

TOWN OF KEARNY

REQUEST FOR PROPOSALS

Water System Contract Operation, and Management Services

SCOPE OF SERVICES:

The Town of Kearny is interested in the complete operation and maintenance of the water supply interconnections and water distribution system, including customer service.

OPENING OF PROPOSALS:

Notice is hereby given by the Town of Kearny that sealed proposals will be received by the *Town Administrator* on September 16, 2015 at 11:00 AM prevailing time in the Town Administrator's Office located at 402 Kearny Avenue, Kearny NJ 07032.

OBTAINING A PROPOSAL:

Proposals may be obtained by the following:

- In person from the Administrator's Office during the hours of 9:00 AM to 4:00 PM, Monday through Friday.
- First Class Mail
- Federal Express/UPS
- Downloadable format, send request to Michael Martello, mmartello@kearnynj.org

All proposals must be submitted on the proposal forms approved and provided for by the specifications in order to be considered.

The successful vendor will be required to comply with the following:

- N.J.S.A. 10:5-31 et seq.
- N.J.A.C. 17:27
- N.J. Prevailing Wage Requirements (if applicable)
- Non-Collusion – Anti-Kickback Requirements
- P.L. 1977, c. 33 Ownership Disclosure Requirements
- New Jersey Business Registration Certification
- W-9
- *Iran Certification*

The Council of the Town of Kearny reserves the right to reject any and all proposals and further reserves the right to waive minor irregularities and immaterial variances and formalities in the proposals.

This request for proposal has been advertised in accordance with the "Fair and Open Basis" process under the "New Jersey Local Unit Pay to Play" Law, NJSA 19:44A-20.7 et seq.

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Administrative Documents

The following documents and information are required to be submitted with this proposal and shall become part of the final Contract between the Town of Kearny and the successful vendor:

- _____ Proposal Form
- _____ Experience and Qualifications Questionnaire
- _____ Non Collusion Affidavit
- _____ Public Disclosure Statement
- _____ Financial Statements (including SSAE 16 Audit Documentation)
- _____ Bank References
- _____ Statement of Tax Compliance
- _____ New Jersey Business Registration Certification
- _____ Affirmative Action Compliance Notice
- _____ Mandatory EEO Language (Exhibits A & B)
- _____ Americans with Disabilities Act of 1990
- _____ Consent of Surety
- _____ Performance Bond (provided within 10 days of award)
- _____ Certificate of Insurance (provided within 10 days of award)
- _____ List of all Subcontractors
- _____ Copy of Public Works Contractor Registration
- _____ Corporate History & Background
- _____ Acknowledgement of receipt of addenda or revision
- _____ W-9

List any deviations from the specifications on attached pages. If no deviations or exceptions are applicable, state "No Exceptions":

TOWN OF KEARNY

Proposal Form

To: Town of Kearny
402 Kearny Avenue
Kearny, NJ 07032

From: _____

The undersigned has reviewed the proposal submitted in response to the Request for Proposals (RFP) issued by the Town of Kearny in connection with the need for the following:

RFP: Water System Contract Operations and Maintenance

We affirm that the contents of the proposal (which proposal is incorporated herein by reference) is accurate, factual and complete to the best of our knowledge and belief and that the proposal is submitted in good faith upon express understanding that any false statements may result in the disqualification of our proposal.

The undersigned hereby agrees to furnish all labor, materials, supplies, supervision, equipment and other means as necessary to perform all the work and furnish all the materials in accordance with the Specifications at the following prices within the time constraints.

Personnel Services	\$ _____
Utilities	\$ _____
Equipment Materials/Supplies	\$ _____
Outside Services	\$ _____
Solid Waste Management	\$ _____
Maintenance and Repairs*	\$ _____
Customer Service	\$ _____
Other (Identify)	\$ _____
Overhead/Profit	\$ _____

TOTAL CONTRACT FOR 1 YEAR \$ _____

* Refer to Section VII for Maintenance Fund amount

****Attach to proposal the "Qualification/Plan of Service"****

Business Name: _____

Respondent's Name (print): _____

Respondent's Signature: _____

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Experience and Qualifications Questionnaire

This questionnaire must be filled out and submitted as a part of the Proposal. Failure to complete this form or to provide any of the requested information will be grounds for the rejection of the bid proposal. If additional space is required, the respondent shall add additional sheets, which identify the question being answered.

Number of years in business under present name & address _____

If less than 5 years, list previous names and address:

Within the last 5 years has the business or any officer/partner failed to complete a contract awarded to them: _____. If yes, provide the details in on a separate page.

Have any liens and lawsuits been filed against the company in the past 5 years: _____

If yes, please provide details:

List similar services you are now providing for which you have signed contract, but not yet started work:

List all major subcontractors to be used to complete the service and the area of their responsibility:

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Experience and Qualifications Questionnaire

Please provide five (5) references below:

Name: _____ **Phone:** _____

Address: _____

Equipment/Service Provided: _____

Contract Amount: _____

Name: _____ **Phone:** _____

Address: _____

Equipment/Service Provided: _____

Contract Amount: _____

Name: _____ **Phone:** _____

Address: _____

Equipment/Service Provided: _____

Contract Amount: _____

Name: _____ **Phone:** _____

Address: _____

Equipment/Service Provided: _____

Contract Amount: _____

Name: _____ **Phone:** _____

Address: _____

Equipment/Service Provided: _____

Contract Amount: _____

TOWN OF KEARNY

Public Disclosure Statement

Chapter 33 of the Public Laws of 1977 provides that no Corporation or Partnership shall be awarded any State, City, Municipal or School District contracts for the performance of any work or the furnishing of any materials or supplies, unless prior to the receipt of the bid or proposal or accompanying the bid or proposal of said corporation or partnership there is submitted a public disclosure information statement. The statement shall set forth the names and addresses of all stockholders in the corporation or partnership who own ten (10%) or more of its stock of any class, or of all individual partners in the partnership who own a ten (10%) or greater interest therein.

Please check the box that indicates the ownership structure of the bidder/vendor and sign below:

☐ Partnership ☐ Corporation ☐ Sole Proprietorship

If a Corporation:

_____ I certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

_____ I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

Stockholders:

Name	Address	% Own

Subscribed and sworn before me this

_____ day of _____ 20____

Affiant

Notary Public

Print Name/Title

****This statement MUST be completed, notarized and included with proposal****

TOWN OF KEARNY

Non-Collusion Affidavit

STATE OF NEW JERSEY
TOWN OF KEARNY ss:

I certify that I am _____
of the firm of _____

the Respondent making this Proposal for the bid or proposal for the above named project, that I executed the said proposal with full authority to do so; that said bidder has not, directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free, competitive bidding in connection with the above named project; and that all statements contained in said proposal and this affidavit are true, correct, and made with full knowledge that the Town of Kearny relies upon the truth of the statements contained in said Proposals and in the statements contained in this affidavit in awarding the contract for the said project.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies.

Signature of Representative: _____

Subscribed and sworn to before me this _____ day of _____, 20_____

Print Name of Affiant: _____

Notary Public of _____

My commission expires _____

****This form MUST be completed, notarized and submitted with the bid document****

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Statement of Tax Compliance

Pursuant to the STATE OF NEW JERSEY STATUTE, I certify under the pains and penalties of perjury that the Contractor, to the best of my knowledge and belief, has complied with all laws of the STATE OF NEW JERSEY regarding taxes, including the filing of relevant tax returns and the payment of any taxes required by law.

DATED THIS _____ DAY OF _____, 20____.

PROPOSER:

BY: _____

TITLE: _____

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Americans with Disabilities Act of 1990

The CONTRACTOR and the OWNER do hereby agree that the provisions of Title 11 of the Americans With Disabilities Act of 1990 (the "ACT") (42 U.S.C~S12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereunto, are made a part of this contract. In providing any act, benefit, or service on behalf of the OWNER pursuant to this contract, the CONTRACTOR agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the CONTRACTOR shall defend the OWNER in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless the OWNER, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The CONTRACTOR shall at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the OWNER grievance procedure, the CONTRACTOR agrees to abide by any decision of the OWNER which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the OWNER or if the OWNER must incur any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the CONTRACTOR shall satisfy and discharge the same at its OWN expense.

The OWNER shall, as soon as practicable after a claim has been made against it, give written notice thereof to the CONTRACTOR along with full and complete particulars of the claim. If any action or administrative proceedings are brought against the OWNER or any of its agents, servants, and employees, the OWNER, shall expeditiously forward or have forwarded to the CONTRACTOR every demand, complaint, notice, summons, pleading, or other process received by the OWNER or its representatives.

It is expressly agreed and understood that any approval by the OWNER of the services provided by the CONTRACTOR pursuant to this contract will not relieve the CONTRACTOR of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the OWNER pursuant to this paragraph.

It is further agreed and understood that the OWNER assumes no obligation to indemnify or save harmless the CONTRACTOR, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the CONTRACTOR expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the CONTRACTOR'S obligations assumed in this Agreement, nor shall they be construed to relieve the CONTRACTOR from any liability, nor preclude the OWNER from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

Furthermore, the CONTRACTOR expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the CONTRACTOR's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

Business Name (print): _____

Representative's Name (print): _____

Representative's Title: _____

Representative's Signature: _____

Phone: _____ **Date:** _____

Mandatory EEO Language

EXHIBIT A
Goods, Professional Services and General Service 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 take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non discrimination 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, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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 employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions; that it does not discriminate on the basis of age, 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.

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Mandatory EEO Language

In conforming with the applicable 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, 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

Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance and EEO as may be requested by the office from time to time in order to carry out the purpose of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance and EEO for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

Business Name: _____

Business Owner Name (print): _____

Business Owner Signature: _____

Date: _____

EXHIBIT B

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A 10:5-31 et seq., N.J.A.C.17:27

CONSTRUCTION CONTRACTS

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, 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, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, Band C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2.

The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities to minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity

with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(ii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in paragraph (i) above, whenever vacancies occur. At the request of the Division, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iii) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as

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may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

COMPANY:_____

SIGNATURE:_____

PRINT NAME:_____

TITLE:_____

TOWN OF KEARNY

General Conditions

SECTION I - INTRODUCTION

Introduction and Purpose:

The Town of Kearny is seeking proposals from qualified vendors for the complete operation and maintenance of its water distribution system as well as customer service.

Fair and Open Process:

The contract will be awarded as a professional services agreement using the "Fair and Open" process under the New Jersey Local Unit "Pay to Play" Law, NJSA 19:44A-20.7 et seq. The Town has structured a procurement process that seeks to obtain the desired services, while establishing a competitive environment to assure that each person and/or firm is provided an equal opportunity to submit a proposal in response to the RFP. Proposals will be evaluated in accordance with the criteria set forth in Section IV of this RFP, which will be applied in the same manner to each proposal received.

Evaluation Committee:

Proposals will be reviewed and evaluated by the Town Review Committee. The proposals will be reviewed to determine if the respondent has met the professional, administrative and subject areas described in this RFP.

Addenda or Amendments:

During the period provided for the preparation of responses to the RFP, the Town may issue addenda, amendments or answers to written inquiries. Those addenda will be noticed by the Town and will constitute a part of the RFP. All responses to the RFP shall be prepared with full consideration of the addenda issued prior to the Proposal submission date. Subsequent to issuance of this RFP, the Town (through the issuance of addenda to all persons and/or firms that have received a copy of the RFP) may modify, supplement or amend the provisions of this RFP in order to respond to inquiries received from prospective respondents or as otherwise deemed necessary or appropriate by (and in the sole judgment of) the Town.

Any proposer may modify their proposal by hand delivery, mail, overnight or by fax at any time prior to the scheduled closing time for receipt of proposals. If fax is utilized, then it shall only be acceptable provided such fax communication is received by the Town Administrator prior to closing time and provided further the Town Administrator is satisfied that a written confirmation of the faxed modification with the signature of the proposer was mailed prior to the closing time. The fax communication shall not reveal the proposal price but shall provide the addition or subtraction or other modification so that the final price or terms will not be known by the Town until the sealed proposals are opened. If written confirmation is not received within two (2) days from the closing time, no consideration will be given to the fax modification.

Contact:

Communications regarding this RFP or the process shall be directed to the following person in writing, via fax or via email:

Michael Martello
Town Administrator
402 Kearny Avenue
Kearny, NJ 07032
Fax: 201-991-0608
Email: mmartello@kearnynj.org

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General Conditions

Rights of the Town:

The Town reserves, holds and may exercise, at its sole discretion, the following rights and options with regard to this RFP and the procurement process in accordance with the provisions of applicable law:

- To conduct investigations of any or all of the respondents, as the Town deems necessary or convenient, to clarify the information provided as part of the proposal and to request additional information to support the information included in any proposal.
- To suspend or terminate the procurement process described in this RFP at any time (in its sole discretion). If terminated the Town may determine to commence a new procurement process or exercise any other rights provided under applicable law without any obligation to the respondent.

Cost of Proposal Preparation:

Each proposal and all information required to be submitted pursuant to the RFP shall be prepared at the sole cost and expense of the respondent. There shall be no claims whatsoever against the Town, its officers, officials or employees for reimbursement for the payment of costs or expenses incurred in the preparation of the proposal or other information required by the RFP.

Disposition of RFP:

Upon submission of a proposal in response to this RFP, the respondent acknowledges and consents to the following conditions relative to the submission and review and consideration of its proposal:

- All proposals shall become the property of the Town and will not be returned.
- All proposals will become public information at the appropriate time, as determined by the Town (in the exercise of its sole discretion) in accordance with law.

Town's Right to Reject:

The Town reserves the right to reject any and all proposals, if necessary, or to waive any informalities in the proposals, and unless otherwise specified by the Respondent, to accept any item, items or services in the proposal should it be deemed in the best interest of the Town.

Original/Authorized Signatures:

Each proposal and all required forms must be signed in ink by a person authorized to do so.

Clarification of RFP:

Should any difference arise as to the meaning or intent of this RFP, the Town's decision shall be final and conclusive.

Delivery of Proposals:

Proposals may be hand delivered or mailed consistent with the provisions of the legal notice to Respondents. In the case of mailed proposals, the Town assumes no responsibility for proposals received after the designated date and time and will return late proposals unopened. Proposals will not be accepted by fax or email.

SECTION II - PROPOSAL REQUIREMENTS

Mandatory Affirmative Action Certification:

Vendors are required to comply with the provisions of N.J.S.A. 10:5-31 and N.J.A.C. 17:27 et seq.

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General Conditions

Americans with Disabilities Act 1990:

Discrimination on the basis of disability in contracting for the purpose of bids or proposals is prohibited. The successful respondent is obligated to comply with the Act and to hold the Town harmless.

Business Registration Certificate:

Vendors are required to comply with the requirements of P.L. 2004 c. 57 (Chapter 57) which include submitting a copy of their Business Registration Certificate (BRC), issued by the NJ Department of the Treasury.

Public Disclosure Information:

Chapter 33 of the Public Law of 1977 provides that no corporation or partnership shall be awarded any contract for the performance of any work or the furnishing of any materials or supplies, unless prior to the receipt of the proposal or accompanying the proposal of said corporation or partnership there is submitted a statement setting forth the names and addresses of all stockholders in the corporation or partnership who own 10% or more of its stock of any class, or of all individual partners in the partnership who own a 10% or greater interest therein.

Indemnification: The vendor, if awarded the contract, agrees to protect, defend and save harmless the Town against damages for payment for the use of any patented material process, article or device that may enter into the manufacture, construction or form a part of the work covered by either order or contract, and further agrees to indemnify and save harmless the Town from suits or actions of every nature and description brought against it for, or on account of, any injuries or damages received or sustained by any party or parties by, or from, any of the acts of the contractor, its servants or agents.

Insurance Requirements:

The vendor shall maintain sufficient insurance to protect against all claims under Worker's Compensation, General and Automobile Liability, and shall be subject to approval for adequacy of protection. Certificates of such insurance shall be provided to the Town. Insurance requirements are as follows:

- | | |
|-----------------------------------|-------------|
| • Commercial General Liability | \$3,000,000 |
| • Comprehensive General Liability | \$1,000,000 |
| • Worker's Compensation | \$1,000,000 |
| • Automobile Liability | \$1,000,000 |
| • Umbrella Liability | \$2,000,000 |

Certificate of Insurance:

The contractor shall provide certificates of the required insurance as listed above along with the contract as evidence covering Comprehensive General Liability, Comprehensive Automobile Liability, and where applicable, necessary Worker's Compensation and Employer's Liability Insurance. Such coverage shall be with acceptable insurance companies operating on an admitted basis in the State of New Jersey and shall name the Town as an additional insured. Said Certificate of insurance shall state specifically that the Indemnification is guaranteed by policy. If such statement is not included in the body of the policy it shall be typed on the face or back of certificate.

Termination:

Should a dispute arise, and if after a good faith effort to resolve, the dispute is not resolved, either party may terminate the contract by providing 120 days written notice to the other party. Regardless, the Town reserves the right to cancel the contract by providing 120 days written notice to the vendor.

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SECTION III - PROPOSAL SUBMISSION REQUIREMENTS

To be responsive, proposals must provide all requested information, and must be in strict conformance with the instructions set forth herein. Proposals and all related information must be signed and acknowledged by the vendor.

Submission Requirements:

Proposer is required to submit four (4) copies of the RFP submission. Each envelope/box must be marked with the name and address of proposer, date and hour of proposal opening, the name of the project, the contents and clearly labeled "DO NOT OPEN - SEALED PROPOSAL".

All proposals shall remain valid for a minimum of 60 days from the time of proposal opening and the proposer shall specifically reference said provision in their cover letter. Negligence on the part of the proposer in preparing the proposal confers no rights for the withdrawal of the proposal after it has been opened.

Cost proposals shall itemize costs and present a lump sum cost for the initial year of the contract term outlined in project description.

All proposers must provide a proposed project staffing plan and include the name and resume of the proposed manager who will be involved with the day to day operations of the facilities.

All proposers must provide a detailed operations plan that will address all processes and associated equipment that will meet the requirements of the Clean Water Act, Safe Drinking Water Act, and other specific requirements of this RFP. The plan of service shall also address all requirements detailed in the "Standard Agreement" herein attached as they specifically relate to the facilities. The proposer is encouraged to elaborate on the background and knowledge of its company, especially as it would relate to the operation and maintenance of the facilities.

All proposers must provide a detailed plan for customer service. The company is encouraged to elaborate on the background and knowledge of its company as it relates to customer service.

Proposal Format:

To facilitate a timely and comprehensive evaluation of all submitted proposals, it is essential that all vendors adhere to the required response format. The Town requires a standard format for all proposals submitted to ensure that clear, concise and complete statements are available from each vendor in response to requirements. The Town is not under any obligation to search for clarifications through additional or unformatted information submitted as a supplement to the formatted response; where a proposal contains conflicting information, the Town at its option may either request clarification or may consider the information unresponsive.

SECTION IV - PROPOSAL EVALUATION AND AWARD OF CONTRACT

The Town's objective in soliciting proposals is to enable it to select a vendor that will provide high quality and cost effective services to the Town. The Town will consider proposals only from vendors that, in the Town's sole judgment, have demonstrated the capability and willingness to provide high quality services to the Town in the manner described herein.

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Evaluation Methodology:

All proposals will be reviewed for compliance with the minimum submission requirements criteria. Proposals that do not meet the minimum criteria will be grounds for disqualification and rejection.

All proposals meeting the minimum submission requirements will be initially evaluated based on the specific information presented in the RFP and as defined in the comparative qualification criteria. Proposals will be rated: Highly Advantageous, Advantageous and Not Advantageous. A short list of firms may be developed if appropriate.

Interviews with short list firms may then be scheduled at the Town's discretion. Interviews, references, and site visits to the existing contract operations facilities will be incorporated into the overall choice of the contract operator. The interviews may consist of the proposed system manager, additional key on-site personnel, regional corporate representative(s) and a regional technical support representative. Resumes for these individuals must be submitted with the proposal.

Any visits to a proposer's existing contract-operated facilities will be at the sole expense of the owner.

A final rating of the proposals will be determined by the selection committee based on the initial evaluations of qualifications, responsiveness to the scope of services requested in this RFP, interview and reference/follow up review work on the firms.

A cost proposal of short listed firms will be reviewed. Cost will be evaluated in conjunction with the evaluation system noted herein; however, proposal quality (i.e. knowledge of the facilities, proposed staffing, approach to operations and maintenance, reliable track record) is important to the Town and final selection will not be made solely upon lowest cost. The Town also reserves the right to negotiate a final contract price with the selected proposer if it is deemed in its best interest.

The Town reserves the right to reject any and all proposals, waive any informalities in the proposal, and also to select the contractor which the Town deems to be in its best interest.

Comparative Qualification Criteria:

The Town will use the following evaluation criteria to rank proposals. The proposer should specifically detail their experience in accordance with these criteria.

- A. Firm must be able to quickly mobilize construction crews to Kearny for the repair and maintenance of water facilities.

RANKING:

Can mobilize in 2 hours or less	Highly Advantageous
Can mobilize in 2- 6 hours	Advantageous
Can mobilize in 6+ hours	Not Advantageous

- B. A staff of at least (3) state certified water operators holding appropriate current NJDEP licenses for the system to be operated. Provide a staffing plan for the water facilities, including identification and resumes of the individuals who will be used in this project. Include availability of backup operating and maintenance personnel, staff maintenance personnel, laboratory staff, engineering staff, administrative staff, and any other pertinent staff information.

RANKING:

10+ Certified Operators	Highly Advantageous
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6- 10 Certified Operators	Advantageous
5 or less Certified Operators	Not Advantageous

- C. Firm must have laboratory facilities and maintenance facilities, equipment and the adequacy of the latter to cope with any needed repairs at the water facilities.

RANKING:

3+ Support Facilities	Highly Advantageous
2- 3 Support Facilities	Advantageous
1or less Support Facilities	Not Advantageous

- D. Familiarity and responsiveness of proposal to Town specific issues.

RANKING:

High Responsive	Highly Advantageous
Responsive	Advantageous
Not Responsive to all Issues	Not Advantageous

- E. Proximity of customer service centers to Town.

RANKING:

Customer Service within 10 miles	Highly Advantageous
Customer Service within 25 miles	Advantageous
Customer Service within 50 miles	Not Advantageous

- F. Staffing for Customer Service

RANKING:

5+ Customer Service Staff	Highly Advantageous
2 – 4 Customer Service Staff	Advantageous
1 Customer Service Staff	Not Advantageous

Negotiations with Highest Scoring Respondent:

The Town regards the submission of the proposal as the most important factor in selection of a respondent to provide services for the operation, maintenance and management of the facilities under a public private partnership. The Town reserves the right to reject any or all proposals and is under no obligation to award a contract.

The Town intends to negotiate an agreement with the respondent with the highest score as determined by the Town. However, should the negotiation with the highest scoring respondent not produce an acceptable partnership arrangement, the Town will request the respondent placing second in the evaluation process to begin negotiations.

The responsibility for the final selection and negotiations rests solely with the Town.

The Town shall not be liable to any respondent for costs associated with responding to the RFP for the respondent's participation in any oral interview, or for any costs associated with negotiations.

Contract Award:

The proposal will not be opened publicly, but the Town will open them in the presence of one or more witnesses at the time and on the dates specified in the RFP. At the opening of the proposals, the Town will prepare a register of proposals which will include the name of each proposer and the number of modifications, if any, received prior to

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the opening. The register of proposals will be open for public inspection. Until the completion of the RFP evaluation as evidenced by an executed service agreement or a decision to terminate this procurement, the contents of each proposal shall remain confidential and shall not be disclosed, except to the technical and cost proposal evaluation committee. The Town intends that cost proposals will be evaluated after the evaluation of the technical proposals.

The Town intends to enter into negotiations with the preferred vendor regarding all terms of the service agreement. The Town in its sole discretion may, after such negotiations, determine that it is in the best interest of the Town to cease negotiations with the preferred vendor and commence negotiations with the next most advantageous proposer. The Town will give written notice of this decision to the preferred vendor, signed by an authorized representative of the Town and delivered to the preferred vendor by registered mail. The Town may then negotiate all terms of the contract agreement with the next highest ranked. The Town intends to award the service agreement, by written notice to the selected vendor by the Town. The parties may extend the acceptance time by mutual agreement.

The Town will not be responsible for any of the direct or indirect negotiations costs incurred by any of the selected proposers who participate in such negotiations.

The Town may condition award on successful negotiations of revisions to the proposer's proposal as specified by the Town in its evaluation.

If the Town awards the contract to a proposer that did not submit the lowest cost proposal, the Town may explain the basis for the award in writing, specifying in reasonable detail the Town's decision.

The contract will be binding upon award or its successor.

Disposal of Proposals:

All proposals are the property of the Town and will not be returned. At the conclusion of the procurement process, the Town may dispose of any and all copies of proposals received in whatever manner is deemed appropriate. In no event will the Town assume liability for any loss, damage, or injury which may result from any disclosure or use of information marked as proprietary or confidential which occurs prior to the disposal of proposals.

Disclaimer of RFP Accuracy:

The Town assumes no responsibility for the completeness or the accuracy of specified technical and background information presented in this RFP or otherwise distributed or made available during this procurement process. Without limiting the generality of the foregoing, the Town will not be bound or responsible for any explanation or interpretation of the proposal document other than those given in writing. In no event shall a proposer to the RFP rely on any oral statements by the Town.

TECHNICAL SPECIFICATIONS

SECTION I - SCOPE OF PROJECT

Scope of Project:

All tasks and responsibilities are to be completed by a qualified firm or other entity (the “successful proposer”) with respect to the operation, maintenance and administration of the Town’s system. The successful proposer will be obligated to provide the necessary services to fully operate, maintain, and manage the Town’s current water system, pursuant to all applicable laws and the terms and conditions of an agreement with the Town. It is the Town’s intention to enter into an agreement for a minimum of five (5) years with the successful proposer.

The following information is provided as assistance to proposers on the operation and maintenance contract for the water distribution system (“facilities”), as well as customer service functions. It is the responsibility of all proposers to satisfy themselves as to all information required for the preparation of their proposals.

SECTION II - QUALIFICATIONS & REQUIRED DOCUMENTS

Minimum Qualifications:

Firm should have at least ten (10) years of experience in the field of contract operations of municipal water and wastewater treatment facilities serving a minimum population of 30,000. A list of current clients to whom contract operations are being provided shall be provided with the proposal. This list shall include the size and complexity of the facility, contract name and title and current telephone. (See “Administrative Documents”)

Firm and Project Manager must have at least ten (10) years of operational experience with municipal water operations and maintenance.

Firm must have 24 hour on-call capabilities to mobilize additional supervisors, personnel and equipment to the Town with minimal response time for an emergency condition or for major mechanical operation or maintenance. (Response times shall be specifically detailed in all proposals.)

Proposer shall be in satisfactory financial condition for performance of the contract. To substantiate this, a proposer shall submit a copy of its balance sheet in the case of a publicly owned company or a recent certified audited balance sheet in the case of a privately owned company (See “Administrative Documents”)

If the proposer intends to use subcontractors for any work elements, the names of all proposed subcontractors must be provided along with their role in the overall contract operations plan.

Joint ventures for the operation and maintenance of the facilities are not acceptable.

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SECTION III - CONTRACT TERM

Contract Term:

The contract for operating services will be for a minimum of five (5) years. Pending selection committee approval, the Town may offer up to two (2) five (5) year extensions at the Town's option. Adjustments to the pricing after the first five year term shall be in accordance with the Annual Adjustments as outlined in Appendix D.

Warranty or service agreement non-performance will not relieve the proposer from providing adequate operation and maintenance of the facilities or otherwise entitle the proposer to additional compensation.

SECTION IV - DESCRIPTION OF KEARNY WATER SYSTEM

The Town of Kearny owns and operates a water supply, transmission and distribution system for the purpose of providing water supply to the residents and businesses in Kearny and the Borough of East Newark. A key area of the Kearny water system is the South Kearny industrial peninsula. Kearny is a member of both the Wanaque North and Wanaque South and has a combined allocation of 13 MGD. Kearny provides bulk water supply to the Borough of East Newark. On average, Kearny uses approximately 5 MGD to supply the Town and Borough of East Newark. In general, the system consists of the following:

- Bulk water supply interconnection with NJDWSC with the point of connection being at the City of Newark Belleville Reservoir
- Water supply interconnections:
 - Jersey City (16")
 - Passaic Valley Water Commission (2-16" and 1-12" connections). PVWC serves Harrison, North Arlington and Lyndhurst
 - Bayonne (20" and 16" connections)
 - East Newark (8")
- Water transmission and distribution mains ranging in size from 4" to 48" with a total length of transmission and distribution mains of approximately 115 miles.
- Approximately 2,500 transmission and distribution system valves (not including small diameter valves, such as curb valves, of which there are approximately 8,100). Approximately 710 fire hydrants are located throughout the transmission and distribution system. The system has approximately 8,000 service connections.

A map showing the extent of the Town of Kearny water system is included in the appendix of this specification.

SECTION V - SCHEDULE OF CRITICAL DATES

The Town anticipates the following procurement schedule, but the Town reserves the right to adjust dates as needed and will advise all who obtain an RFP:

RFP Available:	<u>August 14, 2015</u>
Pre Proposal Conference:	<u>September 4, 2015</u>
Site Visits:	To be scheduled by appointment after Pre Proposal Conference
Deadline for Receipt of Questions on RFP:	<u>September 11, 2015</u>
Plan of Service & Cost Proposal Opening:	<u>September 16, 2015</u> at 11:00 AM
Interviews:	As scheduled by the Town
Complete Evaluation/Notice of Selection:	<u>September 30, 2015</u>
Start Negotiations:	<u>October 1, 2015</u>

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Complete Contract Negotiations:	TBD
Approval & Contract Execution:	<u>October 13, 2015</u>
Initiate Service (Service Commencement):	On or about November 1, 2015 firm date TBD

The proposed contract to be negotiated must be submitted to the Board of Public Utilities, New Jersey Department of Environmental Protection and Department of Community Affairs for their review, comment and approval. The Town will make every effort to expedite the review process but makes no representations or guarantees as to a deadline for achieving such approvals. The Town therefore reserves the right to adjust dates, as needed, and will advise all interested parties.

SECTION VI - INFORMATION FOR PROPOSERS

Proposers must visit the facilities and study operation and maintenance records and to tour the key elements of the water supply facilities. It is the proposer's responsibility to make himself fully aware of the extent, condition and location of the referenced facilities in order to develop a comprehensive "plan of service" as part of the proposal. Failure to do so will not relieve a successful proposer of his obligation to furnish all material and labor necessary to carry out the provisions of the contract. Proposers should schedule a visit to the facilities Monday through Friday between the hours of 8:00 AM and 12:00 PM. Proposers shall phone ahead to make an appointment with the Town Administrator.

Proposers who have questions concerning the request for proposals or the proposal document should make all requests in writing and direct such to Town Administrator.

Any and all interpretations and supplemental instructions, if issued as addenda may be mailed by certified mail with return receipt requested to prospective proposers (at the respective address furnished by the proposer for such purpose), no later than two (2) working days prior to the date fixed for the opening of the proposals. The Town reserves the right to deliver addenda by fax or email only to the respective fax numbers furnished by the proposer for such purpose. It is the proposer's responsibility to provide all current fax numbers and email address to the Town Administrator for notification of any addenda. Any addendum which postpones the receiving or opening of the proposals may be issued at any time prior to the date and time of receiving proposals as noted in the "Request for Proposals" and "Information for Proposers."

Failure of proposer to receive any such addenda or interpretation is the responsibility of the proposer.

The selected proposer will be exempt from the payment of state sales tax for goods and services furnished under this contract to the extent permitted by applicable law. The proposer's cost proposal should reflect the exclusion of any and all local or state applicable taxes.

SECTION VII - COST PROPOSAL

General Requirements:

The cost proposal shall be submitted in accordance with the following format and shall be complete in every detail. The proposal shall identify the terms and conditions associated with the cost proposal. All pricing exceptions shall be noted. Failure to do so will be considered cause for disqualification. The Town will not consider alternative proposals outside of operations, maintenance, management and customer service. The format outlined is to be followed by proposers in order to allow for the proper evaluation and comparison of cost proposals.

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Legality, clarity and completeness of the cost proposal form is essential. All information in the cost proposal must be readable and understandable. Any erasures or other changes in cost proposal must be initialed by a person with authority to commit the proposer to such change. In cases where total amounts do not agree with the amounts identified for individual items, the amounts presented for the individual items may be added to compute the correct total amounts.

Contents of Cost Proposal:

1. Cost Form - See "Proposal Form"
2. Definitions - The following definitions shall be applicable to the cost item requested in this section as follows:
 - a. Personnel Services - Includes, but is not limited to: salaries, wages, overtime, vacation pay, pay differential, longevity, unemployment compensation, holiday pay, meal allowance, short and long term disability, education assistance, hospital, medical, dental plans, life insurance, retirement contributions, sick leave and other costs directly attributable to employees.
 - b. Utilities - Includes, but is not limited to: electricity, natural gas, water and heating fuels.
 - c. Equipment - Includes, but is not limited to: office equipment, laboratory equipment, safety equipment, tools, communication equipment, maintenance equipment, vehicles, mechanical equipment and manually operated equipment.
 - d. Materials and Supplies – Includes, but is not limited to: gasoline and diesel fuel, vehicle supplies, vehicle accessories, office supplies, bills, printing of bills, duplicating and photo supplies, medical supplies, chemical, laboratory supplies, clothing and uniform and other materials and supplies.
 - e. Outside Services – Includes, but is not limited to: equipment rentals, temporary and/or part-time help, legal fees, registrations, telephone, courier service, dues, subscriptions, postage and freight charges, advertising, printing and binding, insurance and other professional services.
 - f. Maintenance and Repair - Includes the total of all maintenance and repair expenditures including, but not limited to: repair parts, maintenance equipment, maintenance supplies, outside maintenance services, oil and grease, parking and maintenance equipment rental. Contractor on-site labor shall NOT be included since it is included under Personnel Services under Item a. above.

SECTION VIII - PERFORMANCE BOND & CONSENT OF SURETY

An annual performance bond and consent of surety issued by a company authorized to do business in the State of New Jersey and of a form acceptable to the Town will be required of the successful proposer for each year of the Contract. In addition, a separate bond and consent of surety shall be required for each year of the Contract in an amount not less than the projected gross receipts to be collected by the Company. The performance bonds and the certificate of insurance MUST be delivered to the Town within ten (10) days of the award. No proposal may be withdrawn for a period of thirty (30) days subsequent to the opening thereof without permission of the Town. The proposal advertisement and awarding of the contract shall be in full compliance with all applicable statutes and Town Ordinances. The Town reserves the right to reject any and or all proposals, waive any informalities in the proposals, or accept the proposal deemed to be in the best interest of the Town. The company must supply annual performance and gross receipts bonds for each year of the contract and the bonds shall be issued by a company authorized to do business in the State of New Jersey. The performance bonds must be delivered to the Town within

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ten (10) days of the award and in the case of a multi year contract, thirty (30) days before the commencement of the anniversary date for the next year of the contract. The performance bond must be in the full amount of the annual price for each year of the service contract.

SECTION I - GENERAL INFORMATION

- P.L. 2004 c. 57 (Chapter 57) amends and supplements the business registration provisions of N.J.S.A. 52:32-44 which imposes certain requirements upon a business competing for, or entering into a contract with a State Agency. Chapter 57 expands the requirement of business registration to business organizations competing for, or entering into contract with the following public contracting agencies:
 - State colleges and universities and county colleges.
 - Contracting units as defined in the Local Public Contracts Law (N.J.S.A. 40A:11-2)
 - Board of education as defined in the Public School Contracts Law (N.J.S.A. 18A:18A 2)
 - Private firms that have entered into a contract with a public entity to provide water supply services pursuant to N.J.S.A. 58:26-19.
 - A private firm or public authority that has entered into a Contract with a public entity to perform wastewater treatment services pursuant to N.J.S.A. 58:27-19, or a duly incorporated nonprofit association that has entered into a contract with a city of the first class to provide wastewater treatment services pursuant to N.J.S.A. 58:27-19.
- These instructions provide guidance to public contracting agencies, and business organizations in meeting their obligations under the new law. For further guidance, interested parties may contact the Division of Taxation, Regulatory Service Branch, directly at (609) 292-5995. Questions concerning activities of public contracting agencies under the Local Public Contracts Law or Public School Contracts Law should be directed to the Division of Local Government Services at (609) 292-7842, or at lpcl@dca.state.nj.us by e-mail.

SECTION II - DEFINITIONS

- “*Affiliate*” means any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly or constructively controlled by another entity, or (3) is subject to the control of a common entity if it owns, directly or individually, more than 50% of the ownership interest in that entity.
- “*Bid*” or “request for proposal” means a formal process used by a contracting agency to receive offers to provide goods or services to the contracting agency. It is not the same as any informal, non advertised process of requesting quotations from contractors.
- “*Business Organization*” means an individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof. It also includes any affiliates of the business organization. It does not include government agencies or organizations organized as non-profit entities.

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- “*Contract*” means any agreement, including but not limited to a purchase order or a formal agreement, which is a legally binding relationship enforceable by law, between a vendor who agrees to provide or perform goods or services and a contracting unit which agrees to compensate a vendor as defined by and subject to the terms and conditions of the agreement.
- “*Contractor*” means a business organization that seeks to enter, or has entered into a contract with a contracting agency, to provide goods, services, or a construction project, the cost of which exceeds 15% of the contracting unit’s bid threshold.
- “*Subcontractor*” means a business organization that seeks to enter, or has entered into a contract with a contracting agency, to provide goods, services, or a construction project, the cost of which exceeds 15% of the contracting unit’s bid threshold.
- “*Supplier*” means a business organization that knowingly provides goods or services directly to a subcontractor or to a contractor in fulfillment of a construction contract issued by a contracting agency, where the value of the goods and services of the supplier exceeds 15% of the contracting unit’s bid threshold.

SECTION III - GENERAL PROVISIONS

- The effective date of Chapter 57 is September 1, 2004. Chapter 57 affects all contracts awarded after that date, but does not apply to contracts awarded prior to September 1, 2004, even if the contract is performed in whole or in part after September 1, 2004.
- When required, a business organization must submit proof of business registration to the contracting agency. Proof of business registration shall be a copy of a Business Registration Certificate issued by the Department of the Treasury, Division of Revenue. Information on how a business can obtain a certificate can be obtained on the internet at www.nj.gov/njbgs or by phone at (609) 292 1730.
- An individual with **no** business tax or employer obligation to the State of New Jersey, who is entering into, or has entered into, a contract with a contracting agency to perform personal services shall submit proof of business registration in the form of a Certification and Registration for Individuals Contracting with Public Agencies (NJ-REG-A) issued by the Department of the Treasury, Division of Revenue. The certificate and Registration form can be downloaded at www.nj.gov/treasury/revenue/pdforms/rega.pdf or by telephone at (609) 292-1730.
- A contracting agency must provide notice of the requirement of submission of proof of business registration in its bid specifications, requests for proposals, or other documents notifying potential contractors of procurement opportunities.
- A contracting agency may not enter into a contract with a contractor unless it has received proof of business registration: (a) at the time of bid or proposal submission, in response to a request for bids or proposals; or (b) for all other transactions, prior to issuance of a purchase order or other contracting documents.
- The requirement to submit proof of business registration is not applicable in those contracting situations in which the dollar value of the contract is less than 15 percent of the bid threshold dollar amount defined in the applicable contracting agency procurement law.

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- When a contract does not involve a request for bids or a request for proposals, a contracting agency may waive the requirements of submission of proof of business registration only if such proof has been previously provided to the contracting agency.
- For any purchases of goods or services made by a contracting agency under a State of New Jersey Purchasing Contract, or any other authorized cooperative purchasing agreement, the contracting agency awarding the contract shall receive and hold the proof of registration. Contract documents issued under a cooperative purchasing agreement shall identify the contracting agency awarding the contract.
- For bids and request for proposals, the contracting agency must keep the proof of business registration in the file where documents relating to the contract are maintained. For all other contracts, proof of business registration shall be kept in a single alphabetical file.
- In situations of an emergent nature, a contracting agency may enter into a contract with a business or organization, but the contracting agency shall not pay the organization for work done or goods provided under the contract until such time as a copy of the business registration or registrations is/are provided to the contracting agency.
- In situations involving sole source contractors unwilling to provide proof of business registration, a contracting agency may refer the matter to the Division of Taxation, Regulatory Services, for resolution on a case by case basis.

SECTION IV - CONTRACTOR REQUIREMENTS

- A contractor must include proof of business registration at the time it submits a bid or proposal in response to a request for bids or proposals. For all other transactions, proof of business registration must be submitted before the issuance of a purchase order or contracting document.
- A contractor must provide written notice to its subcontractors, regardless of the level (tier) of the contractor or subcontractor, of the requirement to submit proof of business registration to the contractor. The contractor shall obtain and maintain on file the proof of business registration of each subcontractor.
- Before final payment on the contract is made by the contracting agency, the contractor shall submit an accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of the contract, or shall attest that no subcontractors were used.
- A contractor and its affiliates, and a subcontractor and its affiliates, regardless of the level (tier) of the contractor or subcontractor must collect and remit to the Division of Taxation the use tax pursuant to the Sales and Use Tax Act on all sales of tangible personal property delivered into this State regardless of whether the tangible personal property is intended for a contract with a contracting agency.
- Procedures for Construction Contracts
 - These procedures shall be used for all construction contracts. For consistency, “construction” shall mean, exclusive of the value of the work, “public work” as defined in the “Prevailing Wage Act,” N.J.S.A. 34:11-56.26:
 - “public work” means construction, reconstruction, demolition, alteration, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.
 - “Maintenance work” means the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

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- In response to a request for bids or a request for proposals for construction work, a contractor must include proof of its own business registration and proofs of business registration of those subcontractors required to be listed in the contractor's submission (i.e. "named contractors."). The proof of business registration shall be provided at the time the bid or proposal is officially received and opened by the contracting agency.
- After award of the contract, a contractor must obtain proof of business registration of subcontractors and suppliers through all tiers of a contract, when the value of the goods or services to be provided by the subcontractor or supplier exceeds 15% of the contracting agency's threshold.

The contractor shall provide written notice to its subcontractors and suppliers of the responsibility to submit proof of business registration to the contractor. The requirement of proof of business registration extends down through all levels (tiers) of the project.

Before final payment on the contract is made by the contracting agency, the contractor shall submit an accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of the contract, or shall attest that no subcontractors were used. For the term of the contract, the contractor and each of its affiliates and a subcontractor and each of its affiliates (NJSA 52:32-44(g) (3)) shall collect and remit to the Director, New Jersey Division of Taxation, the use tax, due pursuant to the Sales and Use Tax Act on all sales of tangible personal property delivered into this State, regardless of whether the tangible personal property is intended for a contract with a contracting agency.

A business organization that fails to provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12-92), or that provides false business registration information under the requirements of either those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly under a contract with a contracting agency. Refer to <http://www.state.nj.us/treasury/revenue/busregcert.htm>.

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Water System Contract Operations, Maintenance and Management Services Agreement

This Operation and Maintenance Agreement (the "Agreement"), made and entered into as of _____, 20____, between, _____ a _____ of the State of _____ with an address at _____ ("Owner") and _____, a _____ with an address at _____ ("Company").

RECITALS:

WHEREAS, the Owner owns and operates a water system (the "System") as described in Appendix A, which is attached hereto and made a part hereof; and

WHEREAS, the Owner is responsible for overseeing the day to day operations, maintenance and management of the System; and

WHEREAS, the Owner desires to contract with a private contracting firm that has the specialized professional skills and experience to efficiently operate, maintain and manage this System; and

WHEREAS, the Owner and Company wish to enter into this Agreement setting forth their respective rights, duties, privileges and responsibilities,

NOW, THEREFORE, in consideration of the agreements, terms and conditions stated herein, the parties agree as follows:

SECTION I – TERM

The term of this Agreement shall be _____ (_____) years commencing on _____, 20____ (or other such date mutually acceptable in writing by both parties) and expiring on _____. The Owner and Company may enter into additional _____ year extensions of this Agreement on mutually acceptable terms and conditions.

SECTION II - SCOPE OF SERVICES

Operation, Maintenance and Management of the System:

The Company shall provide the services as detailed in this Agreement and more particularly in the Scope of Services attached hereto as Appendix C ("Scope of Services"). The Company shall operate, maintain and manage the System at all times on behalf of the Owner in compliance with Applicable Law and in accordance with the terms and provisions of this Agreement; subject to any Uncontrollable Circumstances as defined herein; and the operating and design capability of the facilities comprising the System. Company shall at all times manage, operate and maintain the System in an efficient and economical manner and in accordance with prudent industry and utility practice.

Regulatory Compliance:

Company will supervise all regulatory compliance, including the enforcement of Owner's ordinances or regulations. Subject to the limitations of this Section and the design capabilities, Company shall operate the System in compliance with current state and federal regulatory requirements. Company will not be responsible for process upsets or violations that are attributable to:

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(a) Influent constituents or contaminants that are not within the design capabilities of the System or that cannot, within the design capabilities of the System, be treated to the degree required by Applicable Law, as amended from time to time; or

(b) The malfunction or failure of equipment except to the extent due to the negligent acts, errors or omissions of Company.

Company shall pay any fines or civil penalties for violations imposed on the Owner or Company by a regulatory agency having jurisdiction of the operation, maintenance and management of the System to the extent caused by the negligence or willful misconduct of Company. Company shall be given full authority to contest such violations.

Access:

Owner shall provide Company with access to the System as necessary to perform the Services under this Agreement. Company shall provide reasonable access to the System for authorized Owner personnel. All visitors, including Owner personnel, shall comply with Company's established operating and safety procedures.

Technical Support:

The Company shall provide technical advice to the Owner, utilizing on-site and/or locally based staff, on the operations impact or planning level costs associated with proposed expansions or extensions of the System. Such support is not intended to include engineering design, supervision of major projects, or services that are unrelated to Company's obligations under this Agreement. **Owner may, at its discretion, negotiate with Company for technical support.**

Inventory:

An inventory of all spare parts, and other equipment and tools at the System that are to be used by Company shall be prepared and approved by the Owner and the Company within two (2) months following the commencement of the Term. Upon the termination or expiration of this Agreement, another inventory shall be taken, subject to written approval by Owner and Company. All items listed on the inventory at the time of commencement of this Agreement shall be returned to Owner, and Company shall pay to Owner the replacement cost of any missing items or justify their absence due to consumption; obsolescence, breakage, sale or other legitimate reasons.

Staffing:

Company will provide properly trained employees of Company for the staffing of the System. Backup services will be provided by Company corporate personnel. In addition, Company will be on call 24 hours per day, 7 days per week for emergencies. Company will provide appropriate initial and ongoing training for its employees with respect to safety, supervisory skills, and regulatory compliance. Company shall be deemed to be an independent contractor for purposes of applicable wage, fringe benefit, and worker compensation laws. Furthermore, to the greatest extent possible, Company will hire personnel from within the existing water utility of the Owner. If applicable, the Company is required to pay the prevailing wage rates for the locality in which the project is to be performed in accordance with the New Jersey Prevailing Wage Law (**N.J.S.A. 34:11-56.25 et seq.**)

Non Routine Services:

Non-Routine Services are not included in the Services provided by Company. Company will assist Owner in obtaining or providing, or Company will obtain and provide with Owner authorization, such Non-Routine Services so required, and Company will be paid for such Non-Routine Services as provided for in Appendix D.

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SECTION III – RESPONSIBILITIES

Owner Responsibilities*:

Owner shall be responsible for:

- Payment of all permitting fees;
- Use of Owner's land, equipment, buildings, structures and facilities under the Owner's ownership that are located at the System as of the effective date of this Agreement;
- Facilities insurance;
- Capital Improvements to the System;
- Maintaining all existing easements, licenses, warranties and all permits pertaining to the System; and
- All other items not specifically listed as a Company obligation under this Agreement.

*Where applicable, the Company shall provide a minimum of 60 days written notice of the need for input from the Owner as it relates to their ability to meet the Company Responsibilities

Company Responsibilities:

- Facility performance compliance;
- Company shall be responsible for complete operation and administration of the System as detailed in the scope of services attached hereto. Company shall perform all routine and non-routine operation and maintenance services required for efficient operation and maintenance of the System. Company's obligations under this Agreement are predicated on Owner making necessary Capital Improvements to the System. The Company shall provide a minimum notification of 6 months for minor capital improvements and 12 months for major capital improvements in order to provide the Town with adequate time for planning and execution of required capital improvements.
- Company shall be responsible for any and all income taxes associated with or arising from the performance of the services contemplated under this Agreement. To the extent permitted by law, Owner shall provide Company with any applicable certificates of exemption from sales tax for purchases made by Company in order to fulfill its obligations under this Agreement.
- Company shall be responsible for customer service.

SECTION IV – REPRESENTATIONS

Company Representations:

Company hereby represents and warrants to the Owner that:

- a) Company has full power and authority to perform and observe its covenants contained in this Agreement, has taken all action necessary for the execution, delivery and performance of this Agreement and to carry out and consummate all transactions contemplated hereby, and this Agreement has been duly authorized, executed and delivered by Company and constitutes the legal, valid and binding obligation of Company, enforceable against it in accordance with its terms.
- b) The authorization, execution, delivery do not and will not (i) violate any laws or any regulation, order, injunction or decree of any court, governmental body, agency or other instrumentality or (ii) result in a breach of any of the terms and conditions or constitute a default under, or result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Company pursuant to the terms of any agreement or other instrument to which Company is a party or by which Company or any of its properties is bound.

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There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or threatened in writing, against or affecting the Company or any basis thereof, wherein unfavorable decision ruling or finding would materially adversely affect the transactions contemplated hereby or that in any way would adversely affect the validity of enforceability of this Agreement.

Owner Representations:

The Owner hereby represents and warrants to the Company that:

- a) The Owner has full power and authority to perform and observe its covenants contained in this Agreement, has taken all action necessary for the execution, delivery and performance of this Agreement and to carry out and consummate all transactions contemplated hereby, and this Agreement has been duly authorized, executed and delivered by the Owner and constitutes the legal, valid and binding obligation of the Owner, enforceable against it in accordance with its terms.
- b) The authorization, execution, delivery and performance of this Agreement, the compliance with the terms and conditions hereof and the consummation of the transactions herein contemplated on part of the Owner do not and will not (i) violate any laws or any regulation, order, injunction or decree of any court, governmental body, agency or other instrumentality or (ii) result in a breach of any of the terms and conditions or constitute a default under, or result in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Owner pursuant to the terms of any agreement or other instrument to which the Owner is a party or by which the Owner or any of its properties is bound.
- c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or threatened in writing, against or affecting the Owner or any basis thereof, wherein unfavorable decision ruling or finding would materially adversely affect the transactions contemplated hereby or that in any way would adversely affect the validity of enforceability of this Agreement.

SECTION V-INDEMNIFICATION

Company Indemnification:

Company shall indemnify, defend and hold the Owner and its officials, employees and agents (collectively, the "Owner Indemnified Parties") harmless from and against any and all liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits, including reasonable attorneys' fees and costs, imposed or asserted against or incurred by any of the Owner Indemnified Parties arising out of or resulting from (a) a breach of any of the representations, warranties or covenants contained in this Agreement by Company; or (b) the negligence or willful misconduct of Company, its agents, employees, and/or subcontractors arising out of the performance of this Agreement or the Services; provided, however, as to any of the foregoing, Company shall not be liable to the Owner Indemnified Parties under this Section to the extent that any such liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits arise out of or result from the negligence or willful misconduct or breach of this Agreement by the Owner Indemnified Parties.

Owner Indemnification:

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Owner shall indemnify, defend and hold the Company and its officers, directors, employees, and agents (collectively, the "Company Indemnified Parties") harmless from and against any and all liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits, including reasonable attorneys' fees and costs, imposed or asserted against or incurred by any of the Company Indemnified Parties arising out of or resulting from (a) a breach of any of the representations, warranties or covenants contained in this Agreement by Owner; or (b) the negligence or willful misconduct of Owner; its officials, agents, employees, and/or contractors arising out of this Agreement or the Services; or (c) an Environmental Claim, any discharge, dispersal, release, or escape from the System, any flow into or upon land, the atmosphere or any water course or body of water; or (d) any violation by the Owner of any Applicable Law prior to the first date of the Term of this Agreement; provided, however, that as to any of the foregoing, Owner shall not be liable to the Company Indemnified Parties under this Section to the extent that any such liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits arise out of or result from the negligence or willful misconduct or breach of this Agreement by the Company Indemnified Parties.

In the event that both the Owner and Company are negligent, then in such event each party shall be responsible the portion of the liability equal to its comparative share of the total negligence.

Hazardous Materials:

Owner acknowledges that except as specifically stated in this Agreement, Company has no responsibility as a generator, treater, storer or disposer of hazardous or toxic substances found or identified at a site. Owner agrees to defend, indemnify and hold harmless Company from any claim or liability, arising out of Company's performance of work under this Agreement and or brought against Company for any actual or threatened environmental pollution or contamination except to the extent that Company has negligently caused or contributed to any such pollution or contamination. This indemnification includes reasonable attorney fees and expenses incurred by Company in defense of such claim.

Consequential Damages:

Neither party shall be liable for any special, consequential, indirect or incidental damages relating in any way to this Agreement or the System, loss of actual or anticipated profits or revenue or cost of claims of customers.

Limitation of Liability:

Liability of Company to Owner under this Agreement shall be limited to the amount of the Annual Fee plus proceeds of applicable insurance. The foregoing limitation of liability shall not apply to claims of indemnification from third parties.

SECTION VI - INSURANCE

Company Insurance:

The Company shall obtain and maintain at its expense the insurance coverage described in Appendix F.

Owner's Insurance

Owner shall procure and maintain fire, property, and boiler and machinery insurance, on an all risk basis, on the System, in amounts equal to 100% of the value of their repair or replacement. The Owner agrees to provide the Company a waiver of subrogation on behalf of itself and its insurance carriers.

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SECTION VII – COMPENSATION

Annual Fee:

The initial year base compensation for the operation, maintenance and management of the System as well as customer service shall be as set forth in Appendix D.

Maintenance Fund:

- a) Maintenance Fund. The Base Compensation includes a budgeted amount (“**Annual Maintenance Cap**”) of **\$1,000,000** to provide for necessary predictive, preventative, routine and minor corrective maintenance and repair (“**Maintenance**”) required for the continued operation of the System in the first year of this Agreement, and have included that amount in the Annual Fee, to be paid Company in equal monthly installments. The Annual Maintenance Cap in each subsequent Agreement Year shall be adjusted in the same manner as the Annual Fee, unless otherwise agreed in writing by Owner and Company.
- b) The Company shall furnish all materials, supplies, consumables, equipment rental and subcontracting to accomplish Maintenance **up to \$5,000 per event (not per item), up to the Annual Maintenance Cap**. In connection therewith, the Owner will allow the Company, where appropriate, to make use of its annual contracts for procuring goods and services necessary to complete the Maintenance work. Eligible Maintenance related costs for which the Company shall be entitled to charge against the Annual Maintenance Cap pursuant to this **Section** shall include the cost of all materials, supplies, equipment rental and subcontracting costs, plus 10 percent (10%).
- c) The Company shall be responsible for the first \$5,000 of any **Maintenance event up to the Annual Maintenance Cap**. **All Maintenance that exceeds the Annual Maintenance Cap shall be the responsibility of the Owner.**
- d) The Company shall include in its monthly status reports sufficient information for the Owner to monitor the amounts spent on such Maintenance during each Agreement Year and to determine when the Company is within approximately 80% of reaching the Annual Maintenance Cap. As soon as the Company reasonably believes that it may exceed the **Annual Maintenance Cap, the Company shall so notify the Owner and shall promptly recommend a revised Annual Maintenance Cap for the Agreement Year sufficient to accomplish Maintenance of the System through the end of the Agreement Year, subject to the Owner’s approval, which shall not be unreasonably withheld. The Annual Fee shall be adjusted to reflect such revision in the Annual Maintenance Cap. If the Owner does not approve the revised Annual Maintenance Cap recommended by the Company, the Owner shall indemnify, defend and hold the Company harmless, after one hundred percent (100%) of funds allocated for maintenance have been expended, from and against any and all loss, liability, damage, non-compliance, fine, penalty or enforcement action and reimbursement to the Company for additional costs incurred to operate and maintain the System arising from, related to or resulting from the Owner’s rejection of the Company’s recommended funding of the revised Annual Maintenance Cap.**
- e) Any further individual expenditure or expenditures that would exhaust or exceed the Annual Maintenance Cap for any Agreement Year will require the Owner’s written approval, and Company shall not be required to undertake any such expenditures without such written approval. In the event the Owner shall approve a proposed expenditure by the Company which causes expenditures for Maintenance to exceed the Annual Maintenance Cap, the Company shall proceed with the work and the Owner shall reimburse the Company for the cost of all materials, supplies, equipment rental and subcontracting costs related to such work, plus fifteen (15%), no later than thirty-five (35) days from the date of receipt of an invoice therefore. Any

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Water System Contract Operations, Maintenance and Management Services Agreement

Maintenance Fund monies not expended for Maintenance during an Agreement Year shall be carried over to the subsequent Agreement Year, and any such monies which are not expended as of the end of this Agreement shall be returned to the Owner.

Annual Adjustment to Base Compensation:

The base compensation for the operation, maintenance and management of the System as well as customer service shall be adjusted annually in accordance with the terms of Appendix D.

Payment Terms:

The Owner shall make monthly payments on the first day of each month for which services will be rendered in an amount equal to 1/12 of the base compensation. Company shall invoice the Owner in arrears for all other amounts due, if any. Partial months shall be prorated. Such invoices shall be due and payable within thirty (30) days from the date received by the Owner. The Owner will review Company's invoices, and if the Owner questions any items, the Owner shall notify Company within twenty-one (21) days of receipt of the invoice. All amounts not in dispute will be paid when due.

Change in Law:

Additional costs of operation and maintenance associated with a change in Applicable Law shall be equitably adjusted by the parties.

Non-Routine Services

Costs for Non-Routine Services provided by Company as described previously herein, shall be paid by Owner to Company separately on a time and expense basis, including overtime at the rates set forth in Appendix D.

Public Health and Safety Emergencies:

Company may, without the Owner's prior written approval, undertake emergency repairs or actions which may subsequently be considered changes in the scope of services under this Agreement when in its judgment Company believes public health and safety or regulatory compliance will be compromised and when time is of the essence and prior notification and written agreement by the Owner is not practical. In such instances, Company shall notify the Owner as soon as possible of its actions and its intention to request additional compensation for such emergency services. The Owner shall promptly review Company's request and upon agreement that there was a change in scope of services (which agreement shall not be withheld without good and sufficient cause), the Owner shall provide such compensation.

SECTION VIII - TERMINATION

Breach or Default:

Owner or Company may terminate this Agreement prior to the expiration of its terms, provided:

- a) The other party has materially breached the Agreement;
- b) The party claimed to have committed the breach is given thirty (30) days written notice specifically detailing the nature of the alleged breach;
- c) The party that is claimed to have breached the Agreement shall have the right to cure the breach within a reasonable time which in no event shall be more than ninety (90) days from the receipt of notice.

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Convenience:

Either party may terminate this Agreement, with or without cause, by giving the other party ninety (90) days prior written notice.

Demobilization; Transition:

In the event that the Owner does exercise its rights to terminate for its convenience, Company shall be entitled to reimbursement for its reasonable demobilization costs (not to exceed one month's service fee).

In the event of termination by Owner, the Company shall be entitled to reimbursement for the modifications that the Company has completed on behalf of the Owner to the extent not previously reimbursed.

After the termination or expiration of this Agreement, Company shall assist the Owner with the orderly transition of duties to the Owner or its agent. Company shall, if requested by the Owner, continue to provide the services under this Agreement for up to ninety (90) days beyond the termination or expiration date and shall continue to receive its then current service fee on a pro rata basis for providing such services.

SECTION IX - ASSIGNMENT AND SUBCONTRACTING

Assignment:

Except as otherwise provided in this Agreement, neither party shall assign its rights, nor secure the assumption of its obligations under this Agreement, in whole or in part, without the prior written consent of the other party. The Owner shall have the right to withhold consent if it has reasonable grounds to believe that the assignee will not be able to fulfill the scope of services requirements. This Agreement shall ensure to the benefit of the parties hereto and their respective successors and permitted assigns.

Subcontracting:

Company may subcontract work under this Agreement to any third party without the consent of the Owner.

SECTION X - UNCONTROLLABLE CIRCUMSTANCES

Uncontrollable Circumstances:

Except for payment of compensation, a party's performance under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of Uncontrollable Circumstances. In the event of any such Uncontrollable Circumstance, the party claiming relief from performance shall promptly notify the other party of the existence of same, shall perform those services under the Agreement that are not affected, and shall be required to resume performance of its obligations under this Agreement upon the termination of the Uncontrollable Circumstance. The compensation to Company shall be equitably adjusted for any increase or decrease in the Scope of Services due to Uncontrollable Circumstances.

Labor Disputes:

Labor disputes (strikes, stoppages, slowdowns) by Company employees shall not be considered an Uncontrollable Circumstance; however, Company shall be required to perform the Services on a best efforts basis during such labor dispute. If the Company is unable to meet its material obligations under this Agreement during such labor dispute, the Owner may terminate this Agreement pursuant to Section VIII.

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SECTION XI – GOVERNING LAW AND DISPUTE RESOLUTION

Governing Law:

This Agreement shall be governed by and construed in accordance with the laws (and not the rules governing the conflict of laws) of the State where the Services are performed.

Dispute Resolution:

In the event that a dispute arises among the parties, the disputing party shall provide the other party with written notice of the dispute and within twenty (20) days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include a statement of each party's position and a summary of the evidence and arguments supporting its position. Each party shall designate a high level executive or officer to work together in good faith to resolve the dispute; the name and title of said executive shall also be included in the notice and response. The executives shall meet at a mutually acceptable time and place within thirty (30) days of the date of the disputing party's notice and thereafter as they reasonably deem necessary to resolve the dispute. If the executives have not resolved the dispute through good faith efforts within sixty (60) days, then, before resorting to taking the case to court, the parties shall try in good faith to resolve the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules. All costs attributed to mediation shall be borne equally by both parties.

Absent mutual consent by both parties, in the event that one of the parties brings a dispute immediately to court without first following the aforementioned dispute resolution process, then the opposing party shall be entitled to recover reasonable attorney's fees and costs from the party initiating the litigation if either (a) the case is remanded and the parties are ordered to follow the dispute resolution process outlined herein or (b) the dispute is heard and judgment is awarded in favor of the opposing party.

Jurisdiction shall be proper in any state or federal court located in the State in which the Services are performed.

SECTION XII – MISCELLANEOUS

Relationship of the Parties; Beneficiaries:

This Agreement reflects an arms-length transaction. Nothing in this Agreement creates a fiduciary, partnership, joint venture or employment or other agency relationship among the parties. This Agreement is not entered into for the benefit of, nor are any rights granted to, any third party except as expressly provided herein.

Both parties understand and agree that neither this Agreement nor the performance hereof by Company shall render Company an "owner" or "operator" of the System as those terms are used in the Resource Conservation and Recovery Act, 42 U.S.C.6901 et seq., as amended, and the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601, et seq. or similar federal, state or local environmental legislation and Company's liability shall remain limited as defined in this Agreement. Owner shall execute any manifests or forms required by law or regulation in connection with the transportation, storage or disposal of hazardous or contaminated materials resulting from the Services or work at the site .

Waiver:

The failure of either party to enforce any of the terms of this Agreement on one or more occasions shall not constitute a waiver of the right to enforce such term on any other occasion or of the right of either party to enforce each and every term of the Agreement.

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Notices:

All notices shall be in writing and shall be delivered, in person or transmitted by certified mail, return receipt requested, or national courier service providing proof of receipt, to the parties listed below. Either party may update such addresses on written notice to the other party. Notices shall be effective upon receipt.

To the Company:

and

To the Owner:

Town of Kearny
402 Kearny Avenue
Kearny, NJ 07032

Entire Agreement; Modifications; Schedules:

The provisions of this Agreement (except captions, which are for convenience only and shall be ignored in interpreting this Agreement), including the Appendices annexed hereto shall (a) constitute the entire agreement between the parties, superseding all prior or contemporaneous negotiations, understandings or agreements and (b) not be modified in any respect except by express written agreement executed by the parties. The Appendices attached hereto are specifically made a part of this Agreement.

Severability:

If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, provided the consideration for the agreement can be reasonably determined. In such event, the parties shall make good faith efforts to modify this Agreement to implement the intent of the parties embodied in this Agreement. Any resulting modification and the remaining provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Survival

The Sections of this Agreement pertaining to indemnification, payment and dispute resolution shall be deemed to survive the expiration or earlier termination of this Agreement.

Appendices:

- Appendix A – Description of Kearny Water System
- Appendix B – Description of Kearny Customer Service Requirements
- Appendix C – Scope of Services
- Appendix D – Pricing
- Appendix E – Definitions
- Appendix F – Insurance
- Appendix G – Miscellaneous Documents to be Executed as Part of the Contract

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APPENDIX A

DESCRIPTION OF KEARNY WATER SYSTEM

1. Total Customers: Approximately 8,300 accounts including residential, commercial and industrial).
2. Water mains consisting of cast iron, ductile iron, lock-bar steel, transite and concrete ranging in size from 4" to 48" diameter
3. Approximately 2,500 distribution system isolating valves and 710 hydrants.
4. Total gallons distributed for the year 2014 was approximately 5.3 MGD
5. Refer to water system map for additional information

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APPENDIX B

CUSTOMER SERVICE REQUIREMENTS

Customer services should include the following:

- Response to all customer calls between the hours of 8:00 AM and 4:30 PM, Monday through Friday (except Town observed holidays).
- Creation of a unique e-mail address to the Company for Town of Kearny customers and responses to all e-mails received by the Company. A designated Town employee shall be copied on all Company responses to Kearny customers.
- Response to all written correspondence, with copies of correspondence provided to the designated Kearny employee.
- Complaint management and resolution.
- Creation of a unique web page on the Company website for Kearny customers. The web page would include relevant information on the Kearny water system, past and current CCR reports, and customer related news and information.

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APPENDIX C

SCOPE OF SERVICES

Any and all services needed to operate the system as described in Appendix A, as well as to make capital improvements as requested by the Town.

- Basic operation and maintenance of bulk sale interconnections, maintaining compliance with the Bulk Sale Agreements
- Annual flushing of distribution system (development of unidirectional flushing plan) and interconnections
- Completion and filing of all NJDEP reports as required by licensed operators (i.e. distribution and other compliance reports)
- Compliance with all applicable NJDEP standards and requirements for operation of a Public Community Water Supply System including, but not limited to record keeping, sampling and testing, public notifications, maintenance and updating of O&M Manual, Emergency Response Plan, Vulnerability Assessment, Best Security Practices, Water Conservation Plan, Ops Plan, Testing of backflow devices / Cross connection program, upkeep of safety plans / procedures.
- Maintain and update water system mapping; provide fire hydrant status to the Police and Fire Departments
- Repairs to water mains and installation of service connections as required.
- Data to be transferred in file format agreed upon
- Kearny customers to have separate customer service access phone numbers, email addresses and the Company shall provide timely written response to all correspondence from regulatory agencies and customers.
- Company shall establish a written plan for complaint management and resolution
- Copies of all reports, records, operations summaries, water quality data and reports, and all other records relating to this Operations Contract shall be maintained at the existing Water Department offices at 237 Laurel Ave/570 Elm Street
- Perform utility mark-outs as required.
- Perform fire hydrant maintenance, painting and exercising.
- Perform bulk meter testing / replacements and maintenance.
- Perform inspections of new and replacement water service connections.
- Develop and implement a valve exercising program to ensure proper operation and maintenance of all water system valves.
- Preparation and distribution of the annual consumer confidence report consistent with the format of previous Kearny CCRs.

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APPENDIX D

PRICING

Base Compensation in First Agreement Year: \$_____.

Annual Adjustments: The Annual Fee consists of a Labor Cost Component, a Non Labor Cost Component, and an Energy/Chemicals Component. The Annual Fee for Years 2 and beyond shall be increased through the application of a set of readily available and national cost indices, as follows:

- a) Labor Cost Component, representing ___% of the Base Fee shall be escalated each year based upon the “ECI Index” for price-level changes.
- b) Non-Labor Costs Component, representing ____% of the Base Fee shall be escalated each year based upon the “CPI Index” for price-level changes.
- c) Energy Cost Component, representing __% of the Base Fee shall be escalated each year based upon the “PPI Index” for price-level changes.
- d) Escalation for Growth of Services. Each year, the Total Annual Cost shall be increased based upon the percentage of new customers added to the System.

- The ECI is the current Employment Cost Index, _____ [insert local index], as published by the U.S. Department of Labor, Bureau of Labor Statistics.
- The CPI is the current Consumer Price Index, _____ [insert local index], as published by the U.S. Department of Labor, Bureau of Labor Statistics.
- The PPI is the current Producer Price Index, _____ [insert local index], as published by the U.S. Department of Labor, Bureau of Labor Statistics.

The compensation for Services will be adjusted to compensate for any published rate increases or decreases in electrical cost and/or heating fuel cost that occur during any Agreement year. This adjustment shall be effective beginning with the effective date of the published rate increase.

Non-Routine Services

Costs for Non-Routine Services provided by Company as described previously herein, shall be paid by Owner to Company separately on a time and expense basis, including overtime. Materials and subcontractors will be invoiced to Owner by Company at cost, plus 10% on the actual cost of materials to reimburse Company for administrative expenses. For Company labor not regularly assigned to the System, Owner shall pay Company actual wages plus benefits at 35% plus 20% for overhead and administration. There will be no additional charge for Company labor regularly assigned to the System performing non-routine services during the course of their normal working shift; however, if such employee performs services on an overtime basis, Owner shall pay Company actual wages plus 50% for overtime plus 20% for overhead and administration.

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APPENDIX E

DEFINITIONS

“Applicable Law” means any applicable statute, law, constitution, charter, ordinance, resolution, judgment, order, permit, industry standard or code, decree, rule, regulation, directive, interpretation, standard or similar binding authority, which has been enacted, promulgated, issued or enforced by any judicial, legislative, administrative, municipal or other governmental authority having jurisdiction as of the date of execution of this Agreement. A change in Applicable Law means the enactment, adoption, promulgation, modification, repeal or change of any Applicable Law which establishes new requirements or changes the requirements with respect to the operation or maintenance of the System or otherwise impacts a party’s ability or cost of performance of its obligations under this Agreement. A change in Applicable Law shall include any change in any sales, use, and real property, ad valorem or excise tax or any tax paid by or on behalf of the Company which is imposed by the United States or another taxing authority, or any political subdivision thereof with respect to the Facilities or the performance of the Company’s obligation hereunder, but shall not include taxes based on or measured by net income, any unincorporated business, incorporated business, payroll, franchise or employment taxes.

“Capital Improvement” means all costs related to the construction, installation, repair or replacement of any component of the System in excess of \$5,000 per item, which has a useful life exceeding 5 (five) years.

“Environmental Claim” means any civil, criminal or administrative action, suit, communication (written), demand, claim, hearing, citation, notice, warning, consent decree, contract right, notice of violation, investigation, judgment or order by any person or entity lawfully authorized to issue, bring, give or make the same alleging, claiming, concerning or finding liability or potential liability arising of, based on or resulting from, in whole or in part, the actual or alleged presence, threatened release, release, emission, disposal, storage, treatment, transportation, generation, manufacture or use of any hazardous substance or waste at or from any location.

“Non-Routine Services” means additional operation and maintenance outside the Scope of Services outlined in Appendix C, including the cost of labor, parts and subcontractors, considered non-routine under this Agreement or required as a result of Uncontrollable Circumstances. Repair of water main breaks shall not be considered non-routine unless the number of water main breaks exceed 100 per year. Likewise, valve repairs or replacements shall not be considered non-routine unless the number of valve repairs/replacements exceed 100 per year.

“Services” means those activities provided by Company to Owner as described in Appendix C.

“Uncontrollable Circumstances” means causes beyond either party’s reasonable control, including, but not limited to, Acts of God, floods, quarantine restrictions, riots, strikes other than by employees of Company, commercial impossibility, failures of utilities, increases in tariff rates for electric and gas utilities, hurricanes, landslides, lightning, earthquakes, drought, epidemics, fires, explosions, bombings, casualties, acts of civil or military authority, sabotage, vandalism, acts of a public enemy or terrorists, changes in Applicable Law, receipt of Non-Specification Influent, damage to the system caused by third parties, or other events or circumstances beyond the control of the party obligated to perform, whether such other causes or related or unrelated, similar or dissimilar, to any of the foregoing.

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

APPENDIX F

INSURANCE

The Company at its expense shall procure and maintain during the term of this Agreement the following insurance:

I. Insurance Types and Limits.

- 1) Commercial General Liability Coverage - A policy to provide coverage against of personal injury and property damage, including broad form contractual liability coverage and shall have a \$3,000,000 limit for personal injury and property damage per occurrence and \$3,000,000 in the aggregate
- 2) Comprehensive Automobile Liability Coverage – A policy to provide coverage against claims of personal injury or property damage covering all owned, leased, non-owned and hired vehicles used in the performance of work under this Agreement with a minimum limit per occurrence of \$1,000,000 for personal injury and property damage.
- 3) Workers Compensation Insurance – A policy to provide coverage as required by State law and Employers Liability coverage in the amount of \$1,000,000 per occurrence.
- 4) Umbrella Liability Coverage – A policy to provide coverage excess of General Liability and Automobile Liability in the amount of \$2,000,000. The Company may satisfy this requirement by providing additional limits under the primary policies.

II. Insurance Certification. All policies of liability insurance required to be maintained by the Company shall:

- 1) Be issued by insurers with an A.M. Best rating of not less than “A-:VII”.
- 2) Provide that coverage shall not be canceled or non-renewed until at least thirty (30) days prior notice has been given, except only ten (10) days notice shall be provided for non-payment of premium.

Company shall annually provide Owner a certificate of insurance as evidence of the above coverage.

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

APPENDIX G

Miscellaneous Documents to be Executed as Part of the Contract

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

Americans with Disabilities Act of 1990

The CONTRACTOR and the OWNER do hereby agree that the provisions of Title 11 of the Americans With Disabilities Act of 1990 (the "ACT") (42 U.S.C~S12101 et seq.), which prohibits discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated pursuant thereunto, are made a part of this contract. In providing any act, benefit, or service on behalf of the OWNER pursuant to this contract, the CONTRACTOR agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this contract, the CONTRACTOR shall defend the OWNER in any action or administrative proceeding commenced pursuant to this Act. The Contractor shall indemnify, protect, and save harmless the OWNER, its agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages, of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The CONTRACTOR shall at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the OWNER grievance procedure, the CONTRACTOR agrees to abide by any decision of the OWNER which is rendered pursuant to said grievance procedure. If any action or administrative proceeding results in an award of damages against the OWNER or if the OWNER must incur any expense to cure a violation of the ADA which has been brought pursuant to its grievance procedure, the CONTRACTOR shall satisfy and discharge the same at its OWN expense.

The OWNER shall, as soon as practicable after a claim has been made against it, give written notice thereof to the CONTRACTOR along with full and complete particulars of the claim. If any action or administrative proceedings are brought against the OWNER or any of its agents, servants, and employees, the OWNER, shall expeditiously forward or have forwarded to the CONTRACTOR every demand, complaint, notice, summons, pleading, or other process received by the OWNER or its representatives.

It is expressly agreed and understood that any approval by the OWNER of the services provided by the CONTRACTOR pursuant to this contract will not relieve the CONTRACTOR of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless the OWNER pursuant to this paragraph.

It is further agreed and understood that the OWNER assumes no obligation to indemnify or save harmless the CONTRACTOR, its agents, servants, employees and subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the CONTRACTOR expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the CONTRACTOR'S obligations assumed in this Agreement, nor shall they be construed to relieve the CONTRACTOR from any liability, nor preclude the OWNER from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

Furthermore, the CONTRACTOR expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the CONTRACTOR's obligations assumed in this Agreement, nor shall they be construed to relieve the contractor from any liability, nor preclude the owner from taking any other actions available to it under any other provisions of the Agreement or otherwise at law.

Business Name (print): _____

Representative's Name (print): _____

Representative's Title: _____

Representative's Signature: _____

Phone: _____ **Date:** _____

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

Mandatory EEO Language

EXHIBIT A Goods, Professional Services and General Service 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 take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non discrimination 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, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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 employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division, pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions; that it does not discriminate on the basis of age, 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.

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

Mandatory EEO Language

In conforming with the applicable 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, 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

Employee Information Report Form AA302

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance and EEO as may be requested by the office from time to time in order to carry out the purpose of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance and EEO for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.**

Business Name: _____

Business Owner Name (print): _____

Business Owner Signature: _____

Date: _____

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

EXHIBIT B

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A 10:5-31 et seq., N.J.A.C.17:27

CONSTRUCTION CONTRACTS

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

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, 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, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Division may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, Band C, as long as the Division is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Division, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2.

The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities to minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines or is so notified by the Division that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Division, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Division. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(ii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in paragraph (i) above, whenever vacancies occur. At the request of the Division, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iii) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Division.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Division and submitted promptly to the Division upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Division an initial project workforce report (Form AA 201) provided to the public agency by the Division for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Division and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

COMPANY: _____

SIGNATURE: _____

PRINT NAME: _____

TITLE: _____

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

PERFORMANCE LABOR AND MATERIAL PAYMENT BOND

KNOW all men by these presents, that we, the undersigned, _____, as principal and _____, as sureties, are hereby held and firmly bound unto the Town of Kearny in the penal sum _____ dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed this _____ day of _____, 20____.

The condition of the above obligation is such that whereas, the above named principal did on the _____ day of _____, 20____, enter into a contract with the Town of Kearny (the "Contract"), which said Contract is made a part of this bond the same as though set forth herein;

Now, if the said _____ shall well and faithfully do and perform the things agreed by _____ to be done and performed according to the terms of said Contract, and shall pay all lawful claims of beneficiaries as defined by N.J.S. 2A:44-143 for labor performed or materials, provisions, provender or other supplies or teams, fuels, oils, implements or machinery furnished, used or consumed in the carrying forward, performing or completing of said contract, we agreeing and assenting that this undertaking shall be for the benefit of any beneficiary as defined in N.J.S.2A:44-143 having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

The said surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the said Contract or in or to the plans or specifications therefore shall in any wise affect the obligation of said surety on its bond.

Recovery of any claimant under the bond shall be subject to the conditions and provisions of N.J.S. 2A:44-143 to the same extent as if such conditions and provisions were fully incorporated in the form set forth above.

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

IN WITNESS WHEREOF said principal and surety have hereunto set their respective hands and seals or caused these presents to be signed and sealed by their proper representatives on the day and date set forth above.

Principal

WITNESS/ATTEST

By

Surety

ATTEST

By

NOTE: If the principal (Contractor) is a partnership, the bond should be signed by each of the general partners.

If the principal (Contractor) is a corporation, the bond must be signed by and attested by duly authorized representatives and an enabling corporate resolution must be attached.

There are to be executed an appropriate number of counterparts of this Performance Bond corresponding to the number of counterparts of the Contract.

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

_____, surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety meets the applicable capital and surplus requirements of R.S. 17:17-6 or R.S. 17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital (where applicable) and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amount(s) as of the calendar year ended December 31, _____ (most recent calendar year for which capital and surplus amounts are available), which amounts have been certified as indicated by certified public accountants (indicating separately for each surety that surety's capital and surplus amounts, together with the name and address of the firm of certified public accounts that shall have certified those amounts):

(3)(a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. sec. 9305, the underwriting limitation established therein and the date as of which that limitation was effective is as follows (indicating for each such surety that surety's underwriting limitation and the effective date thereof):

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the underwriting limitation of that surety as established pursuant to R.S. 17:18-9 as of (date on which such limitation was so established) is as follows (indicating for each such surety that surety's underwriting limitation and the date on which that limitation was established):

(4) The amount of the bond to which this statement and certification is attached is

\$ _____

(5) If, by the virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:

and, (b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L. 1993, c.243 (c.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

CERTIFICATE

(to be completed by an authorized certifying agent for each surety on the bond)

I _____, as _____
(Name of Agent) (Title of Agent)

for _____,
(Name of Surety)

a corporation/mutual insurance company/other domiciled in _____,
(indicating type of business organization) (circle one) (State of Domicile)

DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true and
ACKNOWLEDGE that if any of those statements are false, this bond is VOID.

(Signature of Certifying Agent)

(Printed Name of Certifying Agent)

(Title of Certifying Agent)

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

CONTRACT ADDENDUM

1. The Company acknowledges its obligation to comply with the Town of Kearny Ordinance No. 2007-(0)-41, as amended, with regard to the payment of Living Wages and the provision of Health Benefits to its employees.
2. The Company confirms that it has not engaged in investment activities in Iran (as defined in N.J.S.A. 52:32-56) and the Company is not identified as having such investments on the list developed by the New Jersey Department of the Treasury. The Company shall, up execution of this Agreement, complete, sign and file with the Town Clerk, the Certification attached hereto.
3. The Company shall comply with the provisions of Ordinance 2014-13, which limits political contributions by business entities awarded public contracts by the Town, and shall submit all certifications required by that Ordinance.

TOWN OF KEARNY

Water System Contract Operations, Maintenance and Management Services Agreement

IRAN CERTIFICATION

I, _____, residing at _____, upon penalty of perjury do certify to the following statements:

I am the _____ of the business entity submitting this bid and am duly authorized to execute this document on the business' behalf.

I am not, and the business entity submitting this bid, is not:

providing goods or services of \$20,000,000.00 or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

a financial institution that extends \$20,000,000.00 or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Affiant

Print Name

Notary Public