public entity, shall file an annual disclosure statement with the New Jersey Election Law Enforcement Commission, established pursuant to section 5 of P.L.1973, c.83 (C.19:44A-5), setting forth all such contributions made by the business entity during the 12 months prior to the reporting deadline.

The commission shall prescribe forms and procedures for the reporting required in subsection a. of this section which shall include, but not be limited to:

(i) the name and mailing address of the business entity making the contribution, and the amount contributed during the 12 months prior to the reporting deadline;

(ii) the name of the candidate for or the holder of any public office having ultimate responsibility for the awarding of public contracts, candidate committee, joint candidates committee, political party committee, legislative leadership committee, political committee or continuing political committee receiving the contribution; and

(iii) the amount of money the business entity received from the public entity through contract or agreement, the dates, and information identifying each contract or agreement and describing the goods, services or equipment provided or property sold.

The commission shall maintain a list of such reports for public inspection both at its office and through its Internet site.

When a business entity is a natural person, a contribution by that person's spouse or

child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by: all principals, partners, officers, or directors of the business entity, or their spouses; any subsidiaries directly or indirectly controlled by the business entity; or any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee, shall be deemed to be a contribution by the business entity.

As used in this section:

**"Business Entity"** means a for-profit entity that is a natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or of any other state or foreign jurisdiction; and

**"Interest"** means the ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit, as appropriate.

Any business entity that fails to comply with the provisions of this section shall be subject to a fine imposed by the New Jersey Election Law Enforcement Commission in an amount to

be determined by the commission which may be based upon the amount that the business

entity failed to report.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

ATTEST:

NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY

\_\_\_\_\_  
Donna T. Sullivan  
Vice President  
Real Estate

By: \_\_\_\_\_  
Maureen Hassett, SVP  
Governance, Communications &  
Strategic Initiatives

ATTEST:

\_\_\_\_\_

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

(REVISED 4/10)

## 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 SERVICES, 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.

## EXHIBIT A (Cont)

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 AA-302 (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 & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.